

STATE OF ALABAMA)
:
SHELBY COUNTY)

ORIGINAL



20040318000138110 Pg 1/3 92.00
Shelby Cnty Judge of Probate, AL
03/18/2004 09:34:00 FILED/CERTIFIED

MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 16 day of March, 2004, by and between MICHAEL R. SUMMERS, a married man ("Borrower") and ALAMERICA BANK ("Lender"). Certain of the loans described herein are made or guaranteed by GRADCO, INC. (referred to as "Company" or "Guarantor") (Borrower and Guarantor are sometimes referred to as "Obligors").

A. Lender is the holder of a Line of Credit Note in the face amount of \$400,000.00, made by the Company, dated July 3, 2002 (such note, as modified herein, is referred to as the "Note"). The Note is secured by various documents and instruments all dated July 3, 2002, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded as Instrument #20020711000322020, pages 1/20, in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Assignment of Rents and Leases recorded as Instrument #20020711000322030, pages 1/10, in the Probate Office of Shelby County, Alabama.
3. UCC Financing Statements filed as Instrument #20020711000322050, pages 1/6, in the Probate Office of Shelby County, Alabama, and filed as Instrument #B02-0579464, in the Secretary of States' Office for the State of Alabama.
4. Guaranty executed by Michael R. Summers in favor of Lender ("Guaranty").

B. All the documents and instruments referred to or described in Paragraph A, and all other documents and instruments further securing the Note, are referred to as the "Loan Documents." The real and personal properties pledged and mortgaged under the Loan Documents are referred to as the "Project." If not defined herein, capitalized terms used herein shall have the meanings given to them in the Loan Documents.

C. The Company wishes to increase the face amount of the note by \$50,000 (the "Advance"), and the Lender has agreed, on condition (*inter alia*) that record notice is provided that the Loan Documents secure the Advance.

WITNESSETH:

NOW THEREFORE, in consideration of the premises and of other due, good, and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Note.** The face amount of the Note is increased by Fifty Thousand and No/100 Dollars (\$50,000.00) from Four Hundred Thousand and No/100 (\$400,000.00) Dollars, to Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00). All references to the Note, Secured Indebtedness, or Secured Obligations appearing in the Loan Documents shall also include the Note as amended herein, and the indebtedness and obligations added to the Note by this instrument. The Note, together with any extensions, renewals, amendments or modifications thereof, are secured by the Loan Documents, whether now existing or hereafter executed. Lender shall not be obligated to disburse the Advance until Lender has received such title endorsement, leases, opinions, and other due diligence documents as Lender may require.

2. **Guaranty.** Without limiting the foregoing, Guarantor consents to this agreement; the term "Note" as defined in the Guaranty is modified to refer to and include the Note as amended herein (in addition to the Note), which Note Guarantor guarantees under the terms of the Guaranty; and the Guaranty is ratified, confirmed and modified to include this instrument as one of the Loan Documents described therein.

3. **Representations and Warranties.** Obligors represent and warrant to Lender that the following are true, correct and complete as of the date of this agreement:

3.1 **Due Organization, Authority.** Each Obligor which is a corporation is duly organized and validly existing under the state in which such Obligor is stated as being organized herein and in good standing under the laws of such state and has power adequate to carry on its businesses in each such State as presently conducted, to own and/or lease the Properties, to make and enter into those Loan Documents executed by Obligor and to carry out the transactions contemplated therein.

3.2 **Execution, Delivery and Effect of Loan Documents.** Obligors represent (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Obligors, as the case may be, that each is a legal, valid and binding obligation of Obligors, enforceable in accordance with its terms, that there are no defenses, counterclaims, or set-offs to any of the Loan Documents, and that upon default Lender shall be entitled to exercise any one or more remedies under any one or more of the Loan Documents including without limitation suit, receivership, foreclosure, and/or other remedies available under law or equity.

3.3 **Other Obligations.** No Obligor is in violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to the leases executed by any Obligor of portions of (or space in) the Properties or the personal or real property or other thing of value secured by the Loan Documents (the "Collateral"). No tenant or other party has asserted any claim or default relating to any such lease or to any of the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which any Obligor is a party or by which any Obligor may be bound or affected, and do not and will not violate or contravene any laws to which any Obligor is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

3.4 **Legal Actions.** There are no material actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of any Obligor's knowledge and belief, threatened, against or affecting any Obligor, its business or the Collateral, or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of any Obligor's knowledge and belief, threatened against or affecting any Obligor, any Obligor's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Obligor would not have a material adverse effect on any Obligor or the Collateral. No Obligor is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any such Obligor or the Collateral.

3.5 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the loan evidenced by the Note ("Loan") are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statement as of the date thereof. Since the date thereof, no Obligor has experienced any material, adverse change in its finances, business, operations, affairs or prospects.

3.6 **Title to Collateral.** Obligors represent that Borrower has good and clear record and marketable title to the Collateral, free of all liens, encumbrances or restrictions other than the exceptions reflected in the title policies heretofore delivered to and approved by Lender ("Permitted Encumbrances").

3.7 **Compliance with Laws and Private Covenants.** The Collateral complies in all material respects with all laws. Obligors have examined and are familiar with the Permitted Encumbrances and there now exists no

material violation thereof. Obligors have no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

3.8 Hazardous Waste. To the best knowledge and belief of Obligors, no release of any hazardous waste or hazardous substance (as defined under applicable laws) is present on, in, under, or at the Collateral, nor has any Obligor received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

4. Miscellaneous. Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Security Documents shall remain in full force and effect and are hereby ratified and confirmed by each Obligor.

5. Counterparts. This agreement may be executed in counterparts, but all counterparts shall constitute but one and the same document.

"GUARANTOR:"

GRADCO, INC.

By: Michael R. Summers [SEAL]
Michael R. Summers
Its: President

"BORROWER:"

Michael R. Summers [SEAL]
MICHAEL R. SUMMERS

"LENDER:"

ALAMERICA BANK

By: Matt Rockwell [SEAL]
Name: Matt Rockwell
Its: Vice President

STATE OF ALABAMA)

COUNTY OF ~~JEFFERSON~~)

Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael R. Summers, individually and as President of Gradco, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as said President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date. Given under my hand and official seal this 16th day of March, 2004.

Dicki Johnson
Notary Public
My Commission Expires: 6-17-07