

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made this 14th day of May, 1999, by and among:

MORTGAGEE: COMPASS BANK, an Alabama state banking corporation

LESSEE: AIG BAKER SHOPPING CENTER PROPERTIES, L.L.C., a Delaware general partnership

and

OWNER: AIG BAKER LEE BRANCH, L.L.C., a Delaware limited liability company

WHEREAS:

(1) AIG Baker Lee Branch, L.L.C., a Delaware limited liability company ("Owner") is the owner of the real property interest described in **Exhibit A** attached hereto and incorporated herein by reference;

(2) Compass Bank ("Mortgagee") has made or is making a loan to Owner to provide financing for Owner to develop the real property described in **Exhibit A**, such loan to be secured by a mortgage on such property (the "Mortgage");

(3) By Lease dated as of June 1, 1998 (the "Lease"), the Owner, as Lessor, leased to Lessee a portion of said real property or the improvements located thereon ("Leased Premises") for a term of twenty (20) years [with NO () options to extend said lease term for additional periods of N/A () years each so that the total or aggregate number of possible lease years under said Lease is a total of twenty (20) years, at the rental and upon the terms and conditions set forth in said Lease;

(4) Mortgagee desires to assure the Lessee possession of the Leased Premises upon the terms and conditions set forth in the Lease for the entire original term and any optional renewal term therein provided without regard to any default under the terms of the Mortgage between Owner and Mortgagee;

(5) Lessee desires to assure Mortgagee that the Lessee will attorn to the Mortgagee under the circumstances set forth in this Agreement and under the Lease;

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(6) Mortgagee desires to assure Lessee that its possession of the Leased Premises and rights under the Lease will not be disturbed so long as Lessee is not in default under the Lease or the terms of this Agreement;

(7) Lessee has agreed to subordinate the Lease and its interest therein to the Mortgage.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each of the parties hereto to the other, of other good and valuable consideration, and of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the Mortgagee and Lessee covenant and agree as follows:

1. LESSEE TO ATTORN TO MORTGAGEE.

- (a) In the event it should become necessary to foreclose the Mortgage, the Mortgagee thereunder will not, unless otherwise required by law, join the Lessee under said Lease in summary or foreclosure proceedings so long as the Lessee is not in default under the Lease;
- (b) In the event that the Mortgagee shall succeed to the interest of Owner under such Lease, the Lease shall continue with the same force and effect as if the Mortgagee, as Lessor, and the Lessee had entered into a Lease for a term equal to the then unexpired term of the Lease, containing the same terms, conditions and covenants as those contained in the Lease, including but not limited to any rights of renewal therein, and the Lessee shall be bound to the Mortgagee under all of the provisions of the Lease for the remaining term thereof with the same force and effect as if the Mortgagee were the Lessor under the Lease, and the Lessee hereby attorns and agrees to attorn to the Mortgagee as its landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of either of the parties hereto immediately upon the succession of Mortgagee to the interest of Owner under the Lease. The Lessee shall be under no obligation to pay rent to the Mortgagee until the Lessee receives written notice from the Mortgagee that an Event of Default under the Mortgage, the Assignment of Rents and Leases, or other mortgage loan documents has occurred, or that it has succeeded to the interest of the Owner under the Lease. The Owner agrees that upon receiving such notice from Mortgagee, Lessee shall pay all rents directly to Mortgagee without any liability therefor to Owner; provided, however, that if Owner in good faith disputes that such an Event of Default has occurred, Owner may promptly notify in writing Lessee and Mortgagee, and upon receipt of such notice, Lessee shall thereafter deposit all rents into an appropriate court having jurisdiction over the Leased Premises, with notice of such deposit to Mortgagee and Owner (and in such event Owner consents for the Court to remit to Mortgagee from such deposit the debt service required under the Mortgage). Nothing contained herein shall in any manner limit or restrict the right

of Mortgagee to have a receiver appointed or to seek any other appropriate relief or remedy under the Mortgage, the Assignment of Rents and Leases, or other related mortgage loan documents. The respective rights and obligations of the Lessee and the Mortgagee upon such attornment and their relationship shall be as tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in said Lease. All parties acknowledge that they have in their possession and have fully reviewed an executed copy of the Lease and are fully aware of its terms and conditions;

- (c) Lessee agrees that it shall not, without the express consent of Mortgagee, prepay any minimum rental under the Lease to Owner in excess of one (1) month's advance minimum rental; and
- (d) In the event that the Mortgagee shall succeed to the interest of the Owner under the Lease, the Mortgagee agrees to be bound to the Lessee under all of the terms, covenants and conditions of the Lease, provided, however, that Mortgagee shall not be:
 - (i) liable for any act or omission of any prior landlord (including the Owner); or
 - (ii) subject to any offsets not specifically provided for in the Lease which the Lessee might have or thereafter have against any prior landlord (including the Owner); or
 - (iii) bound by any prepayment of more than one month's minimum rental under the Lease to any prior landlord (including the Owner); or
 - (iv) bound by an amendment, modification or surrender of the Lease made without its consent.

2. **MORTGAGEE'S RIGHT TO PROCEED AGAINST LESSEE.** In the event the Mortgagee shall succeed to the interest of the Owner under the Lease, the Mortgagee will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Lease, for the recovery of rent, for the doing of any waste or for any other default, as Owner had or would have had the succession not taken place, and this right shall exist whether or not the Lease is formally terminated; in any such action, Lessee waives the necessity of Owner being made a party to such proceeding.

3. **RIGHT OF MORTGAGEE TO CURE DEFAULTS.** If any default shall occur under the Lease on the part of the Owner, which would give Lessee the right (or under which Lessee might claim the right), to cancel or terminate the Lease, Lessee shall promptly give notice thereof to Mortgagee, and Mortgagee shall have thirty (30) days from the date of such notice to cure any such default, or if such default is not reasonably capable of being cured in such period of time,

Mortgagee shall have the right within such time to commence remedying such default and shall proceed diligently to complete the same. In the event any such default is so cured, the Lease shall not be deemed to be in default, and Lessee's duties thereunder shall continue unabated. Nothing herein shall be deemed to be a duty on the part of Mortgagee to cure any such default but only a right on its behalf.

4. SUBORDINATION. Except to the extent expressed herein, the Lease, and all rights of Lessee thereunder, are and shall be subject and subordinate in all respects to the Mortgage, to each and every advance made or hereafter to be made under the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage. Notwithstanding any provisions of the Lease to the contrary, and for as long as the Mortgage and any modification or extensions thereof shall remain unsatisfied, the Lease shall be superior to any subsequent financing or other encumbrances with a party other than Mortgagee, its successors or assigns, with respect to the Leased Premises, and Lessee and Owner agree that each will not at any time prior to satisfaction of the Mortgage voluntarily subordinate the Lease to any mortgage or encumbrance to a party other than Mortgagee, its successors or assigns, respecting the Leased Premises which is junior in priority to the Mortgage.

5. NON-DISTURBANCE PROVISIONS. In the event the Mortgage shall be foreclosed, or in the event Mortgagee otherwise succeeds to the interest of the Owner under the Lease, and provided that Lessee is not then in default under the Lease, the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise so long as the Lessee continues to pay the rents reserved in the Lease and otherwise does not become in default under the Lease.

6. MORTGAGEE'S APPROVAL OR CONSENT. Wherever Mortgagee's consent or approval under the Lease is required, Mortgagee agrees to not unreasonably withhold such consent, and it is understood and agreed that Mortgagee shall not be deemed to have unreasonably withheld such consent or approval, wherein Mortgagee's reasonable discretion to give such approval or consent would reduce the value, decrease the size or impair the structural integrity of the Leased Property or otherwise impair the security granted under the Mortgage.

7. SURVIVAL. This instrument shall survive any foreclosure of the Leased Premises, or any other succession by Mortgagee to the interest of the Owner with respect to the Leased Premises, and the sale of the Leased Premises to Lessee, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or upon satisfaction of the Mortgage and all renewals, modifications, consolidations, replacements, and extensions of such mortgages, whichever shall first occur.

8. APPROVALS. The Owner has joined in this Agreement for the purpose of expressing its consent and agreement to be bound by the provisions of Paragraph 1(b) and Paragraph 4 hereof.

9. **NOTICES.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, addressed as follows:

If to Mortgagee: Compass Bank
P.O. Box 10566
Birmingham, Alabama 35296
Attention: Commercial Real Estate Loan Department

If to Lessee: AIG Baker Shopping Center Properties, L.L.C.
1701 Lee Branch Lane
Birmingham, Alabama 35242

If to Owner: AIG Baker Lee Branch, L.L.C.
1701 Lee Branch Lane
Birmingham, Alabama 35242

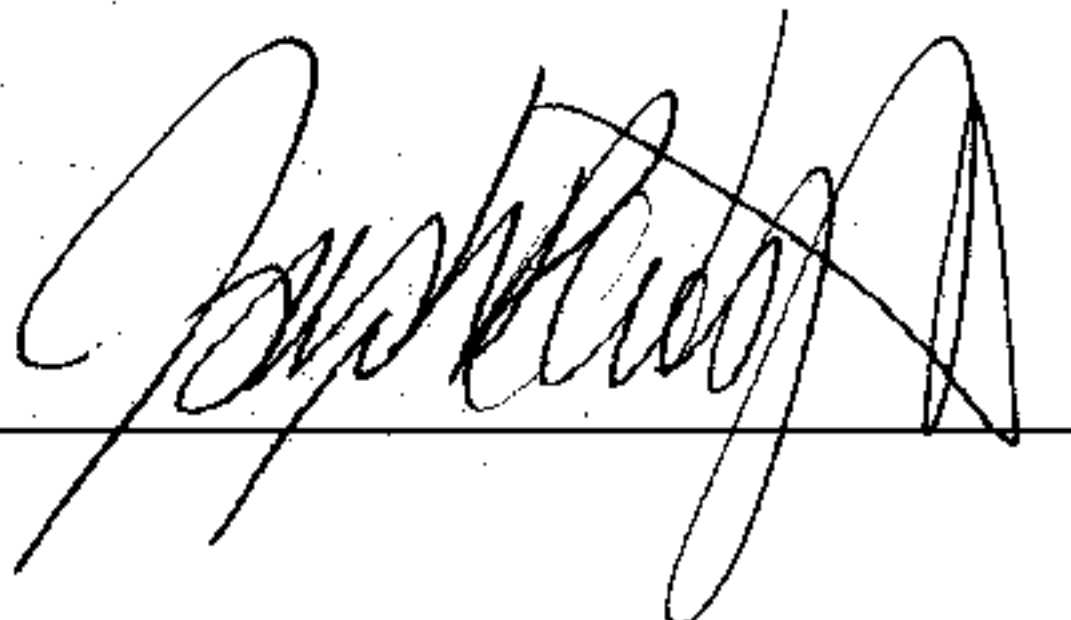
or such other address as either party may hereafter designate in writing to the other.

10. **BINDING EFFECT.** This Agreement and all of the covenants, terms, conditions and obligations herein contained shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

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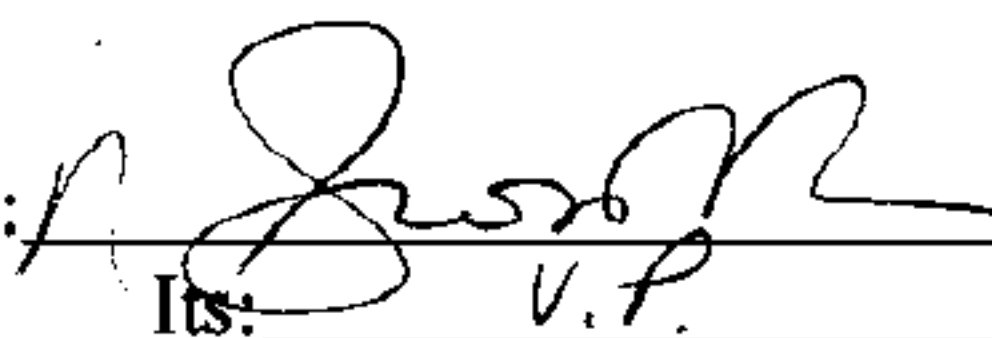
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective on the day and year first above written.

WITNESS:



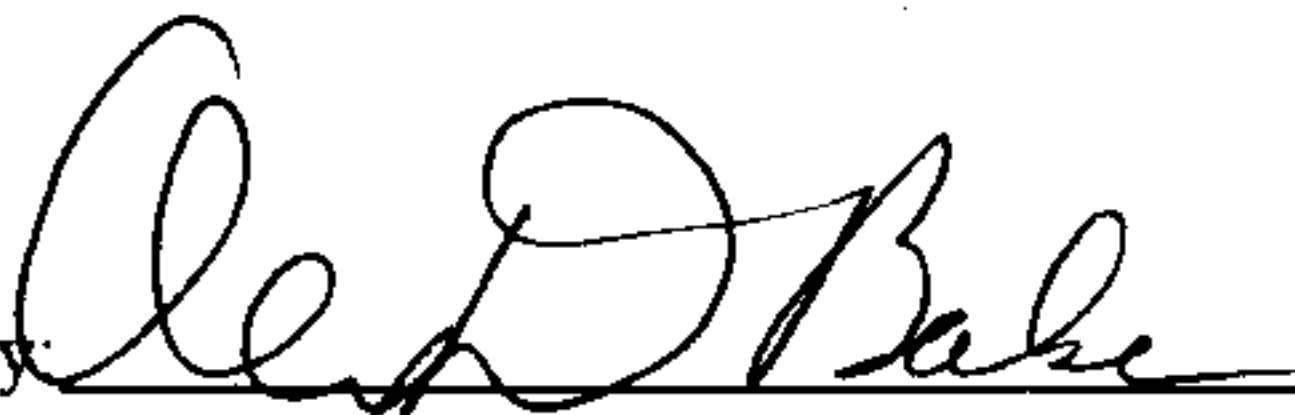
MORTGAGEE:

COMPASS BANK


By: 
Its: V.P.

LESSEE:

AIG BAKER SHOPPING CENTER
PROPERTIES, L.L.C.,
a Delaware limited liability company

By: 
Alex D. Baker
Its President/Manager

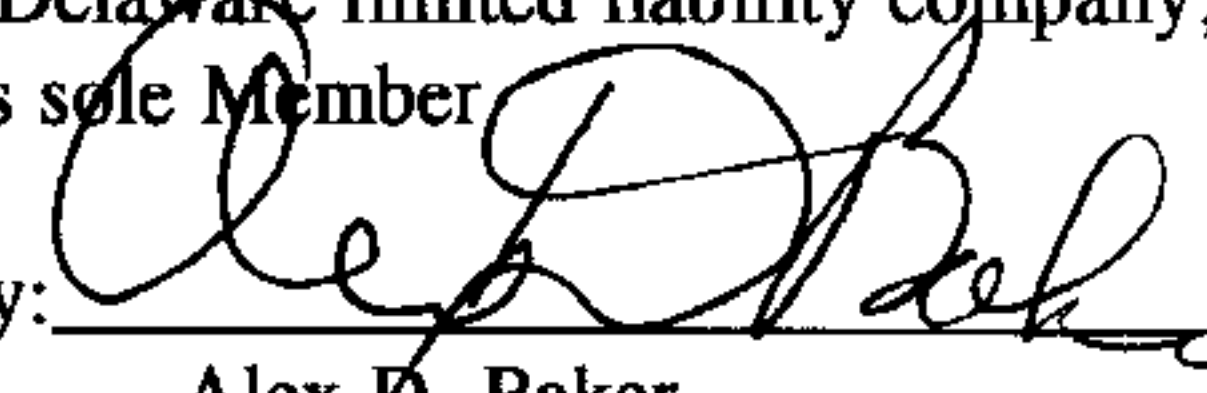
ATTEST:

By: 
Its: Secretary

OWNER:

AIG BAKER LEE BRANCH, L.L.C.,
a Delaware limited liability company

By: AIG BAKER SHOPPING
CENTER PROPERTIES, L.L.C.,
a Delaware limited liability company,
Its sole Member

By: 
Alex D. Baker,
Its President/Manager

WITNESS:



STATE OF ALABAMA

JEFFERSON COUNTY

I, Forster J. Sengston, notary public in and for said county in said state, hereby certify that R. Scott Sullivan, 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 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 18 day of May, 1999.

Forster J. Sengston
Notary Public
My Commission Expires: 10/19/99

[Notarial Seal]

STATE OF ALABAMA

JEFFERSON COUNTY

I, Sharon Leigh Ensor, a notary public in and for said county in said state, hereby certify that Alex D. Baker, whose name as President/Manager of **AIG BAKER SHOPPING CENTER PROPERTIES, L.L.C.**, a 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 President/Manager and with full authority, executed the same voluntarily for and as the act of said limited liability.

Given under my hand and official seal this 14th day of ^{May}~~April~~, 1999.

Sharon Leigh Ensor
Notary Public
My Commission Expires: 1/2/01

[Notarial Seal]

STATE OF ALABAMA

JEFFERSON COUNTY

I, Sharon Leigh Ensor, a notary public in and for said county in said state, hereby certify that Alex D. Baker, whose name as President/Manager of AIG BAKER SHOPPING CENTER PROPERTIES, L.L.C., a Delaware limited liability company, the sole Member of AIG BAKER LEE BRANCH, L.L.C., 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company, in its capacity as the sole Member of AIG Baker Lee Branch, L.L.C..

Given under my hand and official seal this 14th day of May, 1999.

Sharon Leigh Ensor
Notary Public

My Commission Expires: 1/2/01

[Notarial Seal]

EXHIBIT A

LOT 1 and a part of LOT 2, BIGLER'S SURVEY, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 8, Page 106; being more particularly described as follows:

Begin at the Northernmost corner of Lot 1 of Bigler's Resurvey, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 8, Page 106, said point being the point of intersection of the Northeasterly line of said Lot 1 and Southeasterly right-of-way line of Shelby County Highway #119; from said POINT OF BEGINNING run in a Southwesterly direction along the Southeasterly right-of-way line of Shelby County Highway #119 a distance of 113.10 feet to a point; thence $1^{\circ} 04' 50''$ to the right in a Southwesterly direction along the Southeasterly right-of-way line of Shelby County Highway #119 a distance of 304.76 feet to a point; said point being the Westernmost corner of said Lot 1 and the Northernmost corner of Lot 2 Bigler's Resurvey; thence $1^{\circ} 07' 04''$ to the right in a Southwesterly direction along the Northwesterly line of said Lot 2 and Southeasterly right-of-way line of Shelby County Highway #119 a distance of 255.36 feet to a point; thence $87^{\circ} 27' 13''$ to the left in a Southeasterly direction a distance of 2,221.44 feet to a point on the Southeasterly line of said Lot 2; thence $77^{\circ} 18' 17''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 2 a distance of 45.32 feet to a point; thence $10^{\circ} 08' 57''$ to the right in a Northeasterly direction along the Southeasterly line of said Lot 2 a distance of 97.96 feet to a point; thence $8^{\circ} 12' 45''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 2 a distance of 124.91 feet to a point said point being the Easternmost corner of said Lot 2 and the Southernmost corner of said Lot 1, Bigler's Resurvey; thence $1^{\circ} 39' 12''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 76.71 feet to a point; thence $1^{\circ} 51' 06''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 155.07 feet to a point; thence $5^{\circ} 29' 30''$ to the left in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 193.67 feet to a point; thence $6^{\circ} 31' 42''$ to the right in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 314.02 feet to Easternmost corner of said Lot 1; thence $108^{\circ} 37' 26''$ to the left in a Northwesterly direction along the Northeasterly line of said Lot 1 a distance of 398.35 feet a point; thence $1^{\circ} 31' 18''$ to the left in a Northwesterly direction along the Northeasterly line of said Lot 1 a distance of 1,271.98 feet to a point; thence $1^{\circ} 48' 14''$ to the right in a Northwesterly direction along the Northeasterly line of said Lot 1 a distance of 822.79 feet to the Northernmost corner of said Lot 1, said point being the POINT OF BEGINNING. The above described property containing 44.24 acres, more or less.

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