

✓ **This Instrument Prepared by:**

✓ Felton W. Smith

Balch & Bingham

✓ P. O. Box 306

Birmingham, Alabama 35233

Inst. # 1993-28024

09/14/1993-28024
09:12 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
006 KJS 576.00

STATE OF ALABAMA

SHELBY COUNTY

LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT

THIS LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT is entered into as of the 9th day of September 1993, by and between CENTRAL BANK OF THE SOUTH, an Alabama banking corporation ("Lender"), and SAVANNAH DEVELOPMENT, INC., an Alabama corporation ("Borrower"), and DONNIE TUCKER and SUSAN TUCKER (individually and collectively, jointly and severally, "Guarantors").

WITNESSETH:

WHEREAS, Lender extended a residential land development loan to Borrower in the amount of \$519,750.00 pursuant to a Promissory Note (the "First Note"), Construction Loan Agreement (the "Loan Agreement"), Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement in the amount of \$519,750.00, which was recorded as Instrument No. 1992-30927 on December 22, 1992, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"), and other documents executed in connection therewith (the First Note, "Second Note" (as defined below), Loan Agreement and Mortgage, together with such other documents, and as any of the same are hereby or in the future are amended, modified, extended or renewed, being hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, Lender has released from the Mortgage Lots 2, 3, 4, 5, 9, 10, 34, 35, 36, 39, 40, 41 42, 43, 44, 45, 46, 49, 50, 73, 74, 75 and 76 according to the survey of Chadwick, Sector One, as recorded in Map Book 17, Page 52, if the Office of the Judge of Probate of Shelby County, Alabama, in order to allow Borrower to make sales of lots and in consideration of payments made by Borrower on such loan; and

WHEREAS, the Mortgage provides that the Mortgage secures all future obligations and liabilities of Borrower to Lender until actual cancellation of the Mortgage on the probate records of Shelby County, Alabama; and

WHEREAS, the Mortgage has not been so cancelled; and

WHEREAS, Borrower has requested that Lender advance additional funds in the amount of Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00) to Borrower for the purpose of paying the remaining balance due under the First Note and to develop forty-one additional lots on the property that remains subject to the Mortgage (the "Mortgaged Property" and the "Loan", respectively); and

WHEREAS, Lender has agreed to extend the Loan in accordance with the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and the Guarantors hereby agree as follows:

A. Execution of Second Note. The Loan shall be evidenced by, and Borrower shall execute and deliver to Lender, a Promissory Note in the amount of Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00) dated of even date herewith (the "Second Note"). The Loan and Second Note shall be secured by, and be entitled to all the benefits of, the Mortgage, the Loan Agreement and the other Loan Documents.

B. Amendment of Loan Agreement. The Loan Agreement shall be, and is hereby amended as follows:

1. On the first page, immediately after the word "Project:" in the section setting forth definitions of various terms, the phrase "Construction of 31 residential lots on 18.2 acres of land" is hereby deleted and the following inserted in lieu thereof: "Construction of 41 residential lots on approximately 10.7 acres of land."

2. On page one, after the phrase "Loan Amount:" in the section setting forth the definitions of various terms, the amount "\$519,750.00" is hereby deleted and the amount "\$370,000.00" is inserted in lieu thereof.

3. On page one, immediately after the phrase "Commitment Letter:" in the section setting forth the definitions of various terms, the paragraph reading "Commitment Letter from Lender to Borrower dated October 19, 1992, and amendments dated: November 30, 1992. A copy of the Commitment Letter is attached as Exhibit C hereto and made a part hereof." is hereby deleted and the following is inserted in lieu thereof: "Commitment Letter from Lender to Borrower dated August 27, 1993."

4. The Commitment Letter is hereby incorporated into and made a part of the Loan Agreement and all references in the Loan Agreement to the "Commitment Letter" shall be deemed to be references to said Commitment Letter dated August 27, 1993.

5. All references in the Loan Agreement to the "Project", "Loan", "Loan Amount", "Loan Documents", "Collateral", "Mortgaged Property", "Construction Budget" and any other defined or capitalized term contained therein shall be deemed to be references to the same as may be amended or modified by this Agreement or as may be set forth in the Second Note and/or Commitment Letter.

6. The Loan Agreement, as amended above, is hereby restated, republished and affirmed by Borrower in its entirety, including without limitation, each and every warranty, representation, covenant and agreement made by Borrower there.

C. Amendment of Mortgage. The Mortgage is hereby amended as follows:

1. On page one, in the first "Whereas" clause, the phrase "Five Hundred Nineteen Thousand Seven Hundred Fifty and No/100 Dollars (\$519,750.00) (the "Loan")" is hereby deleted and the following inserted in lieu thereof: "Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00) (the "Loan")."

2. On page 1, in the first "Whereas" clause, the phrase "as evidenced by a promissory note dated December 18th, 1992" is hereby deleted and the following inserted in lieu thereof: "as evidenced by a promissory note dated September 9, 1993."

3. All references in the Mortgage to the "Project", "Loan", "Loan Amount", "Loan Documents", "Collateral", "Mortgaged Property", "Construction Budget" and any other defined or capitalized term contained therein shall be deemed to be references to the same as may be amended or modified by this Agreement or as may be set forth in the Second Note and/or Commitment Letter.

4. The term "Mortgaged Property" as used in the Mortgage shall be deemed to refer to that portion of the initial tract, parcel or parcels of real property that was subject to the Mortgage which has not been released by Lender on the probate records of Shelby County, Alabama.

5. The Mortgage, as amended above, is hereby restated, republished and affirmed by Borrower in its entirety, including without limitation, each and every representation, warranty, covenant and agreement made by Borrower therein.

D. Representations and Warranties. Each and every representation, warranty, covenant and agreement contained in the Loan Documents is hereby reaffirmed as of the date hereof. Borrower hereby represents, warrants and certifies to Lender that no Event of Default nor any condition nor any 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 Lender arising under, related to, or connected with the Loan, the Loan Agreement or any of the other Loan Documents.

E. Expenses. Borrower shall pay any recording and all other expenses incurred by Lender and Borrower in connection with the modification of the Loan and amendment of the Loan Documents and any other transactions contemplated hereby, including without limitation, title or other insurance premiums, survey costs, legal expenses, and recording fees and taxes.

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 and, except as expressly set forth herein, all of the Loan Documents shall remain in full force and effect in accordance with their respective terms and shall to evidence, secure, guarantee or relate to, as the case may be, the Loan.

G. Execution by Guarantors. The Guarantors have executed this Agreement to acknowledge and evidence their consent to the transactions contemplated hereby, including the execution and delivery of the Second Note, the Loan and the amendments to the Loan Documents as described herein, and to acknowledge and affirm the continuing effect of their respective Guaranties and the obligations contained therein.

H. Severability. In case any one or more of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining covenants, agreements, terms or provisions contained herein shall in no way be prejudiced, diminished or otherwise affected thereby.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly and properly executed as of the date first set forth above.

BORROWER:

SAVANNAH DEVELOPMENT, INC.

By: Susan G. Tucker
Susan G. Tucker
Its President

LENDER:

CENTRAL BANK OF THE SOUTH

By: [Signature]
Its: Vice President

GUARANTORS:

Susan G. Tucker
SUSAN G. TUCKER

Donnie F. Tucker
DONNIE F. TUCKER

WITNESS:

[Signature]

WITNESS:

[Signature]

WITNESS:

[Signature]

WITNESS:

[Signature]

STATE OF ALABAMA

COUNTY OF Jefferson

I, Peggy Moore Huckbay, a notary public in and for said county in said state, hereby certify that Susan G. Tucker, whose name as President of SAVANNAH 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 such instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 9th day of September, 1993.

Peggy Moore Huckbay
Notary Public

[Notarial Seal]

My Commission Expires: 11-20-96

STATE OF ALABAMA

COUNTY OF Jefferson

I, Peggy Moore Huckbay, a notary public in and for said county in said state, hereby certify that C. Douglas Vibert, whose name as Vice President of CENTRAL BANK OF THE SOUTH, 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 such 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 and official seal this 9th day of September, 1993.

Peggy Moore Huckbay
Notary Public

[Notarial Seal]

My Commission Expires: 11-20-96

STATE OF ALABAMA

COUNTY OF Jefferson

I, Peggy Moore Huckbay, a notary public in and for said county in said state, hereby certify that SUSAN G. 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 such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9th day of September, 1993.

Peggy Moore Huckbay
Notary Public

[Notarial Seal]

My Commission Expires: 11-20-96

STATE OF ALABAMA

COUNTY OF Jefferson

I, Peggy Moore Huckbay, a 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9th day of September, 1993.

Peggy Moore Huckbay
Notary Public

[Notarial Seal]

My Commission Expires: 11-20-96

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