

STATE OF ALABAMA)

COUNTY OF SHELBY)

LOAN ASSUMPTION AND FOURTH LOAN MODIFICATION AGREEMENT

THIS LOAN ASSUMPTION AND FOURTH LOAN MODIFICATION AGREEMENT (this "**Modification Agreement**") made effective as of the 3rd day of July, 2003, by and between **COMPASS BANK**, an Alabama banking corporation (the "**Lender**"), and **GREYSTONE PARK RETAIL, LLC**, an Alabama limited liability company (the "**Greystone**").

WHEREAS, in connection with a loan (the "**Loan**") from Lender to Taylor Properties, L.L.C., an Alabama limited liability company (the "**Original Borrower**") in the original principal amount of \$4,550,000.00 (the "**Loan**"), the Original Borrower executed and delivered to Lender the following Loan Documents dated April 17, 2000, to evidence and secure the Loan: (i) Promissory Note in the amount of \$4,550,000.00 (the "**Note**"); (ii) Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement filed as Instrument No. 2000/12783 (the "**Mortgage**"); (iii) Loan Agreement for Construction and Term Financing (the "**Loan Agreement**"); (iv) Uniform Commercial Code Financing Statement No. 2000-12784 filed in the Office of the Judge of Probate of Shelby County, Alabama; and (v) Uniform Commercial Code Financing Statement No. 2000-15854 filed with the Alabama Secretary of State. The Loan was further secured by the Continuing Guaranties (collectively, the "**Guaranties**") from Michael D. Fuller, Penny Taylor Fuller, Wendell H. Taylor, Jr., Daniel B. Taylor and Lindsay Taylor McGraw (collectively, the "**Guarantors**"); and

WHEREAS, the Loan was modified by (i) that certain First Loan Modification Agreement dated July 1, 2002, (ii) that certain Second Loan Modification Agreement dated September 19, 2002, and (iii) that certain First Amendment to Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated September 19, 2002 and recorded at Instrument No. 20020925000463060 in the Office of the Judge of Probate of Shelby County, Alabama (the Note, the Mortgage, the Loan Agreement, the Guaranties, the Financing Statements and all other documents and instruments which evidenced, secured, guaranteed or otherwise related to the Loan, as modified by (i) - (iii) above are referred to herein as the "**Original Loan Documents**"; and

WHEREAS, Lender, the Original Borrower and Greystone further modified the Loan by Loan Assumption and Third Modification Agreement dated September 19, 2002, recorded at Instrument No. 20020925000463100 in the Office of the Judge of Probate of Shelby County, Alabama, wherein the Greystone assumed the Loan and agreed to pay the same in accordance with its terms, and the Original Borrower (but *not* the Guarantors) was released from liability with respect to the Loan (the Original Loan Documents, as amended by the above Loan Assumption and Third Modification Agreement, are referred to herein as the "**Loan Documents**"; and

Cahaba Title, Inc.

WHEREAS, as of the date hereof, the Greystone is conveying an undivided 50% interest in the Property and Loan to **STUPAUL, LLC**, a Delaware limited liability company ("**Stupaul**"). Stupaul has obtained title to an undivided 50% interest in the Property subject to the Loan; and

WHEREAS, Greystone and Stupaul have requested Lender to consent to such conveyance subject to the Loan; and

WHEREAS, as a condition to its consent to the conveyance of an undivided 50% interest in the Property subject to the Loan to Stupaul, Lender requires that Stupaul assume and agree to perform all of the obligations and agreements under the Loan Documents.

WHEREAS, Greystone, Stupaul and Lender desire to further modify the Loan as set forth herein.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Greystone, Stupaul and Lender agree as follows:

- 1. Assumption.** Stupaul hereby assumes and agrees, in common with Greystone, to be bound by and to perform all of the terms, covenants, conditions and agreements of the "Borrower" under the Loan Documents, and acknowledges and agrees that it shall be subject to all remedies reserved to the Lender in the Loan Documents in the event of any Event of Default thereunder. Stupaul hereby acknowledges and agrees that the Property shall remain in all respects subject to the Mortgage and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the encumbrance of, or warranty of title in, or conveyance effected by, the Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances; nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other instrument held by Lender as security of the Loan.

Effective with this Modification Agreement, both Greystone and Stupaul shall be Borrowers under the Loan documents, and each shall be primarily liable for all obligations of the Borrower under the Note and the other Loan Documents. All references under the Loan Documents to the word "Borrower" shall hereafter mean, individually and collectively, Greystone and Stupaul.

- 2. Lender's Consent.** Lender hereby consents to the conveyance of an undivided 50% interest in the Property to Stupaul subject to the Loan Documents, and to the assumption of the Loan Documents, in common with Greystone, by Stupaul. This consent shall not be deemed to alter or modify any of the terms and conditions of the Loan Documents, or the rights and obligations of the parties thereunder, except as expressly provided herein. Lender acknowledges and agrees that all references to Greystone under the Loan Documents shall

be deemed to refer to both Greystone and Stupaul with respect to covenants and agreements to be performed or observed from and after the date hereof.

3. **Representations and Warranties of Greystone.** In connection with and as an inducement to Lender's consent to the conveyance of an undivided 50% interest in the Property to Stupaul and assumption of the Loan, in common with Greystone, by Stupaul, Greystone hereby represents and certifies to Lender as follows:

- (a) **Condemnation.** To the best knowledge of Greystone, there are no pending or threatened actions or proceedings with respect to the condemnation of all or any portion of the Property.
- (b) **Violation of Law.** Greystone has not received any notice of inquiry from any governmental authority claiming any alleged violation of any law, rule, regulation or order of any government authority having jurisdiction over the Property, which violations in any way relate to or affect the Property.
- (c) **Hazardous Materials.** Neither Greystone, nor, to Greystone's knowledge, any previous owner of the Property nor any person has used, generated, stored, installed or disposed of any Hazardous Materials on, in or under the Property, and to Greystone's knowledge, no environmental investigation, litigation, or settlement by any governmental authority with jurisdiction over the Property is proposed, threatened, or anticipated with respect to the Property. To Greystone's knowledge, no underground storage tanks are located on the Property or were located on the Property and subsequently removed or filled.
- (d) **No Events of Default.** As of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and Greystone has no setoff, counterclaim or defense to the Note or the other Loan Documents.

4. **Representations and Warranties of Stupaul.** In connection with and as an inducement to the Lender's consent to the acquisition of an undivided 50% interest in the Property and assumption of the Loan, in common with Greystone, by Stupaul, Stupaul hereby represents and certifies to Lender as follows:

- (a) **Formation.** That Stupaul is a limited liability company duly formed, in good standing, and validly existing under the laws of the State of Delaware, has qualified to do business in the State of Alabama, and has all requisite power and authority to enter into and perform this Agreement and the Loan Documents; that Stupaul is authorized to conduct business and own and operate the Property under all applicable laws; that the execution, delivery and performance of this Agreement and the assumption of the Loan Documents have been duly authorized by all requisite

liability company action of Stupaul and will not violate any provisions of applicable law, the Operating Agreement of Stupaul, or any agreement, indenture or instrument to which Stupaul is a party or by which Stupaul or any of the properties or assets of Stupaul are bound; and that this Agreement and the Loan Documents are the legal, valid and binding obligations of Stupaul, enforceable against Stupaul in accordance with their respective terms, except as enforceability may be limited or affected by (i) bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws from time to time in effect, (ii) customary principles, judicial decisions, and laws governing, limiting, or affecting the availability of equitable relief generally, and (iii) certain other laws and judicial decisions which may affect certain of the remedial or other provisions contained in the Loan Documents.

- (b) **Event of Default.** As of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and Stupaul has no setoff, counterclaim or defense to the Note or the other Loan Documents.

5. **Amendments to Loan Documents.** In connection with the purchase and sale of an undivided 50% interest in the Property and the assumption of the Loan by Stupaul, in common with Greystone, the Loan Documents are hereby amended in the following respects:

- (a) **Construction Phase Maturity Date.** The Construction Phase maturity date of the Loan is hereby extended to July 1, 2005, and the Term Phase is hereby modified to extend for 19 months after the Construction Phase. In connection therewith, the Note is hereby further amended as follows:
 - (i) In Line 1 of Paragraph 2, the date "January 1, 2004" shall be changed to "July 1, 2005".
 - (ii) In Line 2 of Paragraph 2(b), the date "January 1, 2004" shall be changed to "July 1, 2005".
 - (iii) In Line 2 of Paragraph 5, the date "January 1, 2004" shall be changed to "July 1, 2005".
- (b) **Principal Reduction.** Contemporaneously herewith, a principal reduction shall be made by Borrower to the Note in the amount of \$525,000.00, which payment shall be applied to the principal balance of the Note.
- (c) **Reduction of Loan Commitment.** The Loan Commitment (defined as the outstanding principal balance of the Loan, plus the unfunded commitment of Lender under the Loan Agreement), is hereby reduced from \$4,550,000.00 to \$3,880,000.00.

The unfunded commitment remaining on the Loan, following the principal reduction required by Section 5(b) hereof, shall be \$1,880,000.00.

- (d) **UCC-1 Financing Statements.** Stupaul and Greystone agree that UCC-1 Financing Statements shall be filed in Shelby County, Alabama and with the Secretary of State of Delaware naming Stupaul as a debtor, Lender as secured party, and reflecting a security interest in the same collateral as set forth in the current financing statements on file with respect to Greystone.
- (e) **Loan Agreement.** Section 6.14(b) of the Loan Agreement is hereby amended to provide that copies of notices to the Borrower also shall be delivered to:

Stupaul, LLC
4000 Forest Glen
Birmingham, Alabama 35213

- (f) **Mortgage.** Section 5.08(a) of the Mortgage is hereby amended to add the name of "STUPAUL, LLC" as an additional debtor, and to show the address for Stupaul, as a Borrower (debtor) as follows:

Stupaul, LLC
4000 Forest Glen
Birmingham, Alabama 35213

- 6. **Guaranties.** The Loan shall continue to be guaranteed by the Guaranties of the Guarantors (Michael D. Fuller, Penny Taylor Fuller, Wendell H. Taylor, Jr., Daniel B. Taylor and Lindsay Taylor McGraw).
- 7. **Fee.** Contemporaneously with this Modification Agreement, Borrower shall pay Lender an extension fee of \$9,700.00.
- 8. **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 Modification Agreement. Without limiting the generality of the foregoing, each reference in the Loan Documents to the "Note," shall refer to the Note, as amended hereby and each reference in the Loan Documents to the "Mortgage," or any other Loan Documents shall be deemed to be references to said documents, as amended hereby. 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.

9. **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 Lender 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 Lender arising under, related to, or connected with the Loan, the Loan Agreement or any of the other Loan Documents.
10. **Additional Documentation; Expenses.** Borrower shall provide to Lender if Borrower is a business organization, certified resolutions properly authorizing the transactions contemplated hereby and the execution of this Modification Agreement and all other documents and instruments being executed in connection herewith in form and substance satisfactory to Lender. Borrower shall pay any recording and all other expenses incurred by Lender 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, reasonable legal expenses, recording fees and taxes. Additionally, Borrower agrees, at its expense, to provide an endorsement to Lender's Loan Title Policy from First American Title Company showing no additional encumbrances on the collateral. If the title commitment reveals any matters which are unacceptable to Lender in Lender's sole discretion, Lender shall have the right to declare this modification null and void.
11. **Release of Lender.** By its execution herein below, Greystone hereby acknowledges and agrees that neither Lender nor any of its agents, servants, representatives, employees, attorneys, successors, successors-in-interest, predecessors-in-interest and assigns (hereinafter referred to collectively as the "Released Parties") have interfered with or impaired the acquisition, development, construction, operation, ownership, management or leasing of the Property, and that Greystone has no claim of any nature whatsoever, at law, in equity or otherwise, against the Released Parties, or any of them, as a result of any acts or omissions of the Released Parties, or any of them, under the Loan Documents or in connection to the Loan prior to the date hereof. Greystone hereby unconditionally waives and releases the Released Parties from and against any and all manner of action, suits, claims, counterclaims, offsets, deductions, breach or breaches, default or defaults, debts, dues, sums of money, accounts, deposits, damages, expenses, losses, liabilities and any and all demands whatsoever that Greystone or any of Greystone's successors, successors-in-interest or assigns can or may have against the Released Parties, or any of them, by reason of any matter, cause, transaction or occurrence whatsoever, which happened or has happened on or before the date of this Agreement, and which is connected in any manner whatsoever with the Loan, the Property, any and all collateral which has served or is serving as security for the Loan or the Loan Documents. Any and all such claims are hereby declared to be satisfied and settled, and Greystone hereby discharges the Released Parties from any liability with respect to any and all such claims.

12. **Ratification.** Greystone, Stupaul and Lender mutually covenant and agree that, except as expressly modified herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect, and all of the remaining terms and provisions of the Loan Documents are hereby ratified and confirmed.
13. **Lender Estoppel.** Lender hereby certifies that, as of the date of Lender's signature below:
- (a) Lender is the owner of the Loan and the Loan Documents;
 - (b) The outstanding principal balance of the Loan and Note (*after* the \$525,000.00 principal reduction required by Section 5(b) hereof, is \$2,003,000.00.
 - (c) Interest on the Loan and Note has been paid through and including the payment due June 10, 2003.
 - (d) To the best of Lender's knowledge, and without independent investigation, no Event of Default currently exists under the Loan. For the purposes hereof, the phrase "best of Lender's knowledge" means *only* the actual (and not constructive) knowledge of Mr. John McQueen of Compass Bank, the loan officer for the Loan. Anything in this Section 13(d) to the contrary notwithstanding, this Section 13(d) shall not be construed as a waiver of any existing or subsequent Event of Default, whether or not known by Lender. The certification in this Section 13(d) is given only as a courtesy to Greystone and Stupaul, and neither Greystone nor Stupaul may rely on the provisions of this Section 13(d), nor shall Lender have any liability to Greystone or Stupaul in the event that the certification in this Section 13(d) shall be found to be incorrect.
13. **Counterparts.** This document may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) document and agreement, but in making proof of this document, it shall not be necessary to produce or account for more than one such counterpart, and counterpart pages may be combined into one single document.
14. **Severability.** Whenever possible, each provision of this Modification Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provisions hereof shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or of the remaining provisions of this Modification Agreement.
15. **Headings.** The headings of the paragraphs contained in this Modification Agreement are for convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meaning of the parties hereto.

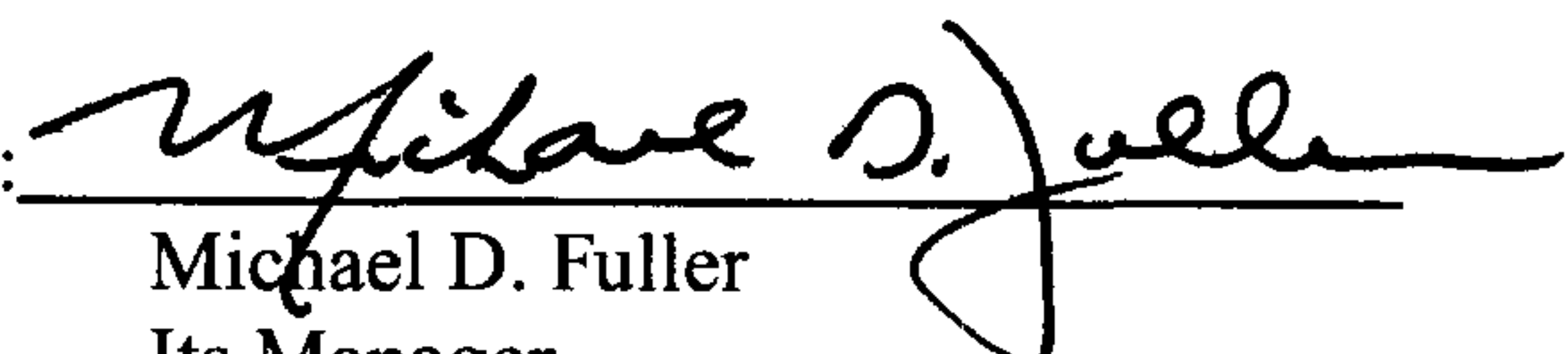
- 16. Parties Bound.** This Modification Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors-in-interest, personal representatives, estates, heirs, and legatees of each of the parties to this Modification Agreement.
- 17. Governing Law.** This Modification Agreement 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 Agreement in the State of Alabama; provided, however, that the Lender shall have no obligation to give, nor shall Greystone and Stupaul be entitled to receive, any notice of such acceptance for this Agreement to become a binding obligation of Greystone and Stupaul. Greystone and Stupaul hereby submit to jurisdiction in the State of Alabama for any cause of action or action arising out of or in connection with this Modification Agreement. Greystone and Stupaul acknowledge that the negotiation, execution and delivery of this Modification Agreement constitutes the transaction of business within the State of Alabama and that any cause of action arising under this Agreement will be a cause of action arising from such transaction of business. Greystone and Stupaul understand and agree that this Modification Agreement has and will have a significant effect on an Alabama bank. This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
- 18. Entire Agreement; Modifications.** This Modification Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements among them concerning the subject matter of this Modification Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties relating to the subject matter contained in this Modification Agreement that are not fully expressed in this Modification Agreement. This Modification Agreement may only be modified in writing.
- 19. Execution by Guarantors.** Guarantors have executed a Consent to this Modification Agreement to evidence their consent to the modification and amendments as described herein, and to acknowledge the continuing effect of their Guaranties and the obligations contained therein.

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IN WITNESS WHEREOF, Lender and Borrower and Stupal have caused this Modification Agreement to be executed effective as of the day and year first set forth above

BORROWER:

GREYSTONE PARK RETAIL, LLC, an
Alabama limited liability company

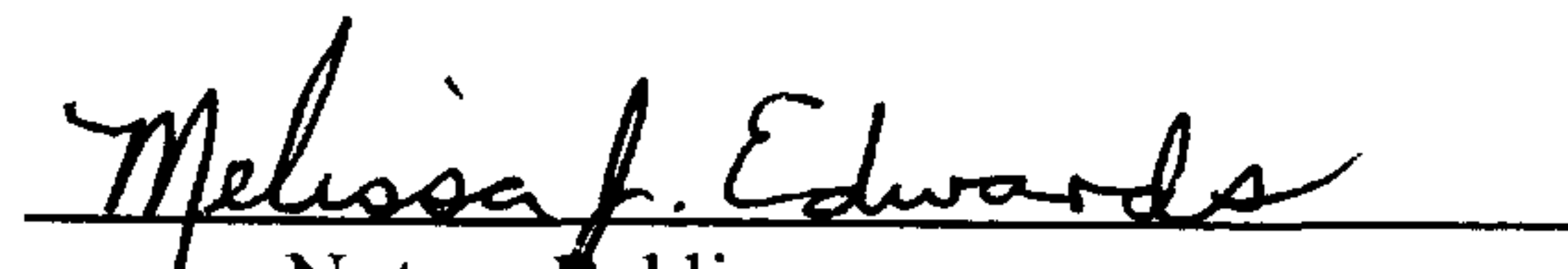
By: 
Michael D. Fuller
Its Manager

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Michael D. Fuller**, whose name as the Manager of **GREYSTONE PARK RETAIL, LLC**, 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 the 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 this the 2nd day of July, 2003.


Notary Public

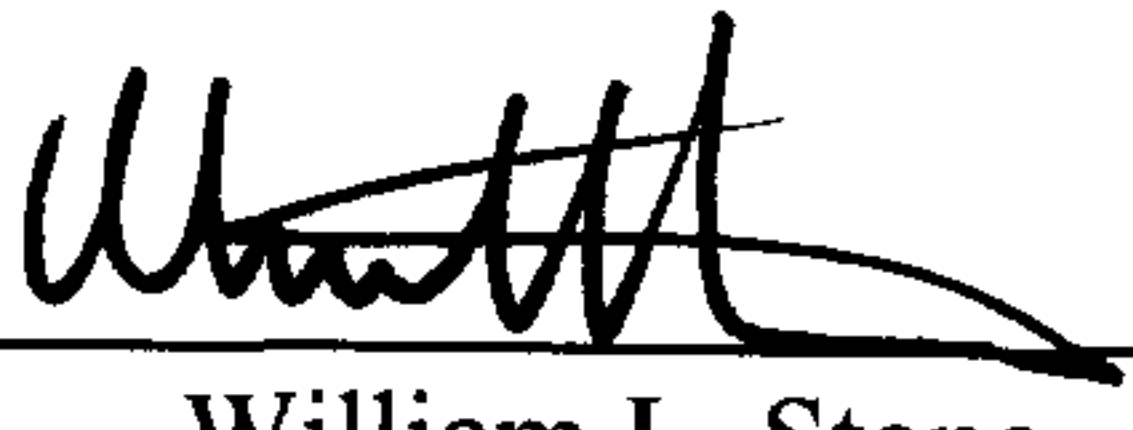
[Notarial Seal]

My Commission Expires: 7/12/06

Loan Assumption and Fourth Loan Modification Agreement

BORROWER:

STUPAUL, LLC,
a Delaware limited liability company

By: 
William L. Stone
Its Manager

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **William L. Stone**, whose name as the Manager of **STUPAUL, LLC**, a Delaware 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 the 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 this the 3rd day of July, 2003.


Notary Public

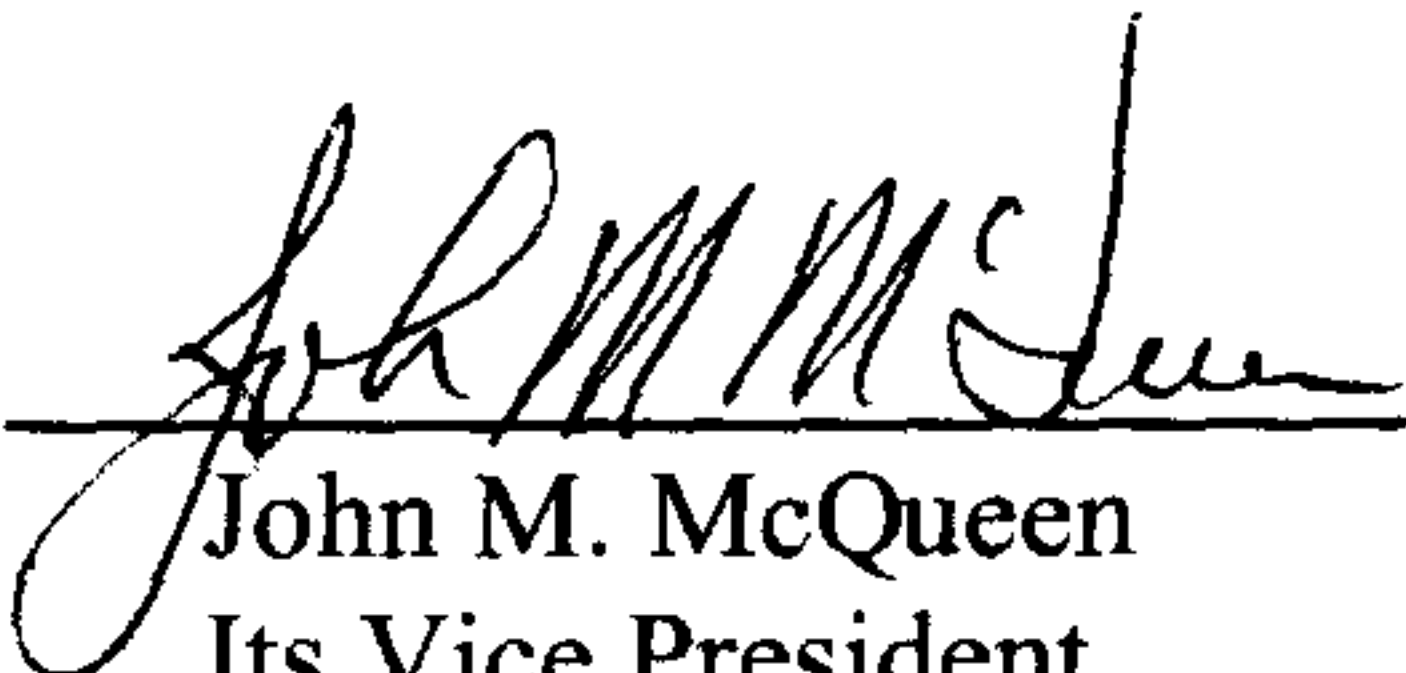
[Notarial Seal]

My Commission Expires: 1-19-05

Loan Assumption and Fourth Loan Modification Agreement

LENDER:

COMPASS BANK, an Alabama banking
corporation


By: 
John M. McQueen
Its Vice President

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **John M. McQueen**, 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, 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 7th day of July, 2003.


Notary Public

[Notarial Seal]

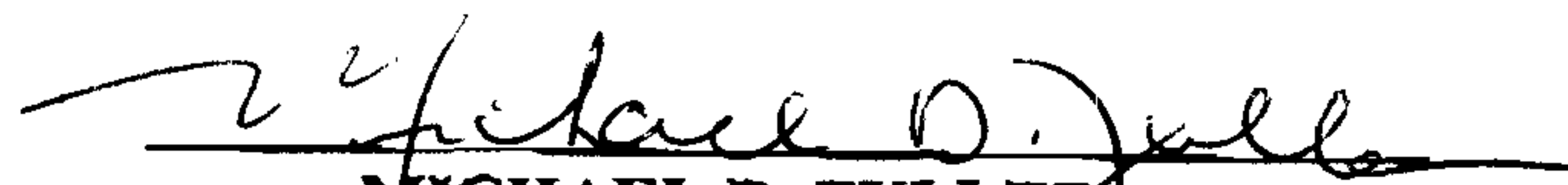
My Commission Expires: 05-12-06


Loan Assumption and Fourth Loan Modification Agreement

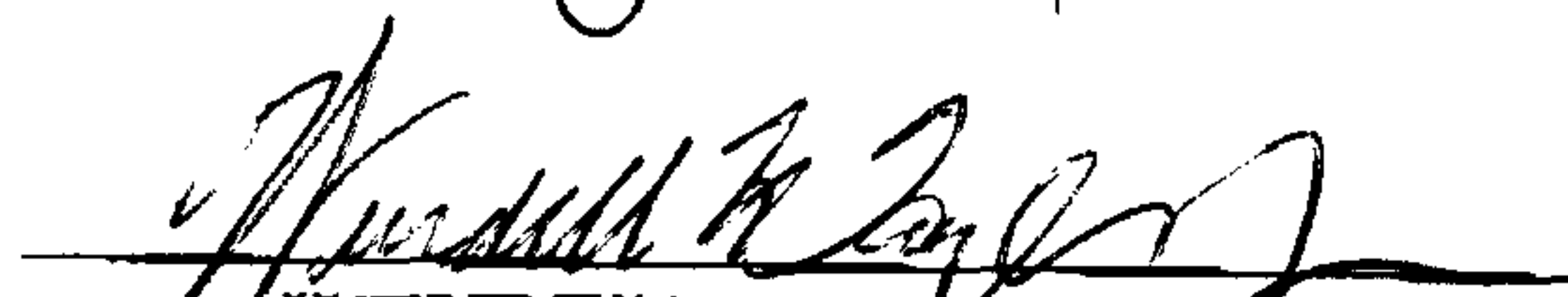
CONSENT

Michael D. Fuller, Penny Taylor Fuller, Wendell H. Taylor, Jr., Daniel B. Taylor and Lindsay Taylor McGraw, as Guarantors under those certain Continuing Guaranties, respectively, dated April 17, 2000, hereby consent to the Loan Assumption and Fourth Loan Modification Agreement (the "**Modification Agreement**") and each agrees that his/her respective Guaranty of the Loan (as defined in the Modification Agreement) shall remain in full force and effect and shall not be impaired or released by virtue of the modifications in the Modification Agreement. Each of the undersigned acknowledges and agrees that he/she has no set-offs, counterclaims or defenses to his/her respective Guaranty of the Loan, and that the Loan Documents, as modified, are legal, valid, binding and enforceable in all respects. The undersigned ratify and affirm the Loan Documents, as modified.

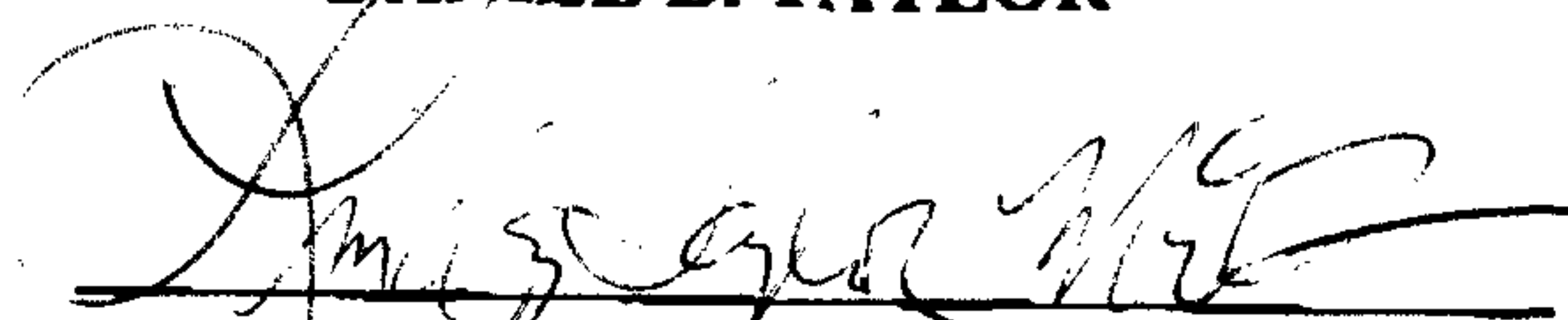
IN WITNESS WHEREOF, the undersigned have executed and sealed this Consent as of the 1 day of July, 2003.


MICHAEL D. FULLER


PENNY TAYLOR FULLER


WENDELL H. TAYLOR, JR.


DANIEL B. TAYLOR


LINDSAY TAYLOR MCGRAW

STATE OF ALABAMA**COUNTY OF JEFFERSON**

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **MICHAEL D. FULLER**, 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 on the day same bears date.

Given under my hand this the 1 day of July, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 7-1-06

STATE OF ALABAMA**COUNTY OF JEFFERSON**

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **PENNY TAYLOR FULLER**, 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, she executed the same voluntarily on the day same bears date.

Given under my hand this the 1 day of July, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 7-1-06

STATE OF ALABAMA**COUNTY OF JEFFERSON**

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **WENDELL H. TAYLOR, JR.**, 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 on the day same bears date.

Given under my hand this the 1 day of July, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 7-1-06

STATE OF ALABAMA**COUNTY OF JEFFERSON**

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **DANIEL B. 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 the instrument, he executed the same voluntarily on the day same bears date.

Given under my hand this the 1 day of July, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 7-1-06

20031008000675780 Pg 15/15 54.00
Shelby Cnty Judge of Probate, AL
10/08/2003 08:28:00 FILED/CERTIFIED

STATE OF ALABAMA**COUNTY OF JEFFERSON**

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **LINDSAY TAYLOR MCGRAW**, 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, she executed the same voluntarily on the day same bears date.

Given under my hand this the 1 day of July, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 7-1-06