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DK T BK 3,403 PG 225  
DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

This instrument prepared by and return to:

*JS*  
Justin T. Starling, MS Bar #103080  
Bass Berry & Sims, PLC (BTG)  
100 Peabody Place, Suite 900  
Memphis, TN 38103  
(901) 543-5900

### **MODIFICATION AGREEMENT**

#### **INDEXING INSTRUCTIONS:**

- Lot 167, Section E, Henry's Plantation Subdivision, situated in Section 22, Township 1 South, Range 6 West. DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 87, Page 12, in the Office of the Chancery Clerk of DeSoto County, Mississippi, to which plat reference is hereby made for a more particular description of said property.

10549131.1

### MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT ("Agreement") is entered into as of the 25 day of October, 2011 and is made and entered into on the terms and conditions hereinafter set forth, by and among **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, a national banking association ("Bank"); **COMPASS POINTE PROPERTIES**, a Tennessee general partnership ("Compass Partnership"), and **COMPASS POINTE HOMES, LLC**, a Tennessee limited liability company ("Compass LLC"), and collectively with Compass Partnership, "Borrower"; and **WILLARD V. RICHERSON**, also known as **WILLARD V. RICHERSON, JR.**, also known as **W.V. RICHERSON, JR.**, also known as **W.V. RICHERSON**, and wife, **DIANE M. RICHERSON**, also known as **DIANE RICHERSON** (collectively, "Guarantors").

#### RECITALS AND STIPULATIONS:

A. **WHEREAS**, Borrower is indebted to Bank with regard to those certain loans (the "Loans") more particularly described as follows:

(1) Loan ("Loan No. 080266835") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Five Thousand Nine Hundred and No/100 Dollars (\$105,900.00) dated July 31, 2008 and executed by Borrower in favor of Bank;

(2) Loan ("Loan No. 080266837") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Eight Thousand Three Hundred and No/100 Dollars (\$108,300.00) dated July 31, 2008 and executed by Borrower in favor of Bank;

(3) Loan ("Loan No. 080266838") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Four Thousand Two Hundred Fifty and No/100 Dollars (\$104,250.00) dated July 31, 2008 and executed by Borrower in favor of Bank;

(4) Loan ("Loan No. 080266840") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Thirty-Nine Thousand Seven Hundred and No/100 Dollars (\$139,700.00) dated July 31, 2008 and executed by Borrower in favor of Bank;

(5) Loan ("Loan No. 05120011324038") evidenced by that certain Promissory Note in the original maximum principal amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) dated October 6, 2005 and executed by Borrower in favor of Bank;

(6) Loan ("Loan No. 05130011336018") evidenced by that certain Promissory Note in the original maximum principal amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) dated August 31, 2006 and executed by Borrower in favor of Bank (the "Lost Creek Note");

(7) Loan ("Loan No. 05130011336033") evidenced by the Lost Creek Note;

(8) Loan ("Loan No. 05130011336034") evidenced by the Lost Creek Note;

(9) Loan ("Loan No. 080266189") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Thirty-Eight Thousand Three Hundred Twenty-Five and 72/100 Dollars (\$138,325.72) dated March 10, 2008 and executed by Borrower in favor of Bank;

(10) Loan ("Loan No. 080266191") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Six Thousand Six Hundred and No/100 Dollars (\$106,600.00) dated March 10, 2008 and executed by Borrower in favor of Bank;

(11) Loan ("Loan No. 080263793") evidenced by that certain Promissory Note in the original maximum principal amount of One Hundred Four Thousand and No/100 Dollars (\$104,000.00) dated December 21, 2006 and executed by Borrower in favor of Bank (such Promissory Notes set forth in this Recital A, as amended from time to time, the "Notes");

**B. WHEREAS**, to secure the obligations of Borrower under the Notes, one of the Borrower and/or Guarantors entered into certain security documents and pledges in favor of Bank (as they may have been amended from time to time, the "Security Instruments"), including, without limitation, the following:

(1) Deed of Trust dated July 31, 2008, recorded August 9, 2008 as Instrument No. 08104428, in the Register's Office of Shelby County, Tennessee;

(2) Deed of Trust dated July 31, 2008, recorded August 9, 2008 as Instrument No. 08104400, in the Register's Office of Shelby County, Tennessee;

(3) Deed of Trust dated July 31, 2008, recorded August 17, 2008 as Instrument No. 08104512, in the Register's Office of Shelby County, Tennessee;

(4) Deed of Trust dated July 31, 2008, recorded August 12, 2008 as Book 2935, Page 245 at the Chancery Clerk's Office of DeSoto County, Mississippi;

(5) Tennessee Construction Deed of Trust and Fixture Filing with Security Agreement and Assignment of Rents and Leases dated August 31, 2006, recorded September 5, 2006 as Instrument No. 06144604, in the Register's Office of Shelby County, Tennessee;

(6) Tennessee Development and Construction Deed of Trust and Fixture Filing with Security Agreement and Assignment of Rents and Leases dated October 6, 2005, recorded October 10, 2005 as Instrument No. 05165713, in the Register's Office of Shelby County, Tennessee;

(7) Deed of Trust dated March 10, 2008, recorded April 2, 2008 as Book 2878, Page 659 at the Chancery Clerk's Office of DeSoto County, Mississippi;

(8) Deed of Trust dated March 10, 2008, recorded April 2, 2008 as Book 2878, Page 659 at the Chancery Clerk's Office of DeSoto County, Mississippi;

(9) Deed of Trust dated December 21, 2006, recorded January 3, 2007 as Instrument No. 07001505, in the Register's Office of Shelby County, Tennessee;

C. **WHEREAS**, the Loans were further evidenced by those certain guaranties of Borrower's indebtedness entered into by Guarantors (collectively, the "Guaranties"), namely:

(1) Commercial Guaranties from Guarantors dated October 21, 2003, January 22, 2004, March 3, 2004, April 29, 2004, June 30, 2004, July 1, 2005 and March 10, 2008;

D. **WHEREAS**, any and all instruments, documents and agreements now or hereafter further evidencing, securing or otherwise relating to the Loans, or any portion thereof, including without limitation, the Notes, the Security Instruments and the Guaranties, are hereinafter collectively referred to as the "Loan Documents"; and

E. **WHEREAS**, Borrower and Guarantors have requested that Bank modify certain terms of the Loan Documents, and Bank has agreed to such modification subject to the requirements and agreements set forth below and as more particularly described herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Modification of Loan Documents. The Loan Documents are hereby modified as follows:

(a) Payment Schedule. The total outstanding principal balance, plus accrued and accruing interest, costs and fees (the "Outstanding Balance") of the Loans shall be due and payable as hereinafter set forth:

(i) Partial payments of principal and accrued interest (at the Modified Rate, defined below) shall be due and payable by Borrower on the fifteenth (15<sup>th</sup>) day of each month in accordance with the terms of the Notes, as amended by this Agreement, without notice or demand, in the following amounts:

(1) Loan No. 080266835, Seven Hundred Ninety Three and No/100 Dollars (\$793.00);

(2) Loan No. 080266837, Eight Hundred Seven and No/100 Dollars (\$807.00);

(3) Loan No. 080266838, Seven Hundred Seventy-Seven and No/100 Dollars (\$777.00);

(4) Loan No. 080266840, One Thousand Fifty-Two and No/100 Dollars (\$1,052.00);

(5) Loan No. 05120011324038, Eight Hundred Seventeen and No/100 Dollars (\$817.00);

(6) Loan No. 05130011336018, Nine Hundred Forty-Six and No/100 Dollars (\$946.00);

(7) Loan No. 05130011336033, Nine Hundred Forty-Six and No/100 Dollars (\$946.00);

(8) Loan No. 05130011336034, Nine Hundred Thirty-Two and No/100 Dollars (\$932.00);

(9) Loan No. 080266189, One Thousand Twenty-Seven and No/100 Dollars (\$1,027.00);

(10) Loan No. 080266191, Seven Hundred Ninety-One and No/100 (\$791.00); and

(11) Loan No. 080263793, Six Hundred Sixty-Nine and No/100 Dollars (\$669.00);

(ii) Concurrently herewith, Borrower shall pay to Bank the October 15, 2011 monthly payments of principal and accrued interest for the Loans, in the amounts set forth in Section 1(a)(i) above;

(iii) On September 15, 2012, the entire Outstanding Balance under the Notes, including all accrued and unpaid interest thereon and all incurred costs and fees, shall be immediately due and payable by Borrower without notice or demand;

(iv) All payments provided for in this Section 1 shall be made by cashier's check and shall be delivered to Bank, attention of Terry W. Smith, 165 Madison Avenue, Memphis, Tennessee 38103 in a manner such that they are received by 4:00 p.m. Central Time on the date that such payments are due; and

(v) Borrower may not reborrow any sums repaid under the Loans, and Bank has no obligation to advance any new loan proceeds under the Loans.

(b) Interest Rate. Effective as of the date of this Agreement, interest shall accrue on the Outstanding Balance at the rate of Base Rate (defined below) plus Two Percent (Base Rate + 2.0%) per annum (the "Modified Rate"). The term "Base Rate", as used herein, is a fluctuating rate and is a reference or benchmark rate of interest that is established by Bank as its Base Rate to be in effect from time to time, whether or not such rate is otherwise published. The Base Rate is established by Bank as an index and may or may not at any time be the best or lowest rate charged by Bank on any loan. Notwithstanding anything else in this instrument to the contrary, in no event shall the maximum rate of interest payable in respect to the indebtedness evidenced hereby exceed the maximum rate of interest allowed to be charged by applicable law. As of the date of

this Agreement, the Base Rate is Three and One Quarter Percent (3.25%) and the Modified Rate is Five and One Quarter Percent (5.25%).

2. Conditions of Modification. Bank's agreement to modify the Loan Documents is conditioned upon and subject to the timely satisfaction by Borrower and Guarantors of each of the following conditions (collectively the "Conditions of Modification"):

(a) Correctness and Warranties. All representations and warranties made by Borrower and Guarantors to Bank under this Agreement and the other Loan Documents shall remain true and correct until the Outstanding Balance shall have been paid in full;

(b) No Defaults Hereunder. Until the Outstanding Balance shall have been paid in full, Borrower and Guarantors shall not breach any promise or covenant contained in this Agreement and shall not be in default under any provision of this Agreement or the other Loan Documents without regard for any notice and cure provision under any of the Loan Documents in respect of a Borrower or Guarantor default, any and all of which notice and cure provisions Borrower and Guarantors each hereby waives; and

(c) Security Interests. Promptly following any request by Bank therefor, Borrower and Guarantors shall take such action, or shall cause such action to be taken, as may be reasonably required to perfect, confirm and insure Bank's security interests and liens under the Security Instruments.

3. Termination Events. Each of the following shall constitute a Termination Event and an Event of Default under this Agreement (each a "Termination Event"):

(a) If any of Borrower or Guarantors shall fail to comply in a timely manner with any of the Conditions of Modification set forth above including, but not limited to, the failure to make any payment set forth in Section 1 herein;

(b) If any of Borrower or Guarantors shall become a debtor in bankruptcy by means of either a voluntary or involuntary petition; or

(c) If any kind of receivership or insolvency proceeding is commenced by or against any of Borrower or Guarantors.

Upon the occurrence of a Termination Event including, but not limited to, the failure of Borrower to timely pay any amount due hereunder, the entire Outstanding Balance, including principal, accrued and accruing interest, attorneys' fees, and all other costs and fees associated therewith, whether incurred prior or subsequent to the execution of this Agreement, shall at Bank's option be due and owing on that date (less any payments made in the interim) and shall be immediately due and payable as of such termination, and Bank shall be entitled immediately to exercise all of its rights, powers, privileges, options and remedies under the Loan Documents, all without notice to Borrower and Guarantors (except as may be required by applicable law).

In addition, upon the occurrence of a Termination Event, interest shall be deemed to have accrued, and shall continue to accrue, on the Outstanding Balance at the highest rate allowed by law, effective as of the date of this Agreement.

4. Representations, Warranties and Covenants. As an inducement to Bank to enter into this Agreement, Borrower and Guarantors make the following representations, warranties and covenants:

(a) The Loans and Loan Documents are the obligations of Borrower and Guarantors, as applicable, are fully enforceable, and are not subject to any defense or counterclaim, or any claim of setoff or recoupment by Borrower or Guarantors.

(b) Borrower and Guarantors have been represented by, or advised to consult with, counsel in connection with the negotiation and execution of this Agreement, this Agreement represents an arms-length transaction, and Borrower and Guarantors have acted in good faith in the making of this Agreement.

(c) Borrower and Guarantors have received good and adequate consideration for their agreements and obligations incurred pursuant to this Agreement.

(d) The execution and performance of this Agreement by Borrower and Guarantors does not and will not violate any agreement to which any of Borrower or Guarantors is a party, and the execution and performance of this Agreement by Borrower and Guarantors does not require the consent of any third party, or if the consent of a third party is required, such consent has been previously obtained by Borrower and Guarantors.

(e) Until the Outstanding Balance shall have been paid in full, Borrower and Guarantors will not dispose of any of property outside the ordinary course of business without the prior written consent of Bank.

(f) Until the Outstanding Balance shall have been paid in full, Borrower and Guarantors will not incur any additional debt except for unsecured trade debt incurred in the ordinary course of business.

(g) Borrower and Guarantors shall take no action which would impair their ability to perform their obligations hereunder or to satisfy any of the Conditions of Modification.

(h) Borrower and Guarantors shall keep all terms and conditions of this Agreement, and all other communications between Bank and Borrower and Guarantors, confidential and shall not, without the prior written consent of Bank, disclose to any party other than to the legal counsel of Borrower and Guarantors, in any manner, any item or agreement contained herein or otherwise related to the indebtedness of Borrower to Bank now existing or arising hereafter.

5. Cross-Defaults and Cross-Collateralization. Borrower and Guarantors acknowledge and agree that all collateral pledged to Bank on account of any indebtedness of Borrower or Guarantors to Bank (including, but not limited to, the Notes) shall secure any and all indebtedness of Borrower or Guarantors to Bank, whether now existing or hereafter arising. Furthermore, any default under the terms of this Agreement, any of the Loan Documents, or any

other agreement between Bank and Borrower or Guarantors shall be a default under each and all of the Loan Documents and any other agreement between Bank and Borrower or Guarantors.

6. Further Assurances. At any time and from time to time after the date of the Agreement, at the request of Bank, Borrower and Guarantors shall, without further consideration, and at Borrower's sole expense, execute and deliver such documents and instruments, and take such actions, as Bank may deem necessary (a) in connection with the Loan Documents, (b) to perfect any of Bank's security interests or liens granted in any of the Loan Documents, and/or (c) to carry out the purposes and intentions of this Agreement and the Loan Documents.

7. Effectiveness of the Loans. This Agreement shall not constitute a novation of any of the other Loan Documents, and all the Loan Documents shall survive the execution of this Agreement and remain in full force and effect subject only to any express modifications thereto as herein provided. There are no oral representations or assurances from Bank to Borrower and Guarantors which survive the execution of this Agreement.

8. Release and Waiver. Borrower and Guarantors hereby acknowledge and stipulate that they have no claims or causes of action of any kind whatsoever against Bank. Borrower and Guarantors represent that they are entering into this Agreement freely, and with the advice of counsel as to their legal alternatives. Borrower and Guarantors, collectively and individually, hereby release Bank from any and all claims, causes of action, demands and liabilities of any kind whatsoever whether direct or indirect, fixed or contingent, liquidated or unliquidated, disputed or undisputed, known or unknown, which Borrower and Guarantors have or may acquire in the future relating in any way to any event, circumstance, action or failure to act to the date of this Agreement. The release by Borrower and Guarantors herein, together with the other terms and provisions of this Agreement, is executed by Borrower and Guarantors advisedly and without coercion or duress from Bank, Borrower and Guarantors having determined that the execution of this Agreement, and all its terms and provisions are in the economic best interest of Borrower and Guarantors.

9. No Obligation to Extend Future Modifications; No Waiver. Borrower and Guarantors acknowledge and agree that Bank is not obligated and does not agree to extend any other or future modification(s) except as expressly set forth herein. This Agreement shall not constitute a waiver by Bank of any defaults under the Loan Documents. Except as expressly provided herein, Bank reserves all of its rights and remedies under the other Loan Documents. No action or course of dealing on the part of Bank, its officers, employees, consultants, or agents, nor any failure or delay by Bank with respect to exercising any right, power or privilege of Bank under the Loan Documents or this Agreement, shall operate as a waiver thereof, except to the extent expressly provided herein.

10. Costs and Expenses. Borrower and Guarantors agree to pay on demand all out-of-pocket costs and expenses of Bank, including the fees and out-of-pocket expenses of counsel for Bank, in connection with the administration, enforcement, or protection of Bank's rights under this Agreement and/or the Loans and Loan Documents.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

12. Amendments. This Agreement cannot be amended, rescinded, supplemented or modified except in writings signed by the parties hereto.

13. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any other discussions or agreements relating to the subject of this Agreement.

14. Time of the Essence. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

15. Counterpart Signature Pages. This Agreement may be executed in one or more counterparts and may be delivered by facsimile or electronic mail, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

{COUNTERPART SIGNATURE PAGES TO FOLLOW}

Counterpart Signature Page to Modification Agreement

In witness whereof, the parties have executed this Agreement as of the date first above written.

BORROWER:

COMPASS POINTE PROPERTIES, a Tennessee general partnership

By: [Signature]  
Willard V. Richerson, Jr., Partner

STATE OF Tennessee  
COUNTY OF Shelby

Before me, Gregory D. Walters, Notary Public of the state and county aforesaid, personally appeared Willard V. Richerson, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a Partner of COMPASS POINTE PROPERTIES, the within named bargainor, a Tennessee general partnership, and that he as such Partner, executed the foregoing instrument for the purpose therein contained, by signing the name of the partnership by himself as Partner.

WITNESS MY HAND, at office, this 27<sup>th</sup> day of October, 2011

[Signature]  
Notary Public

My Commission Expires: 05/18/13



Counterpart Signature Page to Modification Agreement

In witness whereof, the parties have executed this Agreement as of the date first above written.

BORROWER (continued):

COMPASS POINTE HOMES, LLC, a Tennessee limited liability company

By: [Signature]  
Willard V. Richerson, Jr., Chief Manager

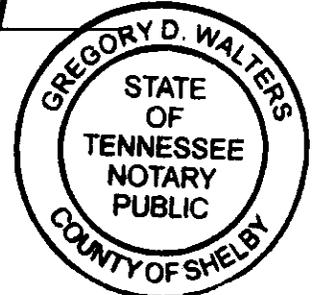
STATE OF Tennessee  
COUNTY OF Shelby

Before me, Gregory D. Walters, Notary Public of the state and county aforesaid, personally appeared Willard V. Richerson, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of COMPASS POINTE HOMES, LLC, the within named bargainor, a Tennessee limited liability company, and that he as such Chief Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself as Chief Manager.

WITNESS MY HAND, at office, this 27<sup>th</sup> day of October, 2011.

[Signature]  
Notary Public

My Commission Expires: 05/12/13



Counterpart Signature Page to Modification Agreement

In witness whereof, the parties have executed this Agreement as of the date first above written.

GUARANTORS:

Willard V. Richerson, Jr.  
WILLARD V. RICHERSON, JR.

Diane M. Richerson  
DIANE M. RICHERSON

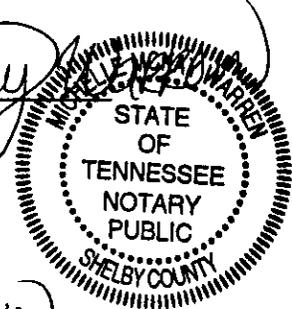
STATE OF Tennessee  
COUNTY OF Shelby

Personally appeared before me, Michelle McKay Warren, Notary Public of said county, **WILLARD V. RICHERSON, JR.**, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS MY HAND, at office, this 27<sup>th</sup> day of October, 2011.

Michelle McKay Warren  
Notary Public

My Commission Expires: February 23, 2014



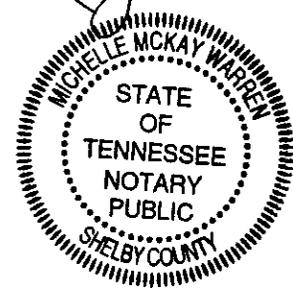
STATE OF Tennessee  
COUNTY OF Shelby

Personally appeared before me, Michelle McKay Warren, Notary Public of said county, **DIANE M. RICHERSON**, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she executed the within instrument for the purposes therein contained.

WITNESS MY HAND, at office, this 27<sup>th</sup> day of October, 2011.

Michelle McKay Warren  
Notary Public

My Commission Expires: February 23, 2014



Counterpart Signature Page to Modification Agreement

In witness whereof, the parties have executed this Agreement as of the date first above written.

BANK:

**FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, a national banking association

By: Terry W. Smith  
Terry W. Smith, Vice President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, Gregory A. Walters, Notary Public of the state and county aforesaid, personally appeared Terry W. Smith, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President of **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, a national banking association, the within named bargainer, a national banking association, and that he as such Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the national banking association by himself as Vice President.

WITNESS MY HAND, at office, this 27th day of October, 2011.

Gregory A. Walters  
Notary Public

My Commission Expires:

05/18/13

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