

THIS INSTRUMENT PREPARED BY:

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Inst # 1996-03533

02/02/1996-03533
08:54 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 MEL 18.50

STATE OF Alabama)

MORTGAGE SUBORDINATION AGREEMENT

COUNTY OF Shelby)

THIS MORTGAGE SUBORDINATION AGREEMENT ("Agreement"), made this 23rd day of January, 1996, by Eddleman Properties, Inc., (hereinafter called "Mortgagee"), with the joinder of Highland Lakes Development, Ltd., an Alabama limited partnership (hereinafter called "Owner").

P R E A M B L E

A. Compass Bank, successor by name change to Central Bank of the South (hereinafter called "Compass") is the holder of a certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement, dated as of May 28, 1995 given to it by Owner, as mortgagor which is recorded as Instrument No. 1993-15710 in the Office of the Judge of Probate of Shelby County, Alabama (as amended from time to time, the "Compass Mortgage"), to secure the indebtedness of Owner to Compass in the original principal amount of \$3,750,000.00 together with negative amortization, interest and other sums referred to therein.

B. The Compass Mortgage encumbers certain premises situated in Shelby County, Alabama owned by Owner and more fully described therein (the mortgaged property described from time to time in the Compass Mortgage and the prior and future amendments thereto being referred to herein as the "Premises").

C. Mortgagee is the holder of a certain mortgage (the "Junior Mortgage"), dated April 28, 1995, and given to Mortgagee by Owner, as mortgagor, to secure the indebtedness described therein, which Junior Mortgage encumbers some or all of the Premises, and was recorded as Instrument No. 1995-12055 in the Office of the Judge of Probate of Shelby County, Alabama.

D. The granting of the Junior Mortgage constitutes default or Event of Default under the Compass Mortgage and other Loan Documents (as defined in the Compass Mortgage).

E. Owner may in the future request that Compass extend additional loans and Compass may agree to extend such additional loans (all loans and other amounts

Cahaba Title

heretofore or hereafter extended or advanced to or paid on behalf of Owner by Compass being collectively referred to as the "Compass Loans").

F. Mortgagee benefits from the transactions contemplated in connection with the securing of the Compass Loans by the Compass Mortgage.

E. The subordinate priority of the Junior Mortgage to the Compass Loans and the Compass Mortgage was and is a condition of Compass's agreement to consummate the Compass Loans and/or waive the default described in Recital D above.

NOW, THEREFORE, intending to be legally bound and for the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee hereby covenants and agrees as follows:

A G R E E M E N T

1. The Junior Mortgage is and henceforth shall be, subject and subordinate in lien, priority and distribution to the lien of the Compass Mortgage and to all advances heretofore made or which hereafter may be made and secured thereby whether by extension of new Compass Loans or otherwise; to any and all increases of any amount in the Compass Mortgage, whether by the extension of additional Compass Loans, by negative amortization or whether made for the purpose of protecting or enforcing any of Compass's rights under the Compass Mortgage, including, without limitation, the curing of any default in the performance of Owner's covenants under the Compass Mortgage, to pay interest, costs, charges, real estate taxes and insurance premiums; and to any extensions, renewals, modifications and replacements of the Compass Mortgage and/or Compass Loans and substitutions therefor, all of which actions by Compass specifically are authorized by Mortgagee. Any reference in this Agreement to the Junior Mortgage shall be deemed to include any security interest of Mortgagee in personalty which is created by the Junior Mortgage, or otherwise, which security interest is likewise subordinate to any security interest of Compass. Mortgagee agrees that any and all right, claim, lien, title and interest of Mortgagee or which Mortgagee may hereafter acquire in the Premises and any improvements, fixtures, chattels, and personal property now or hereafter located thereon, is and will at all times be subordinate, junior, subject to, and inferior to the liens, security interests and all of the terms, provisions and conditions of the Compass Mortgage and any renewals, extensions, increases, or other modifications thereof and any replacements or substitutions thereof and all agreements and documents relating to any of the foregoing.

2. This Agreement is a continuing agreement and shall remain in full force and effect until such time as the Compass Mortgage is satisfied of record or Compass

specifically consents in writing to their termination. No written document, whether placed of public record and/or delivered to Compass, shall amend or modify any of the terms of this Agreement unless the same shall expressly amend this Agreement and be executed by Compass. Mortgagee acknowledges and agrees that Mortgagee shall not be entitled to receive any notice of any increases in either or both of the Compass Mortgage or of the extension of any additional Compass Loans.

3. The provisions of this Agreement are solely for the benefit of (i) Compass and any title insurance company insuring the Compass Mortgage (including without limitation Cahaba Title, Inc. as agent for First American Title Insurance Company, and their successors and assigns) and (ii) Mortgagee, and shall not be deemed to modify any of the agreements executed and delivered in connection with the Compass Mortgage or the Junior Mortgage or to waive any of the rights of Compass or Mortgagee thereunder, as against Owner, nor shall it constitute or give rise to any defense, right of set-off or counterclaim by Owner.

4. This Agreement may be amended or modified only by written instrument signed by Compass and Mortgagee.

5. This Agreement and all of the terms, conditions and provisions hereof shall be binding upon and inure to the benefit of Compass and Mortgagee, and their respective successors and assigns.

6. Owner consents and agrees hereto, but shall not be deemed to be third party beneficiary hereof, nor of any of the terms or provisions contained herein.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year first above written.

WITNESS OR ATTEST:

Jackie M. Harris

MORTGAGEE:

Eddleman Properties, Inc.

By: Billy D. Eddleman
Billy D. Eddleman, its president
CHAMAN/KCO

OWNER:

Highland Lakes Development, Ltd.

**By Eddleman Properties, Inc., its
general partner**

WITNESS OR ATTEST:

By: Jackie M. Harris
Its _____

By: Billy D. Eddleman
Billy D. Eddleman
Its: ~~President~~ CHAIRMAN/CEO

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Billy D. Eddleman**, whose name as ~~President~~ *CHAIRMAN/CEO* of **Eddleman Properties, 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 26th day of January, 1996.

Rebecca K. Rosato

Notary Public

My commission expires: 2/3/97

[NOTARIAL SEAL]

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Billy D. Eddleman**, whose name as ~~President~~ *CHAIRMAN/CEO* of **Eddleman Properties, Inc.**, a corporation, acting in its capacity as general partner of **Highland Lakes Development, Ltd.**, a limited partnership, 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 acting in its capacity as general partner as aforesaid.

Given under my hand this the 26th day of January, 1996.

Rebecca K. Rosato

Notary Public

My commission expires: 2/3/97

[NOTARIAL SEAL]

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