

This Instrument Prepared by:

Felton W. Smith
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35201

Inst # 1995-25591

09/14/1995-25591
10:29 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00

STATE OF ALABAMA

COUNTY OF SHELBY

ASSUMPTION AND CONSENT TO MERGER

THIS ACKNOWLEDGEMENT AND CONSENT TO MERGER ("Agreement") is entered into as of December 29, 1994, by and between COMPASS BANK, Birmingham, Alabama, an Alabama banking corporation (formerly known as Central Bank of the South) ("Lender"), SCHOOL HOUSE PROPERTIES, an Alabama general partnership (the "Partnership"), TAYLOR PROPERTIES, L.L.C. (the "L.L.C."), and WENDELL H. TAYLOR ("Guarantor").

WHEREAS, Lender has extended to the Partnership a loan with a present outstanding principal balance of \$3,439,289.75 (the "Loan"), said Loan being evidenced by a Note executed by the Partnership in the original principal sum of \$3,700,000.00 dated July 8, 1993 (as subsequently amended pursuant to that certain Loan Modification Agreement and Mortgage Amendment dated as of March 17, 1994, and recorded as Instrument No. 1994/10216 in the Office of the Judge of Probate of Shelby County, Alabama, the "Note"); and

WHEREAS, the Loan and Note are secured by, among other collateral, that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement in the original amount of \$3,700,000.00 recorded as Instrument No. 1993/32536 (as amended pursuant to said Loan Modification Agreement and Mortgage Amendment, the "Mortgage"), that certain Pledge Agreement executed by Guarantor dated July 8, 1993 (the "Pledge Agreement"; the Note, Mortgage and Pledge Agreement, together with all other documents executed and/or delivered to Lender in connection with the Loan and as any of the same have been or are in the future amended, modified, extended or renewed, being hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, the Partnership proposes to merge into the L.L.C. with the result being that the L.L.C. shall become the owner of all of the Partnership's property, real and personal, and the L.L.C. shall assume all of the Partnership's liabilities and other obligations; and

WHEREAS, the Partnership has requested that Lender consent to such merger and Lender has agreed to grant such consent; and

WHEREAS, Lender, the Partnership and the L.L.C. wish to acknowledge the merger of the Partnership into the L.L.C. and the L.L.C.'s assumption of the Partnership's liabilities and other obligations pursuant to the Loan Documents.

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NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, the Partnership and the L.L.C. hereby agree as follows:


1. Lender hereby consents to the merger of the Partnership into the L.L.C.
2. The L.L.C. acknowledges and agrees that the Note, the Mortgage and other Loan Documents are enforceable in accordance with their respective terms and that the Mortgage is a first, valid and prior lien or encumbrance against the property described therein.
3. The property described in the Mortgage shall remain in all respects subject to the lien, charge or encumbrance of said Mortgage, or conveyance of title effected thereby, and nothing herein contained and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of, or conveyance effected by, the Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances or to release or affect the liability of any party or parties whomsoever who may now or hereafter be liable hereunder or on account of the Note, Mortgage and/or other Loan Documents; nor shall anything herein contained or done pursuant hereto affect or be construed to affect any other security or instrument held by or in favor of Lender as additional security for or evidence of the aforesaid indebtedness.
4. The L.L.C. does hereby assume, accept and agree to fully and timely perform all of the obligations provided in the Note, the Mortgage and other Loan Documents and to be subject to and comply with all terms and conditions thereof.
5. The Note, the Mortgage and the other Loan Documents are hereby restated, republished and affirmed by the L.L.C. in their entirety, including without limitation, each and every representation, warranty, covenant and agreement made by the Partnership therein. The Partnership and the L.L.C. hereby represent, warrant and certify to Lender that no Event of Default (as defined in the Loan Documents), 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 the Note, the Mortgage or other Loan Documents and that the Partnership and the L.L.C. have no offsets or claims against Lender arising under, related to, or connected with the Loan, Mortgage, Note or any of the other Loan Documents.
6. The L.L.C. shall pay any recording and other expenses incurred by Lender, the Partnership or the L.L.C., in connection with the assumption of the Note, Mortgage and other Loan Documents, including without limitation, title or other insurance premiums, legal expenses and recording fees and taxes.
7. Each of the Loan Documents shall be deemed amended hereby 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.

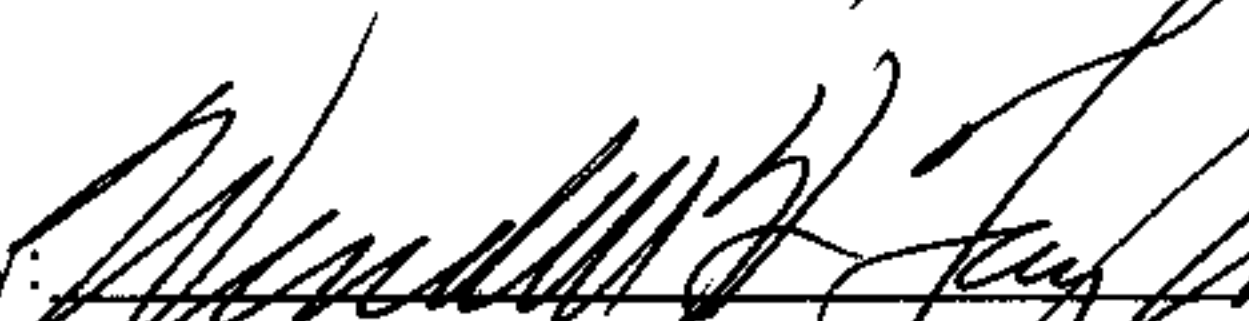
8. The Guarantor executing this instrument below consents to the merger of the Partnership into the L.L.C., and the assumption and other transactions contemplated hereby and agrees that he shall remain fully liable and obligated under any guaranty agreements executed in connection with the Loan, Note, Mortgage and other Loan Documents, including without limitation that certain unlimited continuing guaranty agreement dated July 8, 1993.
9. This Agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.
10. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
11. 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 effected thereby.

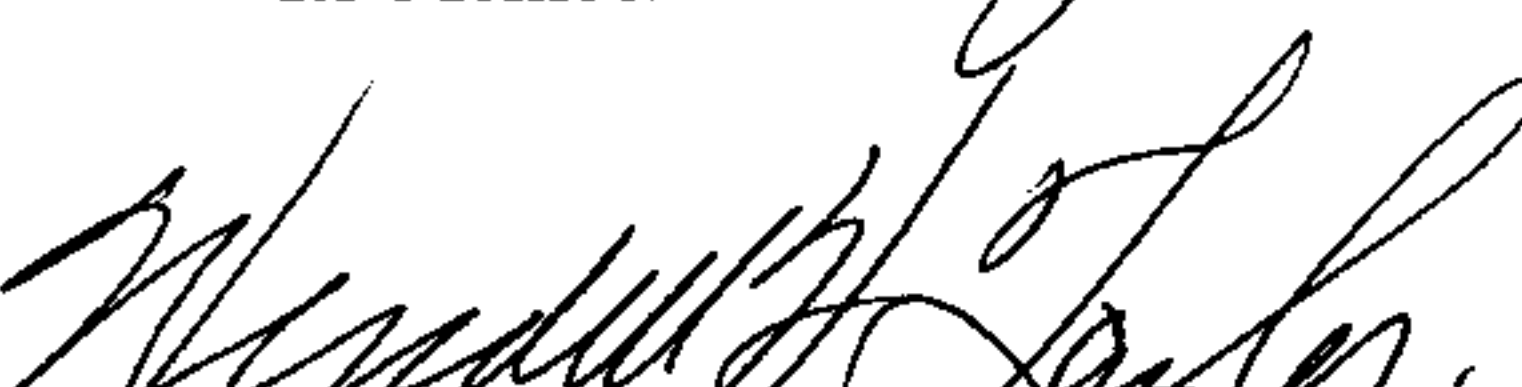
IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly and properly executed effective as of December 29, 1994.

SCHOOL HOUSE PROPERTIES

By: 
Wendell H. Taylor
Its General Partner

TAYLOR PROPERTIES, L.L.C.

By: 
Wendell H. Taylor
Its Member


WENDELL H. TAYLOR, individually
as Guarantor

LENDER:

COMPASS BANK

By: *Laurel H. Taylor*
Its: *Real Estate Officer*

STATE OF ALABAMA

COUNTY OF *Jefferson*

I, *Rebecca J Greathouse*, 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 *18th* day of *January*, 1995.

Rebecca J Greathouse
Notary Public

[Notarial Seal]

My Commission Expires: *11/4/98*

STATE OF ALABAMA

COUNTY OF Jefferson

I, Rebecca J Greathouse, a notary public in and for said county in said state, hereby certify that Wendell H. Taylor whose name as Member 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 this day that being informed of the contents of the instrument, he, as such Member 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 18th day of January, 1995.

Rebecca J Greathouse
Notary Public

[Notarial Seal]

My Commission Expires: 11/4/98

STATE OF ALABAMA

COUNTY OF Jefferson

I, Rebecca J Greathouse, 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 18th day of January, 1995.

Rebecca J Greathouse
Notary Public

[Notarial Seal]

My Commission Expires: 11/4/98

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, 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 7th day of February, 1995.

Brenda Brown
Notary Public

[Notarial Seal]

My Commission Expires: June 12, 1998

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SHELBY COUNTY JUDGE OF PROBATE
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