

This Instrument Prepared by:
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P.O. Box 306
Birmingham, Alabama 35233

Inst # 1995-32363

STATE OF ALABAMA

SHELBY COUNTY

11/08/1995-32363
12:56 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 MCD 1324.55

**SECOND LOAN MODIFICATION AGREEMENT AND
AMENDMENT TO LOAN DOCUMENTS**

This **SECOND LOAN MODIFICATION AGREEMENT AND AMENDMENT TO LOAN DOCUMENTS** (this "Agreement") is being entered into as of the 7th day of November, 1995, by and between **COMPASS BANK**, an Alabama state banking corporation ("Bank"), **DONALD M. ACTON, WILLIAM F. SPRATLIN, and RODNEY D. MCGINNIS** (collectively, the "Guarantors") and **YELLOWLEAF ESTATES, INC.**, a corporation (the "Borrower").

P R E A M B L E

The Borrower is the maker of a certain \$775,000 Promissory Note dated as of February 11, 1994 (the "Note"), which evidences a certain loan from the Bank to the Borrower (the "Loan"). The Loan was made available pursuant to a certain Construction Loan Agreement by and between the Bank and the Borrower dated as of February 11, 1994 (the "Loan Agreement"), and is secured by, among other things, a certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Borrower to the Bank dated as of February 11, 1994 and recorded in the Probate Office of Shelby County, Alabama as Instrument No. 1994-05518 (the "Mortgage") and an Assignment of Sales Contracts from Borrower to Bank dated as of February 11, 1994 (the "Assignment of Sales Contracts"). The principal amount of the Loan heretofore has been increased to \$1,204,000 and the Loan and the documents relating to the Loan have been modified and amended previously pursuant to a certain Loan Modification Agreement and Amendment to Loan Documents dated

as of August 15, 1994 and recorded in the Probate Office of Shelby County, Alabama as Instrument No. 1994-25549. Borrower has reduced the outstanding principal amount of the Loan to \$593,000. Borrower has requested that the Bank make additional financing in the principal amount of up to \$865,700 available to the Borrower for the development of an additional fifty-four (54) lots on the Mortgaged Property (as defined in the Mortgage) (the "Second Sector Lots"). The parties hereto have agreed that the Loan shall be further modified, and that the documents and instruments evidencing, securing, relating to, guaranteeing or executed or delivered in connection with the Loan (collectively the "Loan Documents") shall be further amended. Accordingly, the Bank and the Borrower have agreed that the Loan shall be modified, and that the Loan Documents shall be amended as set forth below:

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. **Modification Fee**. The Borrower shall pay to Bank in consideration of the Bank's commitment to modify the Loan, a non-refundable modification fee in the amount of \$11,622, which shall be deemed earned and shall be paid prior to funding.

B. **Modification of Loan**. The amount of the Loan shall be changed to \$1,458,700. The Bank shall make an additional \$865,700 in financing available to the Borrower to finance the development of the Second Sector Lots. Funding of the additional financing shall be subject to the Borrower's compliance with the terms and conditions of the Loan Agreement and that certain commitment letter from Bank to Borrower dated as of October 30, 1995 (the "Third Commitment").

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

- (i) By changing the amount of the Loan as described therein to \$1,458,700;

- (ii) By incorporating therein the terms of the Third Commitment.

D. **Execution of Second Note.** Borrower shall execute and deliver to Bank a second Promissory Note in the maximum principal amount of EIGHT HUNDRED SIXTY-FIVE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$865,700.00) (the "Second Note"). The Second Note shall be a "Loan Document" and shall be secured by and be entitled to all of the benefits of the Mortgage, Loan Agreement and other Loan Documents.

E. **Amendment of Mortgage.** The Mortgage shall be and the same hereby is amended by revising the first "WHEREAS" clause thereof to read in its entirety as follows:

WHEREAS, Borrower is justly indebted to Bank on a loan (the "Loan") in the principal sum of One Million Four Hundred Fifty-Eight Thousand Seven Hundred and no/100 Dollars (\$1,458,700.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated February 11, 1994, as the same has been amended by a certain Loan Modification Agreement and Amendment to Loan Documents dated as of August 15, 1994, and by a second promissory note in the maximum amount of Eight Hundred Sixty-Five Thousand Seven Hundred and No/100 Dollars (\$865,700.00) dated as of November 7, 1995, and as may from time to time be amended hereafter, payable to Bank with interest thereon (collectively, the "Note") on demand or as otherwise provided in the Note; and

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. Without limiting the generality of the foregoing, each reference in the Loan Documents to the "Note", the "Loan Agreement", or any other "Loan Documents" shall be deemed to be references to said documents, as amended or provided hereby, and each reference to the amount of the Loan shall be changed to \$1,458,700. 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.

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

H. **Additional Documentation; Expenses.** Borrower shall provide to Bank (i) 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 (ii) 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.

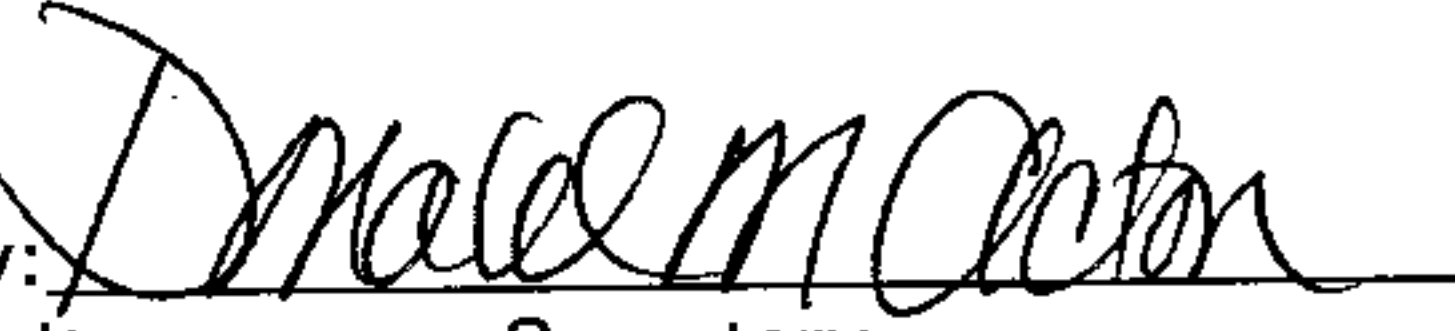
I. **Execution by Guarantors.** Guarantors have executed this Agreement to evidence their consent to the modification and amendments as described herein, and to acknowledge the continuing effect of their respective Guaranties and the obligations contained therein.

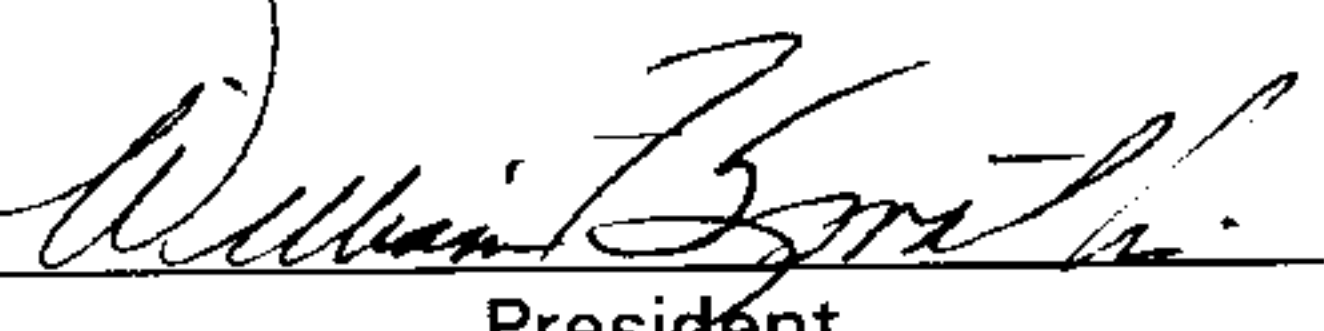
IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the date first set forth above.

BORROWER:

YELLOWLEAF ESTATES, INC.

ATTEST:

By: 
Its _____ Secretary

By: 
Its _____ President

[CORPORATE SEAL]

WITNESS:

Felton W. Smith

BANK:

COMPASS BANK

By: James M. [Signature]
Its Real Estate Officer

GUARANTORS:

WITNESS:

Felton W. Smith

Felton W. Smith

Felton W. Smith

Donald M. Acton
DONALD M. ACTON

William F. Spratlin
WILLIAM F. SPRATLIN

Rodney D. McGinnis
RODNEY D. MCGINNIS

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Wm. J. Spratlin, whose name as President of **YELLOWLEAF ESTATES, 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, he, 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 7 day of Nov, 1995.

Stephen J. Sengfelter
Notary Public

My commission expires: 10/19/99

[NOTARIAL SEAL]

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Travis M. Hays whose name as Real Estate 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, he, 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 7 day of Nov, 1995.

Stephen J. Sengfelter
Notary Public

My commission expires: 10/19/99

[NOTARIAL SEAL]

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **DONALD M. ACTON**, 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 7 day of Nov., 1995.

Catharine J. Singleton
Notary Public

[NOTARIAL SEAL]

My commission expires: 10/19/99

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **WILLIAM F. SPRATLIN**, 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 7 day of Nov., 1995.

Catharine J. Singleton
Notary Public

[NOTARIAL SEAL]

My commission expires: 10/19/99

STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **RODNEY D. MCGINNIS**, 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 7 day of Nov, 1995.

[NOTARIAL SEAL]

Arthur J. Singleton
Notary Public
My commission expires: 10/19/99

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