

This instrument was prepared by:

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STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE SUBORDINATION AGREEMENT

THIS AGREEMENT, made and entered into as of the 28th day of April, 1994, by and among RANDY ROARK, a married man (the "Borrower"), EFV PROPERTIES, LTD., an Alabama limited partnership (the "Subordinating Creditor"), and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association ("Lender").

R E C I T A L S:

A. Lender agreed to make a loan to the Subordinating Creditor in the principal sum of \$3,500,000 (the "Loan"), which Loan is evidenced by a Note in said principal sum dated August 23, 1993 (the "Lender Note"). The Loan is subject to Loan Agreement between the Subordinating Creditor, as the borrower, and the Lender of even date therewith, which has been amended by First Amendment to Construction Loan Agreement of even date herewith (as so amended, the "Lender Loan Agreement"). The Lender Note is secured by, among other things, that certain Mortgage and Security Agreement dated August 23, 1993 (the "Lender Mortgage") encumbering the real estate more particularly described in Exhibit A attached hereto (the "Property") and recorded as Instrument Number 1993-

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SHELBY COUNTY JUDGE OF PROBATE
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25606 in the Probate Office of Shelby County, Alabama, and an Assignment of Rents and Leases dated August 23, 1993 (the "Lender Assignment") recorded as Instrument Number 1993-25606 in said Probate Office. The Lender Note, the Lender Loan Agreement, the Lender Mortgage and the Lender Assignment are, together with any and all other instruments, documents or agreements (including financing statements) evidencing, securing, guaranteeing or otherwise executed in connection with the Lender Note for the benefit of Lender, and any amendments thereto or extensions or modifications thereof heretofore or hereafter made, collectively referred to herein as the "Superior Documents." The Borrower has simultaneously herewith acquired the Property from the Subordinating Creditor and in connection therewith has assumed the indebtedness and other obligations owing to Lender pursuant to the Superior Documents.

B. In connection with its sale of the Property to the Borrower, the Subordinating Creditor has agreed to finance a portion of the purchase price by accepting a promissory note in the principal sum of \$ 612,000.00 (the "Subordinate Note") from Borrower in such amount. Borrower and Subordinating Creditor have requested that they be permitted to secure the Subordinate Note with a subordinate mortgage and security agreement (the "Subordinate Mortgage") encumbering the Property.

C. Lender, as a condition to consenting to the Subordinate Mortgage, requires that Borrower and Subordinating Creditor enter into this Agreement for the benefit of Lender, and Borrower and

Subordinating Creditor are willing to enter into this Agreement in order to induce Lender to grant its consent.

D. The Subordinate Note, the Subordinate Mortgage, and any guaranty executed in connection therewith, if any, are, together with any and all other instruments, documents or agreements (including financing statements) evidencing, securing or otherwise executed in connection with the Subordinate Note for the benefit of Subordinating Creditor, and any amendments thereto or extensions or modifications thereof heretofore or hereafter made, collectively referred to herein as the "Subordinate Documents".

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to consent to the Subordinate Mortgage, the parties hereto agree as follows:

1. Subordination. Borrower and Subordinating Creditor each agree with Lender that the Subordinate Documents and all sums owing to Subordinating Creditor pursuant thereto from time to time are and shall be subject, subordinate and rendered junior in right of payment to the prior indefeasible payment in full of all obligations now existing or hereafter owing pursuant to the Superior Documents, whether for principal, interest, premiums, fees (including, without limitation, reasonable attorneys' fees and disbursements), expenses, protective advances under the Superior Documents, or otherwise (collectively, the "Obligations"). For the

purposes of this Agreement, the Obligations shall not be deemed to have been indefeasibly paid in full until the holders or owners of the Obligations shall have received full payment of the Obligations in cash, which payment shall have been retained by the holders of the Obligations for a period of time in excess of all applicable preference or other similar periods under applicable bankruptcy, insolvency or creditors' rights laws. Accordingly, Subordinating Creditor hereby irrevocably and unconditionally subordinates, upon the terms and conditions set forth herein, all of its right, title and interest in and to the collateral described in the Subordinate Documents (including the real and personal property encumbered by the Subordinate Mortgage), and the lien and security interest thereof, to all right, title and interest of Lender in and to the collateral described in the Superior Documents, a part of which collateral is the Property, such that the Lender's right, title and interest in and to the collateral described in the Superior Documents shall at all times be superior to that of Subordinating Creditor.

2. **Liquidations**. Upon any distribution of any or all of the assets of Borrower in the event of (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relating to Borrower or its creditors or assets, or (ii) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of Borrower, then until the holder of the Obligations shall have received indefeasible payment

in full of all amounts due or to become due with respect thereto, including post-petition interest thereon, Subordinating Creditor shall not be entitled to receive any payment on account of principal of (or premium, if any) or interest on or with respect to the Subordinate Documents, and to that end, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable to Subordinating Creditor in any such case, proceeding, dissolution, liquidation or other winding up or event, shall be paid or delivered directly to Lender for application (in the case of cash) to, or as collateral (in the case of non-cash property or securities) for, the payment or prepayment of the Obligations until the Obligations shall have been paid in full.

3. **Acceleration; Foreclosure.** Until indefeasible payment in full of the Obligations, (a) Subordinating Creditor shall have no right to foreclose pursuant to the Subordinate Mortgage or exercise any other remedy with respect to collateral securing the Subordinate Note if such collateral then secures any unpaid Obligations owing to Lender; and (b) Subordinating Creditor shall have no right to participate in any negotiations or proceedings involving any condemnation of any collateral for the Obligations or involving any insurance that may be available for loss of or damage to any collateral for the Obligations, and shall have no right to receive any proceeds of insurance or condemnation with respect to any collateral for the Obligations until the Obligations are fully paid. Subordinating Creditor appoints Lender as its attorney-in-

fact to settle or compromise any claim for proceeds of insurance or condemnation with respect to any collateral for the Obligations. Any settlement by Lender of any such claim may be without regard to whether any such proceeds will be sufficient to pay any amount to Subordinating Creditor, and Subordinating Creditor hereby fully and forever releases Lender from any obligation to Subordinating Creditor with respect to any settlement by Lender of a claim for proceeds of insurance or condemnation with respect to any such collateral. Borrower and Subordinating Creditor agree to promptly deliver written notice to Lender should any default occur pursuant to any of the Subordinate Documents.

4. Default Pursuant to Superior Documents. Upon any Event of Default, as defined in the Superior Documents, and upon written notice to Borrower and Subordinating Creditor, Borrower will promptly cease making any further payments of any kind pursuant to the Subordinate Documents or otherwise to Subordinating Creditor unless and until written notice is provided by Lender to Borrower and Subordinating Creditor that such Event of Default has been cured or until the Obligations have been indefeasibly paid in full. It is understood and agreed that, except as may otherwise be required by applicable law, no notice to Borrower or Subordinating Creditor shall be required pursuant to this Agreement prior to the exercise by Lender of any right or remedy under the Superior Documents, or the exercise of any other right or remedy deemed necessary by Lender in order to protect the value of its collateral, except that Lender agrees to give notice to

Subordinating Creditor prior to foreclosure and as may otherwise be required by applicable law, unless it is prevented from doing so by bankruptcy or applicable law.

5. Amendment of Documents. Borrower and Subordinating Creditor agree that the Superior Documents may be modified, amended, extended, or renewed, without the prior consent of Subordinating Creditor and without affecting the subordination set forth herein, including increases in the principal balance if necessary in Lender's sole discretion to complete the improvements to be constructed at the Property as set forth in the Superior Documents and pay all costs in connection therewith or to pay taxes, insurance or expenses incurred in the protection or preservation of the Lender's collateral or its perfection or priority therein (provided no increases in the principal amount of the Loan for purposes other than those in this sentence will have priority over the amounts due pursuant to the Subordinate Note). Any such amendments or modifications shall be entitled to the benefits of this Agreement. No amendment or modification shall be made to the Subordinate Note, the Subordinate Mortgage or any other Subordinate Documents without the prior written consent of Lender.

6. Rights of Subordinating Creditor. At any time prior to foreclosure of the Lender Mortgage, so long as the Subordinate Mortgage remains in effect, (a) Subordinating Creditor may elect to purchase the Superior Documents from Lender by paying to Lender all Obligations then outstanding including, but not limited to, principal, interest, fees (including attorney fees and

disbursements), expenses, and protective advances, pursuant to the Superior Documents simultaneously with Subordinating Creditor's delivery to Lender of a written notice exercising such election, and the Lender will then transfer the Superior Documents to Subordinating Creditor. Upon receipt of such funds and such written notice, such transfer shall be made without recourse and without warranty, and (b) Subordinating Creditor shall have the same right, within the same time period as Borrower, to cure any breach or default pursuant to the Superior Documents (with the cure period for each running concurrently). Nothing herein shall be deemed to provide a cure period where none is set forth in the Superior Documents.

7. **Duration.** This Agreement and the subordination of the Subordinate Documents set forth herein shall remain in full force and effect until all of the Obligations are indefeasibly paid, but shall immediately terminate and become of no further force or effect upon the indefeasible payment in full thereof, whereupon Lender agrees that it shall execute and cause to be recorded a satisfaction and release of its Superior Documents and this Agreement.

8. **Consent.** In consideration of this Agreement, Lender consents to the Subordinate Mortgage. Nothing herein shall be deemed a consent to any further transfer or encumbrance of the Property or other collateral securing the Obligations.

9. **Notice.** Any notice required or permitted herein or by applicable law shall be deemed received upon the earlier of actual

receipt or (a) three (3) days following the date sent by United States Mail, certified or registered, postage prepaid, return receipt requested, or (b) one (1) day following the date sent by Federal Express or overnight United States Mail or other national overnight carrier, and addressed in each such case as set forth below:

If to Borrower to:

Mr. Randy Roark
418 Scott Street
Montgomery, Alabama 36104

If to Subordinating Creditor to:

500 Southland Drive
Suite 102
Birmingham, Alabama 35226
Attention: Mr. Charles Ferlisi

If to Lender to:

SouthTrust Bank of Alabama,
National Association
P.O. Box 2554
420 North 20th Street
Birmingham, Alabama 35290 (if for delivery to P.O. Box);
35203 (if for delivery to street address)
Attention: Real Estate Loan Department

Any party may by notice given as herein provided change its address to another single address within the United States. Actual receipt of notice shall not be necessary in order to provide effective notice hereunder, except that any change of address shall not be effective until actually received by the other parties.

10. Indefeasible Payment. For purposes of this Agreement, Subordinating Creditor may accept payments on debt owing to Subordinating Creditor without regard to whether payment to Lender

of the Obligations has been retained for a time sufficient to make it "indefeasible," provided Lender has not been required to refund all or any part of such payment, and provided further that any amounts received by Subordinating Creditor, whether by payment, by foreclosure of the Subordinate Mortgage, from any proceeds of insurance or condemnation or otherwise shall be paid to Lender by Subordinating Creditor to the extent necessary to reimburse Lender if any such payment of the Obligations is thereafter required to be refunded or is rescinded.

11. **Miscellaneous.**

(a) This Agreement may be executed in any number of counterparts bearing the original signatures of all parties hereto, each of which shall constitute an original for all purposes, but all of which shall evidence but one and the same Agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, or at the option of Lender, by the laws of the state in which any collateral securing the Obligations is located.

(c) No waiver by any party hereto of the compliance by any other party with any term, provision, obligation or agreement contained herein shall constitute a waiver of such party's right to thereafter require full compliance therewith, provided, however, that the subordination contained herein is absolute, and no failure of any party to act in all respects in conformity with the requirements of this Agreement shall result in any invalidity or reversion of the priorities established hereby.

(d) Borrower and Subordinating Creditor agree to pay all costs and expenses now or hereafter incurred by Lender in connection with the satisfaction by any party of the conditions of this Agreement, including, without limitation, all taxes and recording fees and all legal fees and expenses.

(e) Except as expressly provided herein, nothing contained in this Agreement shall in any way impair, alter or diminish the effect, security interest, lien or encumbrance of the Subordinate Documents.

(f) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

(g) At the option of the Lender, the failure by either Borrower or Subordinating Creditor to act in all respects in conformity with the requirements of this Agreement shall constitute an "Event of Default" under each and all of the Superior Documents.

12. Waiver of Jury Trial. ALL PARTIES WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE DOCUMENTS REFERRED TO HEREIN. BORROWER AND SUBORDINATING CREDITOR ACKNOWLEDGE THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND GRANT ITS CONSENT TO THE SUBORDINATE MORTGAGE IN PART BY THE PROVISIONS OF THIS WAIVER.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

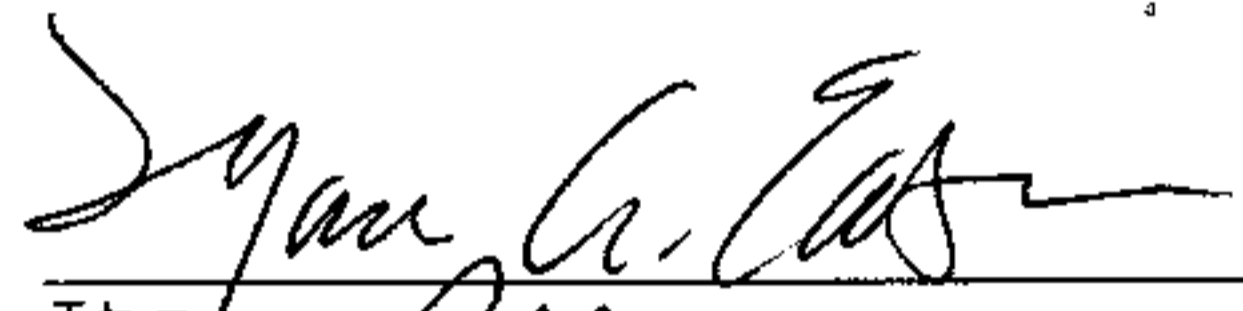
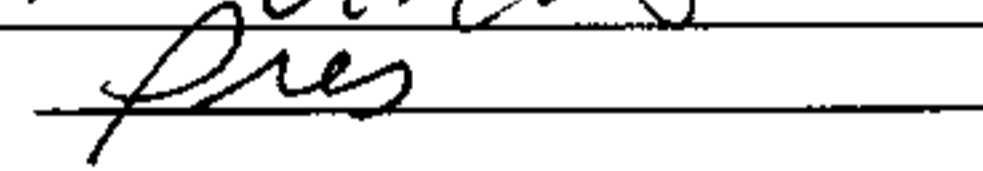
BORROWER:


RANDY ROARK

SUBORDINATING CREDITOR:


EFV PROPERTIES, LTD., an Alabama limited partnership

BY: EFV PROPERTIES, INC., an Alabama corporation, its general partner

BY: 
Its: 

LENDER:

SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association

BY: 
Benjamin S. Weil
Commercial Loan Officer

[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Randy Roark, 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 the same bears date.

Given under my hand and official seal, this 28th day of April, 1994.

Wm R Ayh
Notary Public
My commission expires: _____

MY COMMISSION EXPIRES SEPTEMBER 28, 1997

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that MARC A EASON whose name as President of EFV Properties, Inc., an Alabama corporation, as general partner of EFV Properties, Ltd., an Alabama limited partnership, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as general partner of said partnership.

Given under my hand and official seal, this 28th day of April, 1994.

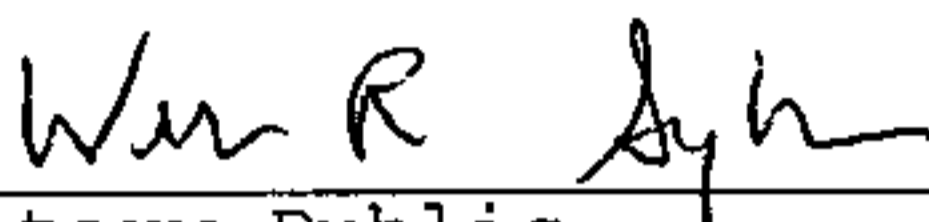
Wm R Ayh
Notary Public
My commission expires: _____

MY COMMISSION EXPIRES SEPTEMBER 28, 1997

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Benjamin S. Weil, whose name as Commercial Loan Officer of SouthTrust Bank of Alabama, National Association, a national banking association, 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 national banking association.

Given under my hand and official seal this 28th day of April, 1994.



Notary Public
My commission expires: _____

MY COMMISSION EXPIRES SEPTEMBER 26, 1997

EXHIBIT A

STATE OF ALABAMA
SHELBY COUNTY

A PARCEL OF LAND LOCATED IN SECTION 2, TOWNSHIP 21 SOUTH, RANGE 3 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 6TH AVENUE SW AND THE EASTERLY RIGHT OF WAY LINE OF THE L&N RAILROAD; THENCE RUN SOUTHWESTERLY ALONG SAID RAILROAD RIGHT OF WAY LINE, A DISTANCE OF 603.00 FEET; THENCE 88 DEGREES, 37 MINUTES LEFT, IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 257.00 FEET; THENCE 90 DEGREES RIGHT, IN A SOUTHWESTERLY DIRECTION, A DISTANCE OF 15.00 FEET; THENCE 90 DEGREES, 04 MINUTES, 19 SECONDS LEFT, IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 187.28 FEET TO A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ALABAMA HIGHWAY NO. 119, SAID POINT BEING ON A CURVE, HAVING A RADIUS OF 1352.49 FEET; THENCE 70 DEGREES, 11 MINUTES, 08 SECONDS LEFT TO TANGENT OF SAID CURVE, IN A NORTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE TO THE RIGHT AND ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 259.97 FEET TO END OF SAID CURVE; THENCE 13 DEGREES, 40 MINUTES, 48 SECONDS RIGHT FROM TANGENT OF SAID CURVE, IN A NORTHEASTERLY DIRECTION ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 119.83 FEET; THENCE 89 DEGREES, 06 MINUTES, 48 SECONDS LEFT, IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 328.80 FEET; THENCE 22 DEGREES, 08 MINUTES RIGHT, IN A NORTHERLY DIRECTION, A DISTANCE OF 219.24 FEET TO A POINT ON SAID SOUTH RIGHT OF WAY LINE OF 6TH AVE SW; THENCE 89 DEGREES, 48 MINUTES LEFT, IN A WESTERLY DIRECTION ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 365.68 FEET TO THE POINT OF BEGINNING.

Inst # 1994-13986

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