

Prepared By and Return to:
O. Douglas Shipman, Esq.
6750 Poplar Avenue, Suite 208
Memphis, Tennessee 38138

W

10/07/08 1:11:38
BK 2,954 PG 326
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

**FIRST AGREEMENT TO MODIFY PROMISSORY NOTE NO. 4267498001 AND
DEED OF TRUST WITH ASSIGNMENT OF LEASES, RENTS AND INCOME
AS RECORDED IN THE OFFICE OF THE DESOTO COUNTY
CHANCERY CLERK AT BOOK 1655, PAGE 0327**

This Agreement is entered into as of the 2nd day of October 2008, by and between **MAGNOLIA SQUARE PARTNERS, LLC**, a limited liability company organized and existing pursuant to the laws of the State of Tennessee, successor to **MAGNOLIA SQUARE PARTNERS, L.P.** (hereinafter referred to as "Borrower") and **CADENCE BANK, N.A.** successor-in-interest to **ENTERPRISE NATIONAL BANK**. (hereinafter referred to as "Bank"). **THOMAS W. HART, ROSEMARY C. HART, THOMAS F. SCHAFFLER, MARGARET SCHAFFLER, STEPHEN T. DUNAVANT, CATHI M. DUNAVANT, JOHN A. BOBANGO AND LISA W. BOBANGO** (hereinafter collectively referred to as "Guarantors") enter into this Agreement for the purpose of acknowledging and consenting to this Agreement and affirming their respective Guaranties for the subject Loan.

WITNESSETH:

WHEREAS, Borrower currently has a Loan (the "Loan") with Cadence Bank, N.A., successor to Enterprise National Bank, in the original principal amount of **TWO MILLION THREE HUNDRED THOUSAND AND NO/100 (\$2,300,000.00) DOLLARS** evidenced by a Promissory Note being executed by Borrower bearing the date of January 30, 2003, (the "Note") and being secured by Deed of Trust with Assignment Of Leases, Rents and Income recorded in Book 1655, Page 327 in the Office of the Chancery Clerk of Desoto County, Mississippi, (the "Trust Deed"), reference being made to said Trust Deed for a more particular description of the property therein conveyed; and

WHEREAS, the Guarantors' delivered to Bank their joint and several personal guaranties on the Loan as limited therein, (the "Guaranties"); and

WHEREAS, the Loan is further secured by a first lien on all of Borrower's accounts, inventory and proceeds thereof as more particularly described in Security Agreement executed by Borrower on January 30, 2003 (the "Security Agreement"); and

WHEREAS, the Borrower, Bank and Guarantors entered into a Term Loan Agreement dated January 30, 2003 (the "Loan Agreement"); and

*O.D. Shipman
(ew)*

WHEREAS, said Loan has been extended by mutual agreement of the Bank and Borrower on numerous occasions (the "Extensions"); and

WHEREAS, the current principal balance of the Loan is \$2,074,430.36; and

WHEREAS, Bank, Borrower and Guarantors agree to amend the terms of the Loan as set forth hereinbelow upon the agreement of the Borrower and Guarantors to make, keep and perform all of the terms, conditions, and covenants set forth in Note, Trust Deed, Security Agreement, Loan Agreement and Guaranties.

NOW, THEREFORE, for and in consideration of the mutual advantages accruing to the parties hereto, one to the other, and for good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged, the parties hereby covenant and agree as follows:

1. To extend the current maturity date of Loan to October 15, 2010.
2. Repayment of principal and interest on the Note shall be as follows:

23 payments of principal and interest in the amount of \$19,312.03 each, commencing on October 15, 2008, and continuing to be due on the same date each succeeding month thereafter through September 15, 2010. At Maturity, October 15, 2010, a 24th and final payment of all outstanding principal and accrued interest shall be due and payable.
3. The minimum Debt Service Coverage Ratio as described in Section 5.02 of the Loan Agreement shall remain at not less than 1.25. Such ratio shall be tested annually, based on Fiscal Year End financial statements. For the purpose of this Agreement, Minimum Debt Service Coverage Ratio is defined as:

Net Income **plus**
 Depreciation, **plus**
 Interest, **divided by**
 Long Term Debt **plus**
 Interest Expense
4. Borrower shall maintain a tangible net worth of \$150,000.00, to be tested annually, based on Fiscal Year-End Financial Statements. For the purpose of the Agreement, Tangible Net Worth is defined as Net Worth less goodwill and other assets.
5. It is the intent of the parties hereto that all collateral securing the Loan as modified shall remain and continue in place.
6. The Deed of Trust, Note, Loan Agreement and Security Agreement are hereby modified as set forth hereinabove.
7. It is expressly understood and agreed that the aforementioned Note, Guaranties, Deed of Trust, Loan Agreement and Security Agreement, are only modified as expressly provided herein and all other terms, conditions and covenants shall remain in full force and effect and the parties hereto ratify and affirm said provision.

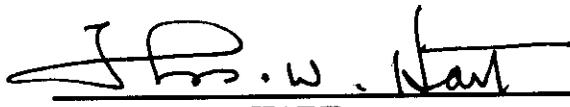
- 8. Borrower and Guarantors hereby expressly acknowledge, ratify and affirm the previous extensions on the Loan, and, further acknowledge, ratify and affirm the provisions of this Agreement.
- 9. In consideration of the terms hereof, Borrower shall:
 - (a) Pay to Bank a loan fee of Two Thousand Five Hundred and 00/100—(\$2,500.00);
 - (b) Bring all accrued interest current; and
 - (c) Pay any and all expenses and attorney fees related to this transaction.
- 10. This document may be executed in counterparts.

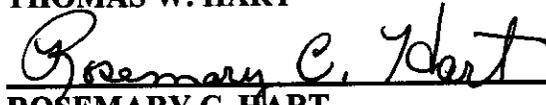
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

BORROWER: MAGNOLIA SQUARE PARTNERS, LLC

By: 
THOMAS W. HART, Chief Member

GUARANTORS:

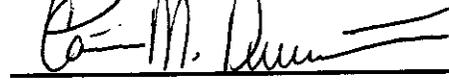

THOMAS W. HART


ROSEMARY C. HART

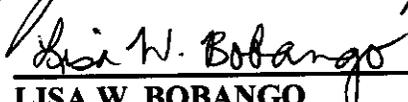

THOMAS F. SCHAFFLER

"see attached" *
MARGARET SCHAFFLER

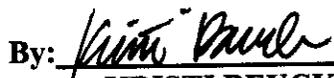

STEPHEN E. DUNAVANT


CATHI M. DUNAVANT


JOHN A. BOBANGO


LISA W. BOBANGO

BANK: CADENCE BANK, N.A.

By: 
KRISTI BEUCKENS, Assistant Vice President

- 8. Borrower and Guarantors hereby expressly acknowledge, ratify and affirm the previous extensions on the Loan, and, further acknowledge, ratify and affirm the provisions of this Agreement.
- 9. In consideration of the terms hereof, Borrower shall:
 - (a) Pay to Bank a loan fee of Two Thousand Five Hundred and 00/100—(\$2,500.00);
 - (b) Bring all accrued interest current; and
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- 10. This document may be executed in counterparts.

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

BORROWER: **MAGNOLIA SQUARE PARTNERS, LLC**

~~_____~~

By: ~~_____~~
THOMAS W. HART, Chief Member

GUARANTORS:

~~_____~~
THOMAS W. HART

~~_____~~
ROSEMARY C. HART

~~_____~~
THOMAS F. SCHAFFLER

Margaret Schaffler *
MARGARET SCHAFFLER

~~_____~~
STEPHEN T. DUNAVANT

~~_____~~
CATHI M. DUNAVANT

~~_____~~
JOHN A. BOBANGO

~~_____~~
LISA W. BOBANGO

BANK: **CADENCE BANK, N.A.**

~~_____~~

By: ~~_____~~
KRISTI BEUCKENS, Assistant Vice President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared **THOMAS W. HART**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chief Member of **MAGNOLIA SQUARE PARTNERS, LLC**, the within named bargainor, a limited liability company, and that he as such Chief Member, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself as Chief Member.

WITNESS my hand and seal at office this 2nd day of October, 2008.



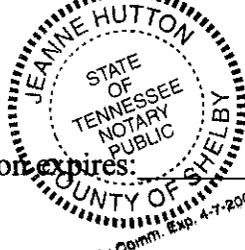
Jeanne Hutton
Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared **THOMAS W. HART**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this 2nd day of October 2008.



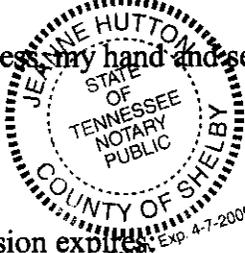
Jeanne Hutton
Notary Public

My commission expires: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared **ROSEMARY C. HART**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this 2nd day of October 2008.



Jeanne Hutton
Notary Public

My commission expires: _____

STATE OF TN
COUNTY OF Shelby

Before me, a Notary Public in and for said State and County, personally appeared **THOMAS F. SCHAFFLER**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this 2nd day of October 2008.



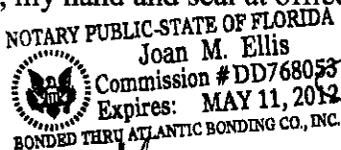
Michael G. Alexander
Notary Public

My commission expires: 1-26-11

STATE OF Florida
COUNTY OF Walton

Before me, a Notary Public in and for said State and County, personally appeared **MARGARET SCHAFFLER**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this 3 day of October 2008.



[Signature]
Notary Public

My commission expires: May 11, 2012

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared, to me **STEPHEN T. DUNAVANT**, known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this _____ day of _____ 2008.

Notary Public

My commission expires: _____

Before me, a Notary Public in and for said State and County, personally appeared **CATHI M. DUNAVANT**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this _____ day of _____ 2008.

Notary Public

My commission expires: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared, to me **JOHN A. BOBANGO**, known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this _____ day of _____ 2008.

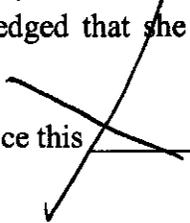
Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

Before me, a Notary Public in and for said State and County, personally appeared **MARGARET SCHAFFLER**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this _____ day of _____ 2008.



Notary Public

My commission expires: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared, to me **STEPHEN T. DUNAVANT**, known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this 3rd day of October 2008.



Jeanne Hutton
Notary Public

My commission expires: _____

Before me, a Notary Public in and for said State and County, personally appeared **CATHI M. DUNAVANT**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this 3rd day of October 2008.



Jeanne Hutton
Notary Public

My commission expires: _____

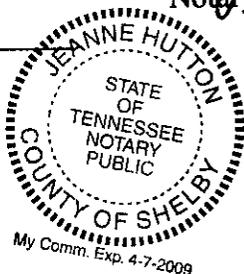
STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, personally appeared, to me **JOHN A. BOBANGO**, known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness, my hand and seal at office this 2nd day of October 2008.

Jeanne Hutton
Notary Public

My commission expires: _____



**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, a Notary Public in and for said State and County, personally appeared **LISA W. BOBANGO**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness, my hand and seal at office this 2nd day of October 2008.



Jeanne Hutton
Notary Public

My commission expires:

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, a Notary Public of the State and County aforesaid, personally appeared **KRISTI BUECKENS**, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be the Assistant Vice President of **CADENCE BANK, N.A.** the within named bargainor, and that she as such Assistant Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by herself as Assistant Vice President.

WITNESS, my hand and Notarial Seal this 3rd day of October 2008.

Jeanne Hutton
Notary Public

My Commission Expires: 4/7/09

