

**THIS INSTRUMENT PREPARED BY:**

**William S. Wright**

**P.O. Box 306**

**Birmingham, Alabama 35201**

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**LOAN MODIFICATION AGREEMENT AND  
AMENDMENT TO LOAN DOCUMENTS**

**THIS LOAN MODIFICATION AGREEMENT AND AMENDMENT TO LOAN DOCUMENTS** (this "Agreement") is being entered into as of the 15 day of August, 1994, by and between **COMPASS BANK**, an Alabama state banking corporation ("Bank"), **DONALD M. ACTON**, a \_\_ married man, **WILLIAM F. SPRATLIN**, a \_\_ married man, and **RODNEY D. MCGINNIS**, a \_\_ married man (collectively, the "Guarantors") and **YELLOWLEAF ESTATES, INC.**, a corporation (the "Borrower").

**P R E A M B L E**

The Borrower is the maker of a certain \$775,000 Promissory Note dated as of February 11, 1994 (the "Note"), which evidences a certain loan from the Bank to the Borrower (the "Loan"). The Loan was made available pursuant to a certain Construction Loan Agreement by and between the Bank and the Borrower dated as of February 11, 1994 (the "Loan Agreement"), and is secured by, among other things, a certain Future Advance Mortgage, Security Agreement and Assignment of Rents and Leases from the Borrower to the Bank dated as of February 11, 1994 and recorded in the Probate Office of Shelby County, Alabama as Instrument No. 1994-05518 (the "Mortgage") and an Assignment of Sales Contracts from Borrower to Bank dated as of February 11, 1994 (the "Assignment of Sales Contracts"). Borrower has requested that Bank make additional financing in the principal amount of up to \$429,000 available to the Borrower for the acquisition of the additional approximately 63 acres described on Exhibit 1 hereto (the "Additional Property") and to add such Additional Property to the Mortgage. The Bank and the Borrower have agreed to

*W. S. Wright*

08/16/1994-25549  
03:49 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DOE RCD 672.50

Inst # 1994-25549

modify the Loan, and to amend the documents and instruments evidencing, securing, relating to, guaranteeing or executed or delivered in connection with the Loan in order to make such additional financing available (collectively the "Loan Documents"). Accordingly, the Bank and the Borrower have agreed that the Loan shall be modified, and that the Loan Documents shall be amended as set forth below.

### **A G R E E M E N T**

**NOW, THEREFORE**, in consideration of the premises, the mutual agreements of the parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Bank to modify the Loan, the parties, intending to be legally bound hereby, agree as follows:

A. **Modification Fee.** The Borrower shall pay to Bank in consideration of the Bank's commitment to modify the Loan, a non-refundable modification fee in the amount of \$4,290 which shall be deemed earned and shall be paid prior to funding.

B. **Modification of Loan.** The amount of the Loan shall be changed to \$1,204,000. Bank shall make an additional \$429,000 in financing available to the Borrower to finance the purchase the Additional Property. Funding of the additional financing shall be subject to Borrower's compliance with the terms and conditions of the Loan Agreement.

C. **Amendment of Loan Agreement.** The Loan Agreement shall be and the same hereby is amended as follows:

- (i) By changing the amount of the Loan described therein to \$1,204,000;
- (ii) By adding to the description of the Mortgaged Property the Additional Property described on Exhibit A hereto.

D. **Amendment of Note.** The Note shall be and the same hereby is amended by changing the stated principal amount thereof to ONE MILLION TWO HUNDRED FOUR THOUSAND AND NO/100 DOLLARS (\$1,204,000) to reflect the additional financing made available hereunder.

E. **Amendment of Mortgage.** The Mortgage shall be and the same hereby is amended as follows:

- (i) By revising the first "WHEREAS" clause thereof to read in its entirety as follows:  
**WHEREAS**, Borrower is justly indebted to Bank on a loan (the "Loan") in the principal sum of One Million Two Hundred Four

Thousand and no/100 Dollars (\$1,204,000.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated February 11, 1994, as the same has been amended by a certain Loan Modification Agreement and Amendment to Loan Documents dated as of August 15, 1994 and as may from time to time be amended thereafter, payable to Bank with interest thereon (the "Note") on demand or as otherwise provided in the Note; and

- (ii) By adding to the description of the Mortgaged Property on Exhibit A thereof the Additional Property described on Exhibit 1 hereto.

**F. Effect on Loan Documents.** Each of the Loan Documents shall be deemed amended as set forth hereinabove and to the extent necessary to carry out the intent of this Agreement. Without limiting the generality of the foregoing, each reference in the Loan Documents to the "Note", the "Loan Agreement", or any other "Loan Documents" shall be deemed to be references to said documents, as amended hereby, each reference to the amount of the Loan shall be changed to \$1,204,000.00 and the description of the Mortgaged Property, Property or Project in each Loan Document shall be revised by adding the Additional Property described on Exhibit 1 hereto. Except as is expressly set forth herein, all of the Loan Documents shall remain in full force and effect in accordance with their respective terms and shall continue to evidence, secure, guarantee or relate to, as the case may be, the Loan.

**G. Representations and Warranties.** Each representation and warranty contained in the Loan Documents is hereby reaffirmed as of the date hereof. The Borrower hereby represents, warrants and certifies to Bank that no Event of Default nor any condition or event that with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing under any of the Loan Documents or the Loan, and that Borrower has no offsets or claims against Bank arising under, related to, or connected with the Loan, the Loan Agreement or any of the other Loan Documents.

**H. Additional Documentation; Expenses.** Borrower shall provide to Bank (i) certified resolutions properly authorizing the transactions contemplated hereby and the execution of this Agreement and all other documents and instruments being executed in connection herewith; and (ii) all other documents and instruments required by Bank; all in form and substance satisfactory to Bank. Borrower shall pay any recording and all other expenses incurred by Bank and Borrower in connection with the modification of the Loan and any other transactions

contemplated hereby, including without limitation, title or other insurance premiums, survey costs, legal expenses, recording fees and taxes.

I. **Execution by Guarantors.** Guarantors have executed this Agreement to evidence their consent to the modification and amendments as described herein, and to acknowledge the continuing effect of their respective Guaranties and the obligations contained therein.

**IN WITNESS WHEREOF**, the undersigned have caused this instrument to be duly executed as of the date first set forth above.

**BORROWER:**

**YELLOWLEAF ESTATES, INC.**

**ATTEST:**

By: Donald Macdon  
Its Secretary

By: William B. Smith  
Its \_\_\_\_\_ President

[CORPORATE SEAL]

WITNESS:

Mr. Dwyer

## COMPASS BANK

By: James M. [Signature]  
Its Real Estate Officer

**GUARANTORS:**

WITNESS:

25 High  
28 High  
31 High

William Smith  
Donald McClen  
Rocky McDermott

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, Notary Public in and for said County in said State, hereby certify that William F. Spratlin, whose name as President of YELLOWLEAF ESTATES, INC., a 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 the instrument, \_\_\_, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 15<sup>th</sup> day of August, 1994.

Lisa R. Zell

Notary Public

My commission expires: 7/2/95

[NOTARIAL SEAL]

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Travis G. McKay, whose name as Real Estate Officer of COMPASS BANK, an Alabama banking 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 the instrument, \_\_\_, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 15<sup>th</sup> day of August, 1994.

Lisa R. Zell

Notary Public

My commission expires: 7/2/95

[NOTARIAL SEAL]

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that William F. Spradlin, whose name 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 the instrument, he executed the same voluntarily.

Given under my hand this the 15<sup>th</sup> day of August, 1994.

Lisa R. Zell  
Notary Public  
My commission expires: 7/2/95

[NOTARIAL SEAL]

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Donald M. Acton, whose name 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 the instrument, he executed the same voluntarily.

Given under my hand this the 15<sup>th</sup> day of August, 1994.

Lisa R. Zell  
Notary Public  
My commission expires: 7/2/95

[NOTARIAL SEAL]

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Rodney D. McInnis whose name 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 the instrument, he executed the same voluntarily.

Given under my hand this the 15<sup>th</sup> day of August, 1994

[NOTARIAL SEAL]

Lisa R. Zell  
Notary Public  
My commission expires: 7/2/95

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name 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 the instrument, \_\_\_\_\_ executed the same voluntarily.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

## EXHIBIT A

The following described property situated in Shelby County, Alabama:

### Parcel I

A parcel of land situated in the SW 1/4 of the SW 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a concrete monument locally accepted to be the Southeast corner of said Section 27, thence run South 89 deg. 02 min. 41 sec. West along the South line of said Section 27 for a distance of 5,302.18 feet to a 2 inch open top iron locally accepted to be the Southwest corner of said Section 27; thence run North 89 deg. 02 min. 41 sec. East along the South line of said Section 27 for a distance of 121.63 feet to the point of beginning; thence turn an angle to the left of 34 deg. 10 min. 47 sec. and run North 54 deg. 51 min. 54 sec. East for a distance of 525.35 feet to a point; thence turn an angle to the right of 17 deg. 47 min. 36 sec. and run North 72 deg. 39 min. 30 sec. East for a distance of 100.55 feet to a point; thence turn an angle to the right of 7 deg. 26 min. 55 sec. and run North 80 deg. 06 min. 25 sec. East for a distance of 142.80 feet to a point; thence turn an angle to the right of 26 deg. 01 min. 37 sec. and run South 73 deg. 51 min. 58 sec. East for a distance of 74.09 feet to a point; thence turn an angle to the right of 9 deg. 17 min. 22 sec. and run South 64 deg. 34 min. 36 sec. East for a distance of 74.09 feet to a point; thence turn an angle to the right of 27 deg. 51 min. 29 sec. and run South 36 deg. 43 min. 07 sec. East for a distance of 37.20 feet to a point; thence turn an angle to the right of 17 deg. 25 min. 42 sec. and run South 19 deg. 17 min. 25 sec. East for a distance of 92.04 feet to a point; thence turn an angle to the right of 87 deg. 51 min. 13 sec. and run South 68 deg. 33 min. 48 sec. West for a distance of 109.46 feet to a point; thence turn an angle to the right of 29 deg. 41 min. 28 sec. and run North 81 deg. 44 min. 44 sec. West for a distance of 56.23 feet to a point on a curve to the right having a radial bearing in of North 77 deg. 02 min. 19 sec. West a central angle of 119 deg. 51 min. 08 sec. and a radius of 66.00 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 138.06 feet to a point on a reverse curve to the left having a radial bearing in of South 42 deg. 48 min. 49 sec. West and a central angle of 77 deg. 56 min. 55 sec. and a radius of 25.00 feet; thence run in a Northwesterly direction along the arc of said curve for a distance of 34.01 feet to a point; thence run tangent to last stated curve South 54 deg. 51 min. 54 sec. West for a distance of 127.86 feet to a point; thence turn an angle to the left of 90 deg. 00 min. 00 sec. and run South 35 deg. 08 min. 06 sec. East for a distance of 52.16 feet to a point on the South line of said Section 27; thence turn an angle to the right of 124 deg. 10 min. 47 sec. and run South 89 deg. 02 min. 41 sec. West for a distance of 484.45 feet to the point of beginning; being situated in Shelby County, Alabama.

### Parcel II

The NE 1/4 of NE 1/4 of Section 33, Township 19 South, Range 1 West. Also, North 1/2 of NW 1/4 of NW 1/4 of Section 34, Township 19 South, Range 1 West, Shelby County, Alabama. Mineral and mining rights excepted.

### Parcel III

An easement for a right of described as follows:

A strip of property 60 feet in width, being 30 feet on either side of a center line which centerline is described as follows:  
From the South east corner of said SW 1/4 of SE 1/4, run West along the South line of said 1/4 1/4 Section for a distance of 75.16 feet to the point of beginning of said centerline, thence turn an angle to the right of 60 deg. 56 min. and run Northwesterly for a distance of 225 feet, more or less, to the center of a public road. All lying and being in the SW 1/4 of SE 1/4 of Section 28, Township 19 South, Range 1 West, as described in Deed Book 284 page 592.

### Parcel IV

An easement 60 feet in width for a private road over and across the NW 1/4 of NE 1/4, Section 33, Township 19 South, Range 1 West. The centerline of said easement is described as follows:  
From the Northeast corner of said NW 1/4 of NE 1/4, run West along the North line of said 1/4 1/4 Section for a distance of 75.16 feet to the point of beginning of said centerline; thence turn an angle of 110 deg. 29 min. left and run Southeasterly for 72.35 feet; thence turn an angle of 6 deg. 04 min. and run Southeasterly for 31.40 feet; thence turn an angle of 28 deg. 43 min. left and run 35 feet more or less, to the East line of said NW 1/4 of NE 1/4, as described in Deed Book 284 page 588.

All being situated in Shelby County, Alabama.

Inst # 1994-25549

08/16/1994-25549  
03:49 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
008 MCD 672.50