

This instrument prepared by:
William S. Wright
Balch & Bingham
Post Office Box 306
Birmingham, Alabama 35201

Inst # 1995-07562

03/24/1995-07562

08:24 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

018 MCD 951.00

STATE OF ALABAMA)

COUNTY OF SHELBY)

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

**THIS LOAN MODIFICATION AGREEMENT AND AMENDMENT TO MORTGAGE
AND OTHER LOAN DOCUMENTS** (this "Agreement") is being entered into as of the
____ day of ~~December~~ ^{14 February 1995} 1994, by and between **COMPASS BANK**, an Alabama state
banking corporation ("Bank") and **GREYSTONE REALTY INVESTORS, INC.**, an
Alabama corporation ("Borrower").

P R E A M B L E

Borrower is the maker of a certain \$1,825,000 Promissory Note dated as of July 22, 1994 (the "\$1,825,000 Note"), which evidences a certain \$1,825,000 loan from Bank to Borrower (the "Loan"). The Loan was made available pursuant to a certain Loan Agreement for Construction and Term Financing by and between Bank and Borrower dated as of July 22, 1994 (the "Loan Agreement"), and is secured by, among other things, a certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated as of July 22, 1994 and recorded as Instrument No. 1994-23178 in the Probate Office of Shelby County, Alabama (the "Mortgage"). The Loan is guaranteed pursuant to those certain Guaranty Agreements of Hisham M. Hakim, M.D. and Thomas A. Staner, M.D. (the "Guarantors") dated as of July 22, 1994 and July 31, 1994, respectively (the "Guaranties").

Pursuant to a Loan Modification Agreement and Amendment to Loan Documents dated as of October 24, 1994 (the "First Modification Agreement"), Borrower and Bank agreed to modify the interest rate under the \$1,825,000 Note.

Alabama Title

Now, Borrower has requested and Bank has agreed to lend Borrower an additional \$600,000 (the "Additional Advance") for the construction of a third story to the Project (as defined in the Loan Agreement), which will be evidenced by a separate \$600,000 Promissory Note in substantially the form of **Exhibit A** hereto (the "\$600,000 Note") and be made available upon different terms, including payment, interest and rate terms, from the \$1,825,000 Note and shall be deemed to be part of the Loan, subject to the Loan Agreement and secured by the Mortgage and the other Loan Documents. Accordingly, Bank and Borrower have agreed to modify the Loan, and to amend the documents and instruments evidencing, securing, relating to, guaranteeing or executed or delivered in connection with the Loan (collectively the "Loan Documents").

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. Amendment of Mortgage. The Mortgage shall be and the same hereby is amended by deleting the first "WHEREAS" clause in its entirety and substituting in place thereof the following:

"**WHEREAS**, Borrower is justly indebted to Bank on loans (collectively, the "Loan") in the aggregate principal sum of TWO MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,425,000.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note in the amount of \$1,825,000 dated July 22, 1994, and a promissory note in the amount of \$600,000 dated ~~December 2nd~~ ^{16 February} 1994, each payable to Bank with interest thereon (collectively, the "Note") as follows:

^{15 MAY 1994}
On ~~April~~ 1, 2002, or such earlier maturity date as provided in the Note or as provided in any Loan Document as defined below;"

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

- (i) By deleting from the first paragraph of the Preamble the phrase "a loan in the amount of up to ONE MILLION EIGHT HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,825,000) (the "Loan")" and substituting in place thereof the phrase "loans in an aggregate amount of up to TWO MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,425,000.00) (collectively, the "Loan")".
- (ii) By deleting from Section 1.01 the amount "\$1,825,000" and substituting in place thereof the amount "\$2,425,000".
- (iii) By deleting Section 1.02 in its entirety and substituting in place thereof the following:

"Section 1.02 Note. The Loan shall be evidenced by two (2) promissory notes, one in the amount of \$1,825,000 and the other in the amount of \$600,000, both made by Borrower and payable to the order of Lender in form and substance acceptable to Lender (collectively, the "Note")."

- (iv) By deleting Section 1.06 in its entirety and substituting in place thereof the following:

"Section 1.06 Commitment Fee. In consideration of Lender's Commitment to make the Loan, Borrower shall pay to Lender a commitment fee in the amount of \$9,125.00 on or before July 22, 1994, and a commitment fee of \$3,000 on or before ~~December 10, 1995~~ ^{ES February 10, 1995}, which fees shall be deemed earned and non-refundable, regardless whether the Loan is funded."

C. **Additional Note.** Pursuant to the terms of this Agreement, Borrower shall execute a \$600,000 Promissory Note substantially in the form of **Exhibit A** hereto. It is hereby acknowledged and agreed that the Additional Advance shall be repayable

upon the terms and bear interest at the rate set forth in the \$600,000 Promissory Note and that the \$1,825,000 Note shall be payable and bear interest as set forth in such \$1,825,000 Note, as such \$1,825,000 Note has been amended by the First Modification Agreement.

D. 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 "Loan", the "Loan Agreement", the "Mortgage" or any other "Loan Documents" shall be deemed to be references to said documents, as amended hereby and by the First Modification Agreement, and shall include and cover not only the indebtedness evidenced by the \$1,825,000 Note but also that evidenced by the \$600,000 Note. 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.

E. Representations and Warranties. Each representation and warranty contained in the Loan Documents is hereby reaffirmed as of the date hereof. 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.

F. Additional Documentation; Expenses. Borrower shall provide to Bank 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 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.

G. 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.

WITNESS:

BORROWER:

GREYSTONE REALTY INVESTORS, INC.

By: Ellen Stoner
Its _____ President

WITNESS:

Shirley M. McNally

BANK:

COMPASS BANK

By: Libbey Shyne
Its _____ President

WITNESS:

GUARANTORS:

✓ Hisham Hakim M.D. MPTT
Hisham M. Hakim, M.D.
Vice-President

WITNESS:

✓ Thomas A. Staner

Thomas A. Staner, M.D.

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ellen T. Staner, whose name as _____ President of **GREYSTONE REALTY INVESTORS, 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, she, 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 _____ day of Feb. 2, 1995²⁵ ~~December, 1994~~.

Mary G. Hughes

Notary Public

My commission expires: 2.18.96

[NOTARIAL SEAL]

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Rebecca D. Shuler**, whose name as Vice President 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, she, 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 9th day of ^{MARCH}~~February~~, 1995 ^{ES}~~HH~~, 1994.

Barbara Ann Moore
Notary Public
My commission expires: 3-9-95

[NOTARIAL SEAL]

STATE OF ALABAMA)
)
COUNTY OF Talladega)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Hisham M. Hakim, M.D.**, 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 21st day of ^{HH}~~February~~, 1995 ^{ES}~~HH~~, 1994.

Alan W. Connell
Notary Public
My commission expires: 9-21-96

[NOTARIAL SEAL]

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Thomas A. Staner, M.D.**, 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 2nd day of ~~December, 1994.~~ ^{February, 1995} 25 ^{H.H.}

[NOTARIAL SEAL]

Mary G. Hughes
Notary Public
My commission expires: 2-18-96

EXHIBIT A

PROMISSORY NOTE

\$600,000.00

**December __, 1994
Birmingham, Alabama**

FOR VALUE RECEIVED, the undersigned **GREYSTONE REALTY INVESTORS, INC.**, an Alabama corporation (the "Borrower"), hereby promises to pay to the order of **COMPASS BANK** (the "Lender"), at its office at 15 South 20th Street, Birmingham, Alabama 35233, or at such other place as Lender may direct, in lawful money of the United States of America constituting legal tender in payment of all debts and dues, public and private, together with interest thereon calculated at the rate and in the manner set forth herein, the principal amount of **SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)**, or so much thereof as may be advanced and outstanding hereunder. Payment of principal and interest shall be in accordance with the following provisions:

1. **Definitions.** The following terms, as used herein, shall have the following meanings:

(a) **"Compass Bank Prime"**, as used herein, is a reference rate established by Lender for use in computing and adjusting interest and is subject to increase, decrease, or change at Lender's discretion. Each change in the applicable interest rate hereunder resulting from a change in "Compass Bank Prime" shall become effective on the day on which such change in "Compass Bank Prime" occurs.

(b) **"Loan Agreement"** shall mean that certain Loan Agreement for Construction and Term Financing dated as of July 22, 1994, between the Lender and the Borrower, as amended.

(c) **"Constant Maturity Index"** shall mean the weekly average yield on United States Treasury securities adjusted to a constant maturity of seven (7) years, as made available by the Federal Reserve Board.

(d) **"Treasury Bill Index"** shall mean the auction rate for United States Treasury Bills having maturities of twenty-six (26) weeks, as established at the most recent auction immediately prior to the date on which the applicable interest rate is to be established by reference to the Treasury Bill Index; and during any period in which the Treasury Bill Index is used to establish the applicable interest rate under this Note, the applicable rate under this Note shall be subject to adjustment every six (6) months (the "Interest Adjustment Dates"), at which time, the applicable rate shall be raised or lowered to reflect changes in the Treasury Bill Index.

2. **Construction Phase.** From the date hereof until the date of the final advance for construction of the Project as defined in the Loan Agreement, but not later than ~~April 1, 1995~~ ^{June 1, 1995 ES} (such period being referred to herein as the "Construction Loan Phase" and the last day of the Construction Loan Phase being referred to herein as the "Conversion Date"), the following provisions shall apply:

(a) **Payment.** Borrower promises to pay interest monthly, on or before the first (1st) day of each month, on the principal amount owing hereunder from time to time, computed daily in the manner and at the applicable rate set forth below. The first interest payment shall be due and payable on January 1, 1995.

(b) **Maturity.** Unless this Note converts to the Term Loan Phase, as defined in the Loan Agreement ("Term Loan Phase"), the maturity date of this Note

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95
shall be ~~April 1, 1995~~ ^{June 1, 1995}, at which time all unpaid accrued interest, principal and all other charges shall be paid in full.

(c) **Applicable Interest Rate.** During the Construction Loan Phase, the applicable interest rate hereunder shall be determined and paid and shall be equal to "Compass Bank Prime" from time to time prevailing at Lender.

3. **Term Loan Phase.** In the event that all conditions to conversion of the Loan to the Term Loan Phase as set forth in the Loan Agreement have been and remain fully satisfied, beginning on the Conversion Date and until this Note has been paid in full, the following provisions shall apply:

(a) **Payments.** The payments due during the Term Loan Phase shall be determined by which of the three (3) interest rates described in paragraph 3 (c) below is applicable.

(i) If interest rate Option A is chosen, such that the applicable interest rate is based upon the Constant Maturity Index, Borrower shall make monthly principal and interest payments, on or before the first (1st) day of each month, with the amount of each monthly payment being based upon a one hundred eighty (180) month amortization of the principal amount outstanding hereunder on the Conversion Date, using the interest rate selected by Borrower for the Term Loan Phase. The first monthly principal and interest payment shall be due and payable on the first (1st) day of the calendar month immediately following the month of the Conversion Date.

(ii) If interest rate Option B is chosen, such that the applicable interest rate is based upon the Treasury Bill Index, the following payment provisions shall be applicable: (A) Borrower shall pay monthly principal and interest installments, on or before the first (1st) day of each month. The first such payment shall be due and payable on the first (1st) day of the calendar month immediately following the month of the Conversion Date. (B) The amount of the monthly principal and interest installments will adjust every six (6) months of each year on June 1st and December 1st, and will be based on a fifteen (15) year amortization schedule. The first six (6) monthly installments (the "Initial Monthly Installments") will be determined based upon the interest rate applicable on the Conversion Date. After the Lender has received Borrower's six (6) previously scheduled payments, the Lender will use the balance due under the Note and the interest rate applicable at that time to calculate the adjusted monthly payment. In the event that the Lender receives a payment amount which is not sufficient to pay all interest which has been earned since the last monthly payment, the Lender may at its option advance an amount equal to the interest earned but unpaid after application of the payment. Any such amount so advanced by the Lender may be added to the principal of this Note.

(iii) In the event that no interest rate option is chosen, such that the applicable interest rate is based upon Compass Bank Prime, the following payment provisions shall be applicable: (A) Borrower shall make eighty-three (83) monthly principal payments in the amount of \$ 2,131.²⁵ each and a final monthly principal payment equal to the entire remaining principal balance hereunder, with such principal payments being due on the first (1st) day of each month, beginning on the first day of the calendar month immediately following the month of the Conversion Date. (B) In addition to such monthly principal payments, interest shall be payable monthly on the first (1st) day of each month, beginning on the first (1st) day of the calendar month immediately following the month of the Conversion Date.

(b) Maturity. In the event that this Note converts to the Term Loan Phase, the entire outstanding balance of principal, interest and all other charges shall be due and payable in full on ^{25 MAY 1, 2002} ~~April 1~~, 2002, which shall be the maturity date of this Note.

(c) Applicable Interest Rate. During the Term Loan Phase, the applicable interest rate hereunder shall be determined and paid and shall be equal to "Compass Bank Prime" from time to time prevailing at Lender; provided, however, that Borrower may elect for one of the following two (2) interest rate options ("Option A" and "Option B", as described below) to be the applicable interest rate during the

Term Loan Phase by giving written notice to Lender of such election (ten) 10 days prior to the end of the Construction Loan Phase:

(i) Option A: In the event that Option A is elected for the Term Loan Phase, the applicable interest rate shall be fixed for the Term Loan Phase at a rate equal to two percentage points (2%) in excess of the Constant Maturity Index which is in effect on the Conversion Date.

(ii) Option B: In the event that Option B is elected for the Term Loan Phase, the applicable interest rate shall be an adjustable rate equal to three percentage points (3%) in excess of the Treasury Bill Index. In the event that this option is elected, the applicable interest rate for Term Loan Phase shall be adjusted every six (6) months on the Interest Adjustment Dates.

4. **Additional Provisions Regarding Interest.** "Compass Bank Prime", the Constant Maturity Index and the Treasury Bill Index are only three of the reference rates or indices that Lender uses in establishing interest rates. Borrower acknowledges that Lender may lend to others at rates of interest at, or greater or less than such indices or the rates provided herein. If any index rate is no longer available, the Lender will choose a new index rate which is based upon comparable information. Interest on all principal amounts outstanding from time to time hereunder shall be calculated on the basis of a 360-day year applied to the actual number of days upon which principal is outstanding, by multiplying the product of the principal amount and the applicable rate set forth herein by the actual number of days elapsed, and dividing by 360. In no event shall the

rate of interest calculated hereunder exceed the maximum rate allowed by applicable law. Any principal amounts outstanding hereunder after maturity shall bear interest at a rate equal to two percentage points (2%) in excess of Compass Bank Prime, as the same is in effect from time to time. In no event shall the applicable interest rate under this Note be less than six percent (6%) or exceed the maximum rate allowed by applicable law.

5. **Prepayment.** (a) This Note may be prepaid in whole or in part without penalty at any time during which a variable or adjustable interest rate is the applicable rate under this Note. (b) Borrower may prepay this Note in whole or in part at any time during which a fixed interest rate is applicable without a prepayment fee, provided that (i) no event of default has occurred hereunder or under the Loan Agreement, (ii) the prepayment is voluntary on the part of the Borrower and is not the result of or following any acceleration of this Note, and (iii) the prepayment is made from funds internally generated by the Borrower and not from any refinancing. In the event that this Note is prepaid in whole or in part at any time during which a fixed rate is the applicable rate under this Note and any of the three (3) conditions to prepayment without a fee described in clauses (b)(i), (ii), and (iii) of the immediately preceding sentence have not been met, Borrower shall pay to Lender upon demand by Lender a prepayment fee which shall be equal to one-twelfth (1/12) of the Annual Yield Differential (as defined below), multiplied by the number of months during the period beginning on the date of the prepayment and ending on the stated maturity date of the Loan. Any partial prepayment under this Note shall be in an amount which is an integral multiple of \$1,000, and shall be accompanied by an amount equal to all accrued interest and other charges on the amount so prepaid. As used herein, the term "Annual Yield Differential" means the difference (but not less than zero) between (i) the yield of the lowest

yielding U.S. Treasury Bond/Bill with a maturity date closest to the maturity date of this Note at the time the fixed rate became the applicable rate under this Note, and (ii) the yield of the lowest yielding U.S. Treasury Bond/Bill with a maturity date closest to the maturity date on this Note on the date of calculation, multiplied by the amount of the prepayment. U.S. Flower Bonds shall not be considered in calculating the Annual Yield Differential.

6. **Indemnity.** Borrower hereby agrees to indemnify Lender, its officers, employees, and agents from any cost or loss arising from their actions taken or omitted to be taken in good faith based upon communications between Borrower and Lender. The obligations of Borrower under this Section shall survive payment of this Note.

7. **Loan Documents.** The indebtedness evidenced hereby is secured by, inter alia, the Loan Agreement, the Future Advance Mortgage, Security Agreement and Assignment of Rents and Leases from Borrower to Lender dated as of July 22, 1994, as amended, and the other Loan Documents defined in the Loan Agreement (collectively, the "Loan Documents"). This Note is included in the indebtedness referred to in the Loan Documents and is entitled to the benefits of those documents, but neither this reference to those documents nor any provisions thereof shall affect or impair the absolute and unconditional obligations of the Borrower to pay the principal of and interest on this Note when due.

8. **Events of Default.** Upon the occurrence of any one or more of the following events ("Events of Default"):

(a) Default in the payment of the principal or interest on this Note, as and when the same is due and payable;

(b) Failure by the Borrower to observe any covenant or obligation contained in the Loan Agreement or any other Loan Document or in any other instrument executed in connection with or securing this Note; or

(c) The occurrence of any default or event of default specified in the Loan Agreement, the other Loan Documents, or in any other instrument executed in connection with or securing this Note;

then, or at any time thereafter during the continuance of any such event, the holder may, with or without notice to the Borrower, declare this Note and indebtedness evidenced hereby to be forthwith due and payable, whereupon this Note and the indebtedness evidenced hereby shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in any of the Loan Documents or in any other instrument executed in connection with or securing this Note to the contrary notwithstanding.

9. **Waivers.** Borrower hereby waives demand, presentment for payment, notice of dishonor, protest, and notice of protest and diligence in collection or bringing suit and agrees that the holder hereof may accept partial payment, or release or exchange security or collateral, without discharging or releasing any unreleased collateral or the obligations evidenced hereby. Borrower further waives any and all rights of exemption, both as to personal and real property, under the constitution or laws of the United States, the State of Alabama or any other state.

10. **Attorneys' Fees.** Borrower agrees to pay attorneys' fees and costs incurred by the holder hereof in collecting or attempting to collect this Note, whether by suit or otherwise.

11. **Miscellaneous.** As used herein, the terms "Borrower", "Lender" and "holder" shall be deemed to include their respective successors, legal representatives and assigns, whether by voluntary action of the parties or by operation of law. This Note is given under the seal of all parties hereto, and it is intended that this Note is and shall constitute and have the effect of a sealed instrument according to law. This Note has been negotiated, and is being executed and delivered in Birmingham, in the State of Alabama, or if executed elsewhere, shall become effective upon the Lender's receipt and acceptance of the executed original of this Note in the State of Alabama; provided, however, that the Lender shall have no obligation to give, nor shall Borrower be entitled to receive, any notice of such acceptance for this Note to become a binding obligation of Borrower. This Note shall be governed by and be construed in accordance with the laws of the State of Alabama. It is intended, and the Borrower and the holder hereof specifically agree, that the laws of the State of Alabama governing interest shall apply to this Note and to this transaction. This Note may not be modified except by written agreement signed by the Borrower and the holder hereof, or by their respective successors or assigns.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed, sealed and delivered as of the date first set forth above.

BORROWER:

GREYSTONE REALTY INVESTORS, INC.

By: EXHIBIT COPY

Its: _____

STATE OF ALABAMA)

COUNTY OF _____)

Inst # 1995-07562

03/24/1995-07562
08:24 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
018 MCD 951.00