

This Instrument Prepared by:

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Inst # 1996-09690

STATE OF ALABAMA

SHELBY COUNTY

03/26/1996-09690
08:15 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 MCD 3008.45

**SEVENTH LOAN MODIFICATION AGREEMENT
AND MORTGAGE AMENDMENT**

This **SEVENTH LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT** is entered into as of March 19, 1996, by and between **COMPASS BANK**, an Alabama banking corporation ("Lender"), and **TAYLOR PROPERTIES, L.L.C.**, an Alabama limited liability company ("Borrower"), and **THE ESTATE OF WENDELL H. TAYLOR, DECEASED, NANCY B. TAYLOR AND SOUTHTRUST BANK OF ALABAMA, National Association, CO-EXECUTORS, AS SUCCESSOR TO WENDELL H. TAYLOR** ("Guarantor").

Inst # 1996-09690

WITNESSETH:

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 (as amended, 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

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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 (all of the property subject to the Mortgage from time to time being referred to as the "Mortgaged Property"); 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, 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, pursuant and subject to that certain Commitment Letter dated January 23, 1995 (the "Third Commitment"), and that certain Third Loan Modification Agreement and Mortgage Amendment dated as of February 23, 1995, Lender agreed to advance additional funds to Borrower to be evidenced by a fourth Promissory Note dated as of February 23, 1995 (as amended pursuant to that certain Note Modification Agreement dated October 23, 1995, in order to provide for revolving advances, the "Fourth Note") in the amount of up to Two Million and No/100 Dollars (\$2,000,000.00) to be used for working capital, distributions to the members of Borrower and development of the Mortgaged Property; and

WHEREAS, pursuant and subject to that certain Commitment Letter dated May 18, 1995 (the "Fourth Commitment"), and that certain Fourth Loan Modification Agreement and Mortgage Amendment dated as of May 22, 1995, Lender agreed to advance additional funds to Borrower to be evidenced by a fifth Promissory Note dated as of May 22, 1995 (the "Fifth Note") in the amount of up to One Million Three Hundred Twenty-one Thousand Two Hundred and No/100 Dollars (\$1,321,200.00) to be used for further development of the Mortgaged Property; and

WHEREAS, pursuant to that certain Fifth Mortgage Amendment dated as of July 28, 1995, Borrower and Lender amended the Mortgage to add additional property thereto; and

WHEREAS, pursuant and subject to that certain Commitment Letter dated October 13, 1995 (the "Fifth Commitment"), and that certain Sixth Loan Modification Agreement and Mortgage Amendment dated as of October 23, 1995, Lender agreed to advance additional funds to Borrower to be evidenced by a sixth Promissory Note dated as of October 23, 1995 (the

"Sixth Note") in the amount of up to Two Million Five Hundred Ten Thousand and No/100 Dollars (\$2,510,000.00) to be used for further development of the Mortgaged Property; and

WHEREAS, pursuant to that certain Accommodation Mortgage and Security Agreement from The Crest at Greystone, Inc. to Lender dated December 21, 1995 and recorded as Instrument No. 1995-37355 in the office of the Judge of Probate of Shelby County, Alabama, additional property was mortgaged to secure the Notes and the Loan (as hereinafter defined) (as amended, the "Accommodation Mortgage"); 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, Borrower has requested and, subject to the terms and conditions of that certain Commitment Letter by and between Lender and Borrower dated February 13, 1996 (the "Sixth Commitment" and, together with the First, Second, Third, Fourth and Fifth Commitments, the "Commitment Letter"), Lender has agreed to advance additional funds to Borrower in the amount of up to One Million Nine Hundred Eighty-eight Thousand Three Hundred and No/100 Dollars (\$1,988,300.00) (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 seventh Promissory Note dated of even date herewith (the "Seventh Note"; and together with the First Note, Second Note, Third Note, Fourth Note, Fifth Note and Sixth Note, the "Notes") a portion of which will be used to reduce the amount outstanding under the First Note and the remainder of which will be used for further development of 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).

A G R E E M E N T

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 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 "\$14,082,800.00" is hereby deleted and the amount "\$14,818,200.00" 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 February 13, 1996."

(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 Seventh 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, the Pledge Agreements and the Accommodation Mortgage 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 Seventh Note. Borrower shall execute and deliver to Lender, a Promissory Note in the amount of \$1,988,300.00 dated of even date herewith (the "Seventh 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, the Accommodation Mortgage 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 "Fourteen Million Eighty-two Thousand Eight Hundred and No/100 Dollars (\$14,082,800.00)" is hereby deleted and the following inserted in lieu thereof: "Fourteen Million Eight Hundred Eighteen Thousand Two Hundred and No/100 Dollars (\$14,818,200.00)."

2. On page 1, in the first "WHEREAS" clause, the phrase "and as evidenced by promissory notes dated July 15, 1994, August 18, 1994, December 1, 1994, February 23, 1995, May 22, 1995 and October 23, 1995" is deleted and the phrase "and as evidenced by promissory notes dated July 15, 1994, August 18, 1994, December 1, 1994, February 23, 1995,"

May 22, 1995, October 23, 1995 and March 19, 1996" is inserted in lieu thereof.

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 consent to the transactions contemplated hereby, including the execution and delivery of the Seventh 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 the 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:

WITNESS:

Sharon Sinclair

TAYLOR PROPERTIES, L.L.C.

By: Wendell H. Taylor Jr.
Its Manager and Member

LENDER:

WITNESS:

Sharon Sinclair

COMPASS BANK

By: J. R. Miller
Its: Vice President

WITNESS:

Nancy B. Taylor

GUARANTOR:

Nancy B. Taylor
Nancy B. Taylor, in her capacity as
Co-Executor of the Estate of Wendell H.
Taylor, Deceased

SouthTrust Bank of Alabama, National
Association, in its capacity as
Co-Executor of the Estate of Wendell H.
Taylor, Deceased

WITNESS:

Lettya Broome

By: Amelita Lomas
Its: Vice President

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 Jr, whose name as Manager and 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 on this day that, being informed of the contents of such instrument, he, as such Manager and 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 13 day of March, 1996.

[Notarial Seal]

Rebecca J Greathouse
Notary Public
My Commission Expires: 11/4/98

STATE OF ALABAMA

COUNTY OF Jefferson

I, Sue Ailshie, a notary public in and for said county in said state, hereby certify that J. R. Miller, 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 20th day of MARCH, 1996.

[Notarial Seal]

Sue Ailshie
Notary Public
My Commission Expires: 3/23/99

STATE OF ALABAMA

COUNTY OF Jefferson

I, Rebecca J. Gnaathouse, a notary public in and for said county in said state, hereby certify that **Nancy B. Taylor**, whose name as Co-Executor of the Estate of Wendell H. Taylor, Deceased, 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, she, in her capacity as such Co-Executor, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14th day of March, 1995.

Rebecca J. Gnaathouse
Notary Public
My Commission Expires: 11/4/98

[Notarial Seal]

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STATE OF ALABAMA

COUNTY OF Jefferson

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I, Barbara K. Holson, a notary public in and for said county in said state, hereby certify that Pamela L. Turnas, whose name as Vice President of **SOUTHTRUST BANK OF ALABAMA**, National Association, a national banking association, as Co-Executor of the estate of Wendell H. Taylor, Deceased, 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 national banking association, acting in its capacity as Co-executor as aforesaid.

Given under my hand and official seal this 19th day of March, 1996.

Barbara K. Holson
Notary Public
My Commission Expires: 3-1-98

[Notarial Seal]