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RECORDED TO INCREASE THE AMOUNT OF THE ORIGINAL NOTE DESCRIBED IN THE MORTGAGE AND SECURITY AGREEMENT AND THE ASSIGNMENT OF RENTS AND LEASES DESCRIBED HEREIN BY \$303,024.00. ALSO ADDS AS ADDITIONAL COLLATERAL FOR A \$1,449,000.00 LOAN SUCH MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES. TAX PAID ON SUCH \$1,449,000.00 LOAN UPON THE RECORDING OF A MORTGAGE AND SECURITY AGREEMENT AT REAL VOLUME 3207, PAGE 744 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA AND UPON THE RECORDING OF THE AMENDMENTS THERETO.

THIS INSTRUMENT WAS PREPARED BY

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STATE OF ALABAMA)

COUNTY OF SHELBY)

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

THIS FIFTH LOAN MODIFICATION AGREEMENT AND AMENDMENT TO LOAN DOCUMENTS (this "Agreement") is being entered into as of the 29 day of May, 1990, by and between CENTRAL BANK OF THE SOUTH, an Alabama state banking corporation ("Bank") and DONNIE F. TUCKER, a married man (the "Borrower").

P R E A M B L E

The Borrower is the maker of that certain \$1,109,000.00 Promissory Note dated as of July 21, 1987 (which amended and restated in its entirety that certain \$1,109,000.00 Promissory Note dated as of May 14, 1987), which was amended by that certain Second Loan Modification Agreement and Amendment to Loan Documents by and between the Bank and the Borrower dated as of June 29, 1988, recorded at Real Record 192, Page 359 in the Office of the Judge of Probate of Shelby County, Alabama (the "Second Loan Modification Agreement"), and by that certain Third Loan Modification Agreement and Amendment to Loan Documents by and between the Bank and Borrower dated as of May 19, 1989, recorded at Real Record 240, Page 49 in the Office of the Judge of Probate of Shelby County, Alabama (the "Third Loan Modification Agreement"), to, among other things, increase the principal amount thereof to \$1,702,393.00 (as amended, the "Note"), which evidences a certain \$1,702,393.00 loan from the Bank to the Borrower (the "Loan"). The Loan was extended pursuant to a certain Loan Agreement for Land Acquisition and Development by and between the Bank and the Borrower dated as of July 21, 1987, which was amended by that certain Loan Modification Agreement and Amendment to Loan Documents by and between the Bank and the Borrower dated as of May 18, 1988 (the "First Loan Modification

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Agreement"), by that certain Fourth Loan Modification Agreement and Amendment to Loan Documents by and between the Bank and the Borrower dated as of January 17, 1990 (the "Fourth Loan Modification Agreement") and by the Second and Third Loan Modification Agreements (as amended, the "Loan Agreement"), and is secured by, among other things, (i) a Mortgage and Security Agreement dated as of May 14, 1987, recorded at Real Record 131, Page 239 in the Office of the Judge of Probate of Shelby County, Alabama, which was amended by a certain Amendment to Mortgage and Security Agreement dated as of July 21, 1987, recorded at Real Record 141, Page 925 in the Office of the Judge of Probate of Shelby County, Alabama, and which was further amended by a certain Amendment No. 2 to Mortgage and Security Agreement dated as of May 18, 1989, recorded at Real Record 185, Page 344 in the Office of the Judge of Probate of Shelby County, Alabama, to add as additional collateral for the Loan the real property described therein, and which was further amended to reflect the increase in the amount of the Note by the Second and Third Loan Modification Agreements (as amended, the "Mortgage"); (ii) a Security Agreement dated as of July 21, 1987, which was amended by the First Loan Modification Agreement to add as additional collateral for the Loan the improvements and personal property related to the real property described therein and in Amendment No. 2 to Mortgage and Security Agreement (as amended, the "Security Agreement"); (iii) an Assignment of Rents and Leases dated as of July 21, 1987, recorded at Real Record 141, Page 929 in the Office of the Judge of Probate of Shelby County, Alabama, which was amended by a certain Amendment No. 1 to Assignment of Rents and Leases dated as of May 18, 1988, recorded at Real Record 185, Page 348 in the Office of the Judge of Probate of Shelby County, Alabama, to add as additional collateral for the Loan the rents and leases related to the real property described therein and in Amendment No. 2 to Mortgage and Security Agreement, and which was further amended by the Second and Third Loan Modification Agreements (as amended, the "Assignment of Rents"); and (iv) UCC-1 and UCC-3 Financing Statements (the "Financing Statements"), all as more particularly described in the Loan Agreement. The Note, the Loan Agreement, the Mortgage, the Security Agreement, the Assignment of Rents, the Financing Statements, and all of the other documents and instruments evidencing, securing, guaranteeing, relating to, or executed or delivered in connection with the Loan are collectively referred to herein as the "Loan Documents".

The Borrower has requested that the Bank renew and modify the Loan, and amend the Loan Documents, to, among other things, (i) increase the Loan amount to \$2,005,417.00 to assist Borrower in financing the development of Phase IV and site preparation and other preliminary work on Phase V of the residential subdivision known as "Stratford Place" (the "Pelham Subdivision") located on the Land (as defined in the Loan Agreement); and (ii) extend the maturity date of the Loan to May 1, 1991.

As a condition to the Bank's agreeing to so modify and renew the Loan, the Bank has required that the Loan be cross-collateralized and cross-defaulted with a certain \$1,449,000.00 loan from the Bank to the Borrower.

Accordingly, the Bank and the Borrower have agreed that the Loan shall be modified and renewed, 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 renew and modify the Loan, the parties, intending to be legally bound hereby, agree as follows:

A. **Renewal and Modification Fee.** The Borrower shall pay to Bank in consideration of the Bank's commitment to renew and modify the Loan, a non-refundable renewal and modification fee in the amount of \$2,710.00, which shall be deemed earned as of the date of Bank's commitment, and shall be paid at the closing of this modification.

B. **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 wherever referred to therein to \$2,005,417.00;
- (ii) by changing the date in the definition of "Development Period" on page 2 of the Loan Agreement to September 1, 1990;
- (iii) by adding to the Collateral described in Section 1.03 of the Loan Agreement all of the collateral for that certain \$1,449,000.00 loan from the Bank to the Borrower (the "Pinson Loan"), evidenced by a certain \$900,000.00 Promissory Note dated as of July 21, 1987, which was amended by a certain Second Loan Modification Agreement and Amendment to Loan Documents dated as of June 29, 1988, which was executed in two counterparts, one of which was recorded at Real Volume 3416, Page 189 in the Office of the Judge of Probate of Jefferson County, Alabama, and one of which was recorded at Real Volume 193, Page 119 in the Office of the Judge of Probate of Shelby County, Alabama (the "Pinson Second Loan Modification Agreement"), by a certain Third Loan Modification Agreement and Amendment to Loan Documents dated as of May 24, 1989 (the "Pinson Third Loan Modification Agreement"), and by a certain Fourth Loan Modification Agreement and Amendment to Loan Documents of even date herewith (the "Pinson Fourth Loan Modification Agreement"), to, among other things, increase the principal amount thereof to \$1,449,000.00 (as amended, the "Pinson Note"), such collateral is described in that certain Loan Agreement for Development Financing between the Bank and the Borrower dated as of July 21, 1987, which was amended by that certain Loan

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Modification Agreement and Amendment to Loan Documents dated as of May 18, 1988 (the "Pinson First Loan Modification Agreement"), and by the Pinson Second, Third, and Fourth Loan Modification Agreements (as amended, the "Pinson Loan Agreement"), and includes, among other things, (a) a Mortgage and Security Agreement dated as of July 21, 1987, recorded at Real Volume 3207, Page 744 in the Office of the Judge of Probate of Jefferson County, Alabama, which was amended by a certain Amendment No. 1 to Mortgage and Security Agreement dated as of May 18, 1988, executed in two counterparts, one counterpart of which was recorded at Real Volume 3390, Page 960 in the Office of the Judge of Probate of Jefferson County, Alabama, and the other counterpart of which was recorded at Real Volume 186, Page 279 in the Office of the Judge of Probate of Shelby County, Alabama, and by the Pinson Second and Fourth Loan Modification Agreements (as amended, the "Pinson Mortgage"); (b) a Security Agreement dated as of July 21, 1987, which was amended by the Pinson First Loan Modification Agreement (as amended, the "Pinson Security Agreement"); (c) an Assignment of Rents and Leases dated as of July 21, 1987, recorded at Real Volume 3207, Page 734 in the Office of the Judge of Probate of Jefferson County, Alabama, which was amended by a certain Amendment No. 1 to Assignment of Rents and Leases dated as of May 18, 1988, executed in two counterparts, one counterpart of which was recorded at Real Volume 3390, Page 951 in the Office of the Judge of Probate of Jefferson County, Alabama, and the other counterpart of which was recorded at Real Volume 186, Page 313 in the Office of the Judge of Probate of Shelby County, Alabama, and by the Pinson Second and Fourth Loan Modification Agreements (as amended, the "Pinson Assignment of Rents"); and (d) UCC-1 Financing Statements (the "Pinson Financing Statements") (the Pinson Note, the Pinson Loan Agreement, the Pinson Mortgage, the Pinson Security Agreement, the Pinson Assignment of Rents, the Pinson Financing Statements, and all of the other documents and instruments evidencing, securing, guaranteeing, relating to, or executed or delivered in connection with the Pinson Loan shall be collectively referred to in the Loan Agreement as the "Pinson Loan Documents", and shall be included in the definition of the "Loan Documents" in Section 1.03 of the Loan Agreement);

- (iv) by deleting Section 1.09 in its entirety and replacing it with the following:

Section 1.09 Sale and Release of Lots in Project: Payoff of Loan and Pinson Loan. Provided that no event has occurred or failed to occur which would be a default or Event of Default (as defined herein and therein) under this Agreement or under any of the other Loan Documents or which upon notice or lapse of time, or both, would constitute such a default or

Event of Default, upon receipt by Lender of \$16,000.00 from the net sales proceeds of the sale by the Borrower of a lot constituting a part the Project (the "Release Price"), Lender shall release such lot from the coverage the Mortgage and any other relevant Loan Documents. So long as any amounts remain outstanding under the Loan, upon receipt by Lender of the Release Price for a lot constituting a part of the Project, such Release Price, or the amount outstanding under the Loan if such amount is less than the Release Price, shall be applied to the Loan. Upon the payment in full of all indebtedness outstanding under the Loan, all payments of the Release Price, including any portion of a payment of the Release Price remaining at the time the Loan is paid in full, shall be applied to the Pinson Loan until the indebtedness outstanding under the Pinson Loan is paid in full. Upon the payment in full of the Pinson Loan, all payments of the Release Price, including any portion of a payment of the Release Price remaining at the time the Pinson Loan is paid in full, shall be applied to any other indebtedness secured by the Mortgage at the discretion of the Lender.

- (v) by adding the following Section 1.11 to the Loan Agreement:

Section 1.11 Additional Collateral for Pinson Loan. In addition to all of the collateral described in the Pinson Loan Agreement and the other Pinson Loan Documents, the Pinson Loan is secured by the Collateral and all of the Loan Documents described herein.

- (vi) by adding the following subsection (w) to Section 5.01 of the Loan Agreement:

(w) If there shall occur any default or Event of Default (as defined therein) under the Pinson Note, the Pinson Loan Agreement, or any of the other Pinson Loan Documents;

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

- (i) by changing the stated principal amount thereof to TWO MILLION FIVE THOUSAND FOUR HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$2,005,417.00); and
- (ii) by changing the maturity date of the Note to May 1, 1991.

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

- (i) by deleting the first WHEREAS paragraph of the Mortgage and replacing such paragraph with the following:

WHEREAS, Borrower is justly indebted to Bank on a loan in the principal sum of TWO MILLION FIVE THOUSAND FOUR HUNDRED

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SEVENTEEN AND NO/100 DOLLARS (\$2,005,417.00) (the "Loan"), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated May 14, 1987, as amended and restated in its entirety by a promissory note dated July 21, 1987, and as further amended by a Second Loan Modification Agreement and Amendment to Loan Documents dated June 29, 1988, by a Third Loan Modification Agreement and Amendment to Loan Documents dated May 19, 1989, and by a Fifth Loan Modification Agreement and Amendment to Loan Documents dated May 29, 1990 (as amended, the "Note"), payable to Bank with interest thereon on demand or as otherwise provided in the Note; and

- (ii) by including in the "Other Indebtedness" described therein that certain loan in the principal sum of ONE MILLION FOUR HUNDRED FORTY-NINE THOUSAND AND NO/100 DOLLARS (\$1,449,000.00), evidenced by a promissory note dated as of July 21, 1987, which was amended by a certain Second Loan Modification Agreement and Amendment to Loan Documents dated as of June 29, 1988, by a certain Third Loan Modification Agreement and Amendment to Loan Documents dated as of May 24, 1989, and by a certain Fourth Loan Modification Agreement and Amendment to Loan Documents dated as of May 29, 1990 (the "Pinson Note"), payable to Bank with interest thereon on demand or as otherwise provided in the Pinson Note.

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

- (i) by changing the principal sum of the Note to TWO MILLION FIVE THOUSAND FOUR HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$2,005,417.00);
- (ii) by including within the "other Indebtedness" described in the first paragraph of the Assignment of Rents that certain loan in the principal sum of ONE MILLION FOUR HUNDRED FORTY-NINE THOUSAND AND NO/100 DOLLARS (\$1,449,000.00), evidenced by a promissory note dated as of July 21, 1987, which was amended by a certain Second Loan Modification Agreement and Amendment to Loan Documents dated as of June 29, 1988, by a certain Third Loan Modification Agreement and Amendment to Loan Documents dated as of May 24, 1989, and by a certain Fourth Loan Modification Agreement and Amendment to Loan Documents dated as of May 29, 1990.

F. Current Amount Outstanding; Use of Proceeds. The current principal amount outstanding under the Loan is \$ 141,632.63. The amount remaining to be disbursed to Borrower under the Loan Agreement, as amended hereby, is approximately \$392,175.00; approximately \$375,911.00 of which shall be used by Borrower to develop Phase IV of the Pelham

Subdivision and perform site preparation and other preliminary work on Phase V of the Pelham Subdivision in accordance with the plans and specifications heretofore submitted to and approved by the Bank and to pay expenses associated therewith, as set forth in the project budget heretofore submitted to and approved by the Bank. The word "Project" wherever used in the Loan Agreement and the other Loan Documents shall include Phase IV of the Pelham Subdivision and such site preparation and other preliminary work on Phase V of the Pelham Subdivision, the word "Plans" wherever used in the Loan Agreement and the other Loan Documents shall include the plans and specifications for Phases IV and V heretofore furnished to and approved by the Bank, and the phrase "Project Budget" wherever used in the Loan Agreement and the other Loan Documents shall include the project budget submitted to and approved by Bank in connection with this Agreement.

G. 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, (i) each reference in the Loan Documents to the "Note", the "Loan Agreement", the "Mortgage", the "Assignment of Rents", or any other "Loan Documents" shall be deemed to be references to said documents, as amended hereby; (ii) each reference to the amount of the Loan shall be changed to \$2,005,417.00; (iii) all Collateral for the Loan shall secure the Pinson Loan and all Collateral for the Pinson Loan shall secure the Loan; and (iv) any default or Event of Default under any of the Pinson Loan Documents shall constitute an Event of Default under the Loan Documents and any default or Event of Default under the Loan Documents shall constitute an Event of Default under the Pinson Loan Documents. 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.

H. 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.

I. Additional Documentation: Expenses. Borrower shall provide to Bank (i) certified resolutions of Stratford Place Development, Inc., properly authorizing the transactions contemplated hereby and the execution of this Agreement; (ii) plans and specifications relating to the development of Phases IV and V of the Pelham Subdivision; (iii) the project budget for Phase IV and the portion of the development of Phase V to be financed by the proceeds of this modification; (iv) endorsements to the title policies and a UCC-11 report, all showing the title to the real and personal property securing this Loan is free and clear of mechanics' or materialmen's liens and

other encumbrances not approved by the Bank; and (v) 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. Borrower shall pay to the Bank at the time of the closing of the modification a release fee of \$399.00 to cover the cost of recording future lot releases for the Project. Such amount shall be used by the Bank to pay the recording fees for future lot releases. Such amount shall not be, nor deemed to be trust funds, but may be commingled with the general funds of the Bank, and no interest shall be payable to Borrower in respect thereof. Upon the demand of the Bank, the Borrower agrees to deliver to the Bank such additional amounts as may be necessary to make up any deficiencies in the amounts necessary to enable the Bank to pay such recording fees when due. Upon the occurrence of an Event of Default under any of the Loan Documents, the Bank may apply such sums to the reduction of the indebtedness evidenced and secured by the Loan Documents.

J. Interstate Land Sales Full Disclosure Act. Borrower represents and warrants to Bank that in developing the Pelham Subdivision, including Phases IV and V, Borrower is in compliance with, or is exempt from compliance with, the Interstate Land Sales Full Disclosure Act.

K. Execution by Stratford Place Development, Inc. Stratford Place Development, Inc. has executed this Agreement to evidence its consent to the modification and amendments as described herein.

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

WITNESS:

[Signature]

BORROWER:

[Signature]
DONNIE F. TUCKER

BANK:

CENTRAL BANK OF THE SOUTH

WITNESS:

[Signature]

By: [Signature]
Its Real Estate Officer

WITNESS:

[Signature]

STRATFORD PLACE DEVELOPMENT, INC.

By: [Signature]
Its President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that DONNIE F. TUCKER, 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 29th day of May, 1990.

Frances D. Newfield
Notary Public
My commission expires: 7/21/91

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Charles E. Snipes I, the undersigned, Notary Public in and for said County in said State, hereby certify that Central Bank of the South whose name as Central Bank of the South CENTRAL BANK OF THE SOUTH, 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, he, 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 29th day of May, 1990.

Frances D. Newfield
Notary Public
My commission expires: 7/21/91

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Donnie F. Tucker I, the undersigned, Notary Public in and for said County in said State, hereby certify that Donnie F. Tucker whose name as President of STRATFORD PLACE DEVELOPMENT, 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, he, 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 29th day of May, 1990.

Frances D. Newfield
Notary Public
My commission expires: 7/21/91

[NOTARIAL SEAL]

1. Deed Tax	\$	
2. Mtg. Tax	\$	454.65
3. Recording Fee	\$	22.50
4. Indexing Fee	\$	3.00
5. V. Tax Fee	\$	
6. Certified Fee	\$	1.00
Total	\$	481.15

90 MAY 30 PM 3:07

Frances D. Newfield
JUDGE OF PROBATE

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