

This Instrument Prepared by:

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Balch & Bingham
P. O. Box 306
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Inst # 1995-13162

05/19/1995-13162
09:08 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MCD 3023.50

STATE OF ALABAMA

SHELBY COUNTY

**THIRD LOAN MODIFICATION AGREEMENT
AND MORTGAGE AMENDMENT**

THIS THIRD LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT is entered into as of February 23, 1995, by and between COMPASS BANK, an Alabama banking corporation ("Lender"), and TAYLOR PROPERTIES, L.L.C., an Alabama limited liability company ("Borrower"), and WENDELL H. TAYLOR ("Guarantor").

W I T N E S S E T H:

WHEREAS, on July 15, 1994, Lender extended a land acquisition loan to Greystone Ridge, Inc. in the amount of \$6,150,000.00 pursuant to a Promissory Note dated July 15, 1994 (as amended pursuant to Loan Modification Agreements of January 18, 1995, and February 1, 1995, the "First Note"), Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement in the amount of \$6,150,000.00, which was recorded as Instrument No. 1994-22321, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"), Pledge Agreements executed by Guarantor and others, all dated July 14, 1994 (the "Pledge Agreements"), and other documents executed in connection therewith; and

WHEREAS, the Loan and the obligations and liabilities of Greystone Ridge, Inc. pursuant to the First Note, the Mortgage and such other documents were assumed by Borrower, as evidenced by that certain Assumption Agreement executed by and among Borrower, Lender and Greystone Ridge, Inc. dated August 18, 1994, and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 1994-25922 (the "Assumption Agreement"); and

WHEREAS, pursuant and subject to that certain Commitment Letter dated August 18, 1994 (the "First Commitment"), and that certain Construction Loan Agreement by and between Lender and Borrower dated August 18, 1994 (the "Loan Agreement"), Lender agreed to advance additional funds to Borrower to be evidenced by a second Promissory Note, dated as of August 18, 1994 (as amended pursuant to Loan Modification Agreement of January 18, 1995, the "Second Note") in the amount of up to One Million Two Hundred Thirty-two Thousand Six Hundred and No/100 Dollars (\$1,232,600.00) to be used for the development of a portion of the property subject to the Mortgage (the "Mortgaged Property"); and

WHEREAS, pursuant and subject to that certain Commitment Letter dated November 16, 1994 (the "Second Commitment"), and that certain Second Loan Modification Agreement and Mortgage Amendment dated as of December 1, 1994, Lender agreed to advance additional funds to Borrower to be evidenced by a third Promissory Note dated as of December 1, 1994 (as amended pursuant to Loan Modification Agreement of January 18, 1995, the "Third Note") in the amount of up to Two Million Five Hundred Thirty-Three Thousand Eight Hundred Fifty and No/100 Dollars (\$2,533,850.00) to be used for the development of a portion of the Mortgaged Property; 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 the Mortgage has not been so cancelled; and

WHEREAS, in connection with the execution and delivery of the Second Note, Lindsay Taylor McGraw pledged to Lender certain stock to be held by Lender as additional collateral for Borrower's liabilities and other obligations to Lender (also a "Pledge Agreement"); and

WHEREAS, Borrower has requested and, subject to the terms and conditions of that certain Commitment Letter by and between Lender and Borrower dated January 23, 1995 (the "Third Commitment" and, together with the First and Second Commitments, the "Commitment Letter"), Lender has agreed to advance additional funds to Borrower in the amount of up to Two Million and No/100 Dollars (\$2,000,000.00) (such funds, together with any other amounts advanced by Lender to or on behalf of Borrower pursuant to any of the Loan Documents (as defined below) being herein referred to as the "Loan") to be evidenced by a fourth Promissory Note dated of even date herewith (the "Fourth Note"; and together with the First Note, Second Note and Third Note, the "Notes") to be used for the development of a residential subdivision on the property 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 (as defined below).

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 Guarantor hereby agree as follows:

A. Amendment of Loan Agreement; Definition of Loan Documents.

1. The Loan Agreement shall be, and is hereby amended as follows:

(a) On page one, after the phrase "Loan Amount:" in the section setting forth the definitions of various terms, the amount "\$9,048,100.00" is hereby deleted and the amount "\$11,048,100.00" is inserted in lieu thereof.

(b) On page one, the following is added to the sentence immediately following the phrase "Commitment Letter:" in the section setting forth the definitions of various terms: "and to Borrower dated January 23, 1995."

(c) 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 as defined above.

(d) 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.

(e) 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.

2. Borrower and Lender agree that the Loan shall be disbursed, secured, administered and otherwise governed by the terms and conditions of the Loan Agreement. In addition to this Agreement and the Fourth Note, Borrower, Guarantor and other parties have executed and delivered to Lender other documents evidencing, securing, guaranteeing or otherwise relating to the Loan. Such other documents, together with the Notes, this Agreement, the Assumption Agreement, the Loan Agreement, the Mortgage and the Pledge Agreements, and as any of the same are hereby or may in the future be amended, modified, extended, replaced or renewed, are herein referred to as the "Loan Documents."

B. Execution of Fourth Note. Borrower shall execute and deliver to Lender, a Promissory Note in the amount of \$2,000,000.00 dated of even date herewith (the "Fourth Note"). The Loan shall be evidenced by the Notes and the Loan and the Notes shall be secured by, and be entitled to all the benefits of, the Mortgage, the Loan Agreement and the other Loan Documents.

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

1. On page one, in the first "WHEREAS" clause, the phrase "Nine Million Forty-eight Thousand One Hundred and No/100 Dollars (\$9,048,100.00)" is hereby deleted and the following inserted in lieu thereof: "Eleven Million Forty-Eight Thousand One Hundred and No/100 Dollars (\$11,048,100.00)."

2. On page 1, in the first "WHEREAS" clause, the phrase, "and as evidenced by a promissory note dated January 18, 1995," is added immediately after the phrase "and as evidenced by a promissory note dated December 1, 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.

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

G. Execution by Guarantor. The Guarantor has executed this Agreement to acknowledge and evidence his consent to the transactions contemplated hereby, including the execution and delivery of the Fourth Note, the modification of 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.

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:

TAYLOR PROPERTIES, L.L.C.

WITNESS:

John D. Sanson

By:

Wendell H. Taylor
Wendell H. Taylor
Its Manager

LENDER:

COMPASS BANK

WITNESS:

John D. Sanson

By:

[Signature]
Its: Vice President

GUARANTOR:

WITNESS:

John D. Sanson

Wendell H. Taylor
WENDELL H. TAYLOR

STATE OF ALABAMA

COUNTY OF Jefferson

I, Rebecca J. Brathouse, a notary public in and for said county in said state, hereby certify that Wendell H. Taylor, whose name as Manager of TAYLOR PROPERTIES, L.L.C., an Alabama limited liability company, 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 Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 23rd day of February, 1995.

Rebecca J. Brathouse
Notary Public

[Notarial Seal]

My Commission Expires: 11/4/98

STATE OF ALABAMA

COUNTY OF Jefferson

I, Joyce Coe, a notary public in and for said county in said state, hereby certify that C. Douglas Vibert, whose name as Vice President 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 2nd day of March, 1995.

Joyce R. Coe
Notary Public

[Notarial Seal]

My Commission Expires: 8/8/97

STATE OF ALABAMA

COUNTY OF Jefferson

I, Rebecca Gnaathouse, 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 23rd day of February, 1995.

Rebecca Gnaathouse
Notary Public

[Notarial Seal]

My Commission Expires: 11/4/98

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