

## SUBORDINATION AGREEMENT

This Subordination Agreement is made and entered into this 19<sup>th</sup> day of June, 2001, by and between **SIMIAN ENTERPRISES, INC.**, an Alabama Corporation and **FIRST COMMERCIAL BANK**, a State Bank.

**WHEREAS**, Simian Land, L.L.C. has executed a Mortgage and Security Agreement as recorded in Inst. # 1999-35470, as amended by Amendment to Mortgage and Security Agreement recorded in Inst. # 1999-51414 in the Office of the Judge of Probate of Shelby County, Alabama to First Commercial Bank for a loan in the amount of \$806,500.00, covering certain property located in Shelby County, Alabama; and

**WHEREAS**, Simian Land, L.L.C. has executed an Assumption Agreement and Amendment to Loan Documents [Lots 1006, 1007, 1016, 1017 and 1019, The Arbores of Forest Parks] dated of even date herewith assigning its interest in the above referenced Mortgage and Security Agreement to Simian Enterprises, Inc., recorded in Inst. # 2001-25875 in the Office of the Judge of Probate of Shelby County, Alabama; and

**WHEREAS**, First Commercial Bank is making a \$178,400.00 first mortgage loan to Simian Enterprises, Inc. (the "Mortgage"), covering certain property located in Shelby County, Alabama as described with more particularity on the attached Exhibit "A"; and

**WHEREAS**, it is a condition to First Commercial Bank making the \$178,400.00 loan to Simian Enterprises, Inc. that the Mortgage and any all amendments thereto shall be and remain a lien or charge on the property described in Exhibit "A" prior to and superior to the mortgage from Simian Land, L.L.C. to Simian Enterprises, Inc. in the amount of \$750,000.00 (the "Simian Land Mortgage"); and

**WHEREAS**, First Commercial Bank is willing to make such loan provided the Mortgage is a lien prior to and superior to the lien of the Simian Land Mortgage to Simian Enterprises, Inc., and provided Simian Enterprises, Inc. will specifically and unconditionally subordinate the lien of its mortgage described above to the Mortgage of First Commercial Bank.

**NOW, THEREFORE**, in consideration of the premises and other valuable consideration, receipt of which is hereby acknowledged, and in order to induce First Commercial Bank to make the loan above referred to, it is hereby agreed as follows:

1. **SUBORDINATION:** The Mortgage securing the Notes in favor of First Commercial Bank, referred to above, and any renewals, modifications or extensions of same, and the Notes secured thereby, shall be and remain at all time a lien on the property described in Exhibit "A" prior to and superior to the lien of the Simian Land Mortgage.
2. **ACKNOWLEDGMENT OF SUBORDINATION:** Simian Enterprises, Inc. hereby acknowledges and specifically waives, relinquishes, and subordinates the priority and superiority of the Simian Land Mortgage upon the property described in Exhibit "A" to First Commercial Bank, and it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, loans and advances are being made and will be made, Simian Enterprises, Inc. acknowledges that loans and advances under the loans would not be made or entered into but for such reliance upon this waiver, relinquishment, and subordination.
3. **BINDING EFFECT:** This agreement shall inure to the benefit and be binding upon the legal representatives, heirs, devisees, successors, and assigns of the parties.

Inst # 2001-25877


06/22/2001-25877  
04:01 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 KB 23.00

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first written above.

**SIMIAN ENTERPRISES, INC.**, an Alabama Corporation

By:  [SEAL]  
Walter Wilson, Its President


**FIRST COMMERCIAL BANK**, a State Bank

By:  [SEAL]  
Paul M. Schabacker, Its First Vice President

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned, a notary public in and for said County and State, hereby certify that Walter Wilson, whose name as President of **SIMIAN ENTERPRISES, INC.**, an Alabama Corporation, is signed to the foregoing document and who is known to me, acknowledged before me on this day that, being informed of the contents of said 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 seal this 19<sup>th</sup> day of June, 2001.

  
NOTARY PUBLIC - Claude M. Moncus  
My Commission Expires: 12/28/03

[NOTARIAL SEAL]

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned, a notary public in and for said County and State, hereby certify that Paul M. Schabacker, whose name as First Vice President of **FIRST COMMERCIAL BANK**, a State Bank, is signed to the foregoing document and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said bank.

Given under my hand and seal this 19<sup>th</sup> day of June, 2001.

  
\_\_\_\_\_  
NOTARY PUBLIC - Claude M. Moncus  
My Commission Expires: 12/28/03

[NOTARIAL SEAL]

This Instrument Prepared By:

Claude McCain Moncus, Esq.  
CORLEY, MONCUS & WARD, P.C.  
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Suite 100  
Birmingham, Alabama 35209  
(205) 879-5959

## **EXHIBIT "A"**

Lot 1007, according to the Survey of The Arbores of Forest Parks, as recorded in Map Book 25, Page 146 and Instrument #1999-32466, in the Probate Office of Shelby County, Alabama.

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