

P BK 98 PG 290

BK 1694 PG 0759

STATE MS. - DE SOTO CO.

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Prepared by and return to:  
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BK 98 PG 290  
W.E. DAVIS CH. CLK.

BK 1694 PG 759  
W.E. DAVIS CH. CLK.

**MODIFICATION AGREEMENT**

THIS MODIFICATION AGREEMENT made and entered into this 14<sup>th</sup> day of March, 2003, by and between MICHAEL A. LIGHTMAN (hereinafter "Borrower"); and UNION PLANTERS BANK, NATIONAL ASSOCIATION, a national banking association (hereinafter "Bank").

Recitals of Fact:

WHEREAS, Borrower executed that certain Construction/Term Promissory Note dated June 3, 1998, in the principal sum of Five Million Six Hundred Thousand and No/100ths Dollars (\$5,600,000.00) ("Note"), the Note being payable to and held and owned by Bank and secured *inter alia*, by a Deed of Trust and Security Agreement of even date therewith ("Deed of Trust"), which Deed of Trust describes certain real property (hereinafter "Property") located in DeSoto County, Mississippi, as more particularly described in said Deed of Trust of record in Book 1004, at Page 209, in the office of the Chancery Clerk of DeSoto County, Mississippi;

WHEREAS, the Note is further secured, *inter alia*, by an Assignment of Rents and Leases of record in Book 77, Page 720, and UCC-1 Financing Statements of record in Book 1004, Page 233 and 46-6-98, in said Chancery Clerk's Office and the Mississippi Secretary of State's Office at Instrument No. 01222395, Construction/Term Loan Agreement, Environmental Certificates and Indemnity, and other documents, instruments and agreements pertaining thereto (collectively, "Security Documents");

WHEREAS, the parties hereto by means of this instrument desire to modify the terms of payment of the indebtedness evidenced by the Note, to make certain other modifications and amendments to the Note, the Deed of Trust and the Security Documents, as hereinafter provided, without, however, releasing or affecting the lien and priority of the Deed of Trust.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Acknowledgment of Debt. It is acknowledged that as of the date hereof the current unpaid principal balance of the Note is \$5,140,321.24.

2. Change of Interest Rate and Repayment Terms. It is hereby agreed that the Note shall be and is hereby modified, effective as of March 14, 2003 through and including March 13, 2010 (the "Fixed Rate Period"), to provide that the unpaid principal balance of the Note shall bear interest at the per annum rate of six and 17/100 percent (6.17%). Effective March 14, 2010 through the Maturity Date (as hereinafter defined) (the "LIBOR Rate Period"), interest shall be that rate equal to two hundred fifty (250) basis points in excess of LIBOR. As used herein,

“LIBOR” means the rate per annum which is equal to the London Interbank Offered Rate reported from time to time at approximately 11:00 a. m., London time, by Telerate News Services, at which foreign branches of major United States banks offer United States dollar deposits to other banks for a ninety (90) day period in the London interbank market. If such interest rates shall cease to be available from Telerate News Services, the LIBOR shall be determined from such financial reporting service as the Bank shall reasonably determine and use with respect to its other loan facilities on which interest is determined based on the LIBOR. Effective every ninety (90) days during the LIBOR Rate Period, interest shall be adjusted upward or downward by a number of percentage points (and fractional parts thereof) equal to the adjustment upward or downward in LIBOR; provided, however, that the rate, as adjusted, shall not exceed the maximum rate of interest which Bank, as a national banking association, is permitted by law to contract for and charge from time to time during the term hereof. Interest shall accrue on the basis provided in the Note.

The Note shall be due and payable on the following basis:

**FIXED RATE PERIOD:** During the Fixed Rate Period, Borrower shall pay monthly installments of \$40,740.58 each, commencing April 14, 2003 and on the same day of each and every month thereafter to and including March 14, 2010. Installments shall be applied first to accrued but unpaid interest and the balance, if any, to unpaid principal.

**LIBOR RATE PERIOD:** During the LIBOR Rate Period, Borrower shall pay monthly installments computed and re-computed on each interest rate change date using the adjusted interest rate, the then outstanding principal balance and the number of years remaining in a 17-year amortization measured from the date hereof.

**FINAL INSTALLMENT:** On March 14, 2013 (the “Maturity Date”), Borrower shall pay all accrued but unpaid interest and the outstanding principal balance. The final installment is a balloon payment. The Bank has no obligation, to extend, modify or change the final installment.

**NOTWITHSTANDING ANY PROVISION HEREIN OR ELSEWHERE CONTAINED TO THE CONTRARY,** the entire unpaid principal balance of the Note, plus all accrued interest thereon and any other sums due on the loan evidenced by the Note shall be due and payable on the Maturity Date, unless sooner paid.

3. Prepayment Provisions. All prepayment provisions provided for in the Note, Deed of Trust, Security Documents or any other loan and security documents, instruments or agreements pertaining thereto shall be and are hereby deleted in their entirety and the following shall be inserted in the Note and shall govern any and all prepayments:

The Borrower shall have the privilege, at any time and from time to time, of prepaying, in whole or in part, the principal evidenced by the Note, together with (a) accrued interest thereon, and (b) during the Fixed Rate Period only, a prepayment premium equal to (i) five percent (5%) of amounts prepaid during the first year of the Fixed Rate Period, (ii) four percent (4%) of amounts prepaid during the second year of the Fixed Rate Period, (iii) three percent (3%) of amounts prepaid during the third year of the Fixed Rate Period,

(iv) two percent (2%) of amounts prepaid during the fourth and fifth years of the Fixed Rate Period, and (v) one percent (1%) of amounts prepaid during the sixth and seventh years of the Fixed Rate Period; provided, however, there shall be no prepayment premium applicable during the last six (6) months of the Fixed Rate Period. There shall be no prepayment premium due or payable during the LIBOR Rate Period. All prepayments of principal shall be applied to installments due in the inverse order of their maturity.

4. Modification of Deed of Trust and Security Documents. The Deed of Trust and Security Documents are hereby modified to reflect the changes in the Note and the lien of the Deed of Trust is hereby extended so that the same will not be barred by the statute of limitations until ten (10) years after the date of maturity of the last installment of the indebtedness evidenced by the Note as set forth above. The lien of the Deed of Trust shall remain in full force and effect and unimpaired for a period of ten (10) years from the maturity of said indebtedness as modified hereby.

5. Reaffirmation of Obligations. All other provisions of the Note, the Deed of Trust the Security Documents and other loan documents which secure the Note which are inconsistent with the provisions of this Modification Agreement are hereby modified and amended to conform herewith; and as so modified, each and all of said instruments and documents are hereby ratified, approved and confirmed in all respects.

6. Borrower's Representations and Warranties. In order to induce Bank to enter into this Modification Agreement, the Borrower does hereby certify, represent and warrant to Bank that:

- a) All representations and warranties made by the Borrower in any and all other documents, instruments and agreements pertaining to the Borrower's indebtedness are true, correct and complete in all material respects as of the date of this Modification Agreement.
- b) There are no existing offsets, defenses or counterclaims to the respective obligations of the Borrower as set forth in the Note, the Deed of Trust, the Security Documents or in any other documents, instruments or agreements executed by the Borrower in connection with the loan evidenced by the Note.

7. Borrower's Covenants. In consideration of the modification herein granted, the Borrower promises to pay said indebtedness and the interest thereon, as above set out, and to keep and perform all the covenants, terms, and conditions contained in the Note, the Deed of Trust, the Security Documents and in all other documents, instruments and agreements, in default of any of which Bank may, at its option, immediately or (if the said Note or other loan documents provide for a period of cure) following the expiration of any applicable cure period which no cure of such default having been effected, thereupon declare said indebtedness accelerated and matured for all purposes and may proceed to foreclose said Deed of Trust, it being expressly understood and agreed that the Note shall continue as evidence of said

STATE OF TENNESSEE  
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said County and State, on this 21 day of March, 2003, within my jurisdiction, the within named Michael Skillern, who acknowledged that he is a Vice-President of Union Planters Bank, National Association, a national banking association, and that for and on behalf of the said national banking association, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said national banking association so to do.

Dorothy L Westmoreland  
Notary Public

My Commission Expires:

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STATE OF TENNESSEE  
COUNTY OF SHELBY

Personally appeared before me, the undersigned authority in and for the said county and state, on this 21 day of March, 2003, within my jurisdiction, the within named Michael A. Lightman, who acknowledged that he executed the above and foregoing instrument.

Dorothy L Westmoreland  
Notary Public

My Commission Expires:

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indebtedness until the same is paid, and that the lien of the Deed of Trust shall be in no manner whatsoever affected by the execution of this instrument, except as the same is modified herein.

8. Law Governing. The negotiations for the indebtedness evidenced by the Note and secured by the Deed of Trust, and for this modification have taken place in the State of Tennessee. The Note, the Deed of Trust, the Security Documents, this Modification Agreement, and all other documents evidencing or securing the loan evidenced by the Note are or have been delivered from Borrower to Bank at Memphis, Tennessee, and shall be construed according to and governed by the laws of the State of Tennessee, except to the extent that federal law may control as to the maximum rate of interest which may be lawfully charged.

9. Releases. A release of the Deed of Trust shall also be and constitute a release of this Modification Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

BANK:

UNION PLANTERS BANK  
NATIONAL ASSOCIATION

By: Michael Skillern  
Michael Skillern, Vice President

BORROWER:

Michael A. Lightman  
Michael A. Lightman