

**This Instrument Prepared by:**  
Felton W. Smith  
Balch & Bingham  
P. O. Box 306  
Birmingham, Alabama 35233

Inst # 1994-10216

STATE OF ALABAMA

SHELBY COUNTY

03/29/1994-10216  
12:07 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
006 SNA 1521.00

**LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT**

THIS LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT entered into as of the 17th day of March 1994, by and between COMPASS BANK, an Alabama banking corporation, successor by name change to CENTRAL BANK OF THE SOUTH ("Lender"), and SCHOOL HOUSE PROPERTIES, an Alabama general partnership ("Borrower"), and WENDELL H. TAYLOR ("Guarantor").

Inst # 1994-10216

**W I T N E S S E T H:**

WHEREAS, on July 8, 1993, Lender extended a residential land development loan to Borrower in the amount of \$3,700,000.00 pursuant to a Promissory Note dated July 8, 1993 (the "First Note"), Construction Loan Agreement dated July 8, 1993 (the "Loan Agreement"), Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement in the amount of \$3,700,000.00, which was recorded as Instrument No. 1993-32536 on October 20, 1993, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"), a Pledge Agreement executed by Guarantor dated July 8, 1993 (the "Pledge Agreement") and other documents executed in connection therewith (the First Note, "Second Note" (as defined below), Loan Agreement, Pledge 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 60, 78, 79, 91 and 92, according to the Survey of Greystone Village Phase I as recorded in Map Book 18, Page 9, of the Office of the Judge of Probate of Shelby County, Alabama, in order to allow Borrower to make sales of such lots; 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 refinance the outstanding balance under the First Note and to advance additional funds in the amount of up to One Million and No/100 Dollars (\$1,000,000.00) to Borrower (such refinanced amount and additional funds being

referred to herein as the "Loan") for the purpose of providing additional funds for the development of the property that remains subject to the Mortgage (the "Mortgaged Property"); and

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

### 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 Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00) 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 page one, after the phrase "Loan Amount:" in the section setting forth the definitions of various terms, the amount "\$3,700,000.00" is hereby deleted and the amount "\$4,700,000.00" is inserted in lieu thereof.

2. 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.

3. 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 therein.

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

1. On page one, in the first "Whereas" clause, the phrase "Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00) (the "Loan")" is hereby deleted and the following inserted in lieu thereof: "Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00) (the "Loan")."

2. On page 1, in the first "Whereas" clause, the phrase "as evidenced by a promissory note dated July 8, 1993" is hereby deleted and the following inserted in lieu thereof: "as evidenced by a promissory note dated March 17, 1994."

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 real property 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. Amendment of Pledge Agreement. The Pledge Agreement is hereby amended as follows:

1. In the fourth line of the first paragraph, the amount "\$3,700,000.00" is hereby deleted and the amount "\$4,700,000.00" is hereby inserted in lieu thereof.

2. In the fifth line of the first paragraph, the date "July 8, 1993" is hereby deleted and the date "March 17, 1994" is hereby inserted in lieu thereof.

3. The following is hereby added at the end of the first paragraph: ", as any of the same have been or may be amended in connection with the increase and modification of the Loan evidenced by such Promissory Note from \$3,700,000.00 to \$4,700,000.00."

4. The Pledge Agreement, as amended above, is hereby restated, republished and affirmed by Owner in its entirety, including without limitation, each and every representation, warranty, covenant and agreement made by Owner therein.

E. 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.

F. 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.

G. Commitment Fee. In addition to the commitment fee paid to Lender simultaneously with the execution of this Agreement, Borrower agrees to pay to Lender on February 1, 1995, a commitment fee equal to one-quarter of one percent (1/4%) of the outstanding principal balance plus any unfunded portion of the Loan as of such date.

H. 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 continue to evidence, secure, guarantee or relate to, as the case may be, the Loan.

I. Execution by Guarantors. The Guarantor has executed this Agreement to acknowledge and evidence his 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 his Guaranty and the obligations contained therein.

J. 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:

WITNESS:

Felton W. Smith

SCHOOL HOUSE PROPERTIES

By:

Wendell H. Taylor Jr.  
Wendell H. Taylor  
Its General Partner

LENDER:

WITNESS:

Felton W. Smith

By:

Travis M. Taylor  
Its: Real Estate Officer

WITNESS:

John W. Smith

GUARANTOR:

Wendell H. Taylor  
WENDELL H. TAYLOR

STATE OF ALABAMA

COUNTY OF Jefferson

I, Reva O. Ramey, a notary public in and for said county in said state, hereby certify that Wendell H. Taylor, whose name as General Partner of SCHOOL HOUSE PROPERTIES, an Alabama general partnership, 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 general partner and with full authority, executed the same voluntarily for and as the act of said general partnership.

Given under my hand and official seal this 17th day of March, 1994.

Reva O. Ramey  
Notary Public

[ Notarial Seal ]

My Commission Expires: 1-8-96

STATE OF ALABAMA

COUNTY OF Jefferson

I, Reva O. Ramey, a 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, 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 17 day of March, 1994.

Reva O. Ramey  
Notary Public

[ Notarial Seal ]

My Commission Expires: 1-8-96

STATE OF ALABAMA

COUNTY OF

Jefferson

I, Reva D. Ramey, a notary public in and for said county in said state, hereby certify that WENDELL H. TAYLOR, 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 17 day of March, 1994.

Reva D. Ramey  
Notary Public

[ Notarial Seal ]

My Commission Expires: 1-8-96

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