

**SUBORDINATION AGREEMENT**

THIS AGREEMENT dated August 23rd, 2000 is entered into by and between Holcombe Home Center, Inc., an Alabama corporation (the "Borrower"), and John H. Holcombe and John Howard Holcombe (together, the "Stockholders"), for the benefit of NATIONAL BANK OF COMMERCE OF BIRMINGHAM, a national banking association (the "Lender"), its successors and assigns.

**Recitals**

A. The Borrower is indebted to the Stockholders in the principal amount of \$ 312,000.00 (the "Junior Debt") as evidenced by a promissory note or promissory notes in favor of the Stockholders dated 12/31/99 (together, the "Junior Notes").

B. The Borrower and the Stockholders have heretofore requested the Lender to enter into a loan agreement (the "Loan Agreement") pursuant to which the Lender will agree to make available to the Borrower a loan in the principal amount of \$1,250,000 (the "Senior Debt") as evidenced by a promissory note or promissory notes dated of even date herewith (the "Senior Note").

C. The Stockholders are the holders of 100% of the capital stock of the Borrower and will receive a direct financial benefit from the extension of the Senior Debt to the Borrower by the Lender.

D. The Lender has agreed to extend such credit to the Borrower on the condition that (among other things) the Borrower and the Stockholders execute this Agreement in favor of the Lender.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Stockholders, for themselves and all other or subsequent Junior Debt Holders, and the Borrower, jointly and severally, agree with the Lender, for its benefit and the benefit of any other or subsequent Senior Debt Holder, as follows:

**ARTICLE 1 - - Definitions and Other  
Provisions of General Application**

**SECTION 1.1 General Rules of Construction** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meaning assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa. Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders.

(b) All references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this Agreement as the same may be amended from time to time. All headings and captions used in this Agreement are for purposes of convenient reference only and shall not limit or define the meaning of any provision of this Agreement.

(c) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to."

(e) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel drafted any portion hereof.

09/06/2000-30580  
08:59 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 CJ1 31.00

**SECTION 1.2 Definitions** For the purposes of this Agreement the following terms shall have the following meanings:

**This Agreement** shall mean this Agreement, as the same may be amended in writing in accordance with Section 3.6.

**Collateral** shall mean all property, real and personal, conveyed to the Senior Debt Holder, or in which the Senior Debt Holder is granted a Lien, under the Senior Security Documents.

**Governmental Authority** shall mean and include any national, federal, state, county, municipal or other government, domestic or foreign, and any agency, department, commission, bureau, board, court or other instrumentality thereof.

**Junior Debt Documents** shall mean the Junior Notes and all other loan agreements, notes, security documents (including the Junior Security Documents) and other documents now or hereafter evidencing, securing or otherwise executed in connection with or related to any of the Junior Liabilities, and any renewals, extensions, modifications, amendments or supplements to or of any of said documents.

**Junior Debt Holders** shall mean the Stockholders and any subsequent holder or holders of the Junior Liabilities or any of the Junior Debt Documents.

**Junior Liabilities** shall include all principal of and interest on, the Junior Debt, all other sums now or hereafter payable under the Junior Debt Documents, including all principal, interest, fees (including attorneys' fees), charges, costs, expenses and other amounts, and all other indebtedness, obligations (including obligations of performance) and liabilities of the Borrower to the Stockholders or any of them of every kind and description whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, or acquired by the Stockholders or any of them from any source, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by any agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, indemnitor, account party with respect to a letter of credit or otherwise, including obligations incurred in connection with the issuance of a letter of credit, and any and all extensions and renewals of any of the same.

**Junior Security Documents** shall mean all documents that grant or purport to grant to the Junior Debt Holders a Lien on any property as security for any of the Junior Liabilities, and any renewals, extensions, modifications, amendments or supplements to or of any of said documents.

**Lien** shall mean any mortgage, pledge, encumbrance, charge, security interest, assignment or other preferential arrangement of any kind, including any conditional sale agreement or other title retention agreement.

**Obligor** means the Borrower and any other maker, endorser, surety, guarantor or other person liable for the payment or performance of the Senior Liabilities, or any part thereof.

**Person** shall include natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

**Senior Debt Documents** shall mean the Senior Note, the Loan Agreement and all other loan agreements, notes, security documents (including the Senior Security Documents) and other documents now or hereafter evidencing, securing or otherwise executed in connection with or related to any of the Senior Liabilities, and any renewals, extensions, modifications, amendments or supplements to or of any of said documents.

**Senior Debt Holder** shall mean the Lender and any subsequent holder or holders of any of the Senior Liabilities or any of the Senior Debt Documents.



**Senior Liabilities** shall include all principal of and interest on, the Senior Debt, all other sums now or hereafter payable under the Senior Debt Documents, including all principal, interest, fees (including attorneys' fees), charges, costs, expenses and other amounts and all other indebtedness, obligations (including obligations of performance) and liabilities of the Borrower to the Lender of every kind and description whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, or acquired by the Lender from any source, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by any agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, indemnitor, account party with respect to a letter of credit or otherwise, including obligations incurred in connection with the issuance of a letter of credit, and any and all extensions and renewals of any of the same.

**Senior Security Documents** shall mean all documents that grant or purport to grant to the Senior Debt Holder a Lien on any property as security for any of the Senior Liabilities, including the Security Documents described in the Loan Agreement and any renewals, extensions, modifications, amendments or supplements to or of any of said documents.

## **ARTICLE 2 - Debt Subordination**

**SECTION 2.1 Subordination of Junior Liabilities.** The Junior Liabilities and the payment of the principal, and interest and other amounts on the Junior Liabilities, are hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of the Senior Liabilities.

**SECTION 2.2 Certain Permitted Payments on Junior Liabilities.** So long as no default on the Senior Liabilities or under any of the Senior Debt Documents exists at the time any payment on the Junior Liabilities is due, or would be caused by any such payment, the Borrower may pay, and the Junior Debt Holders may receive, payments of principal and interest on the Junior Liabilities as and when due and payable in accordance with the terms thereof; provided, however, the Borrower shall not pay, and the Junior Debt Holders shall not receive, any prepayment of principal or interest on the Junior Liabilities prior to the date on which such sums are due and payable in the ordinary course under the terms of such Junior Liabilities. Notwithstanding any contrary provision herein or in any of the Junior Debt Documents, if the Senior Debt Holder shall notify the Borrower of its desire that no further principal and interest payments be made with respect to the Junior Liabilities, the Borrower shall not make, and the Junior Debt Holders shall not thereafter receive, any further payments with respect to the Junior Liabilities without the Senior Debt Holder's prior written consent.

**SECTION 2.3 Prohibited Payments Held in Trust.** If the Junior Debt Holders shall receive any payment of principal, interest or any other amount with respect to the Junior Liabilities under the Junior Notes or any of the other Junior Debt Documents in violation of the requirements of Section 2.1 or 2.2, the Junior Debt Holders shall hold such payment in trust for the benefit of the Senior Debt Holder and shall pay over such payment or an amount equal thereto to the Senior Debt Holder on demand.

**SECTION 2.4 Subordination of Junior Security Documents.** The Borrower and the Junior Debt Holders, jointly and severally, agree that (a) the Liens of the Junior Security Documents in the Collateral shall be and they hereby are fully subordinated in priority of Lien to the Liens of the Senior Security Documents; and (b) the Liens of the Junior Security Documents shall be fully junior, subject and subordinate to the Liens of the Senior Security Documents to the same extent that they would be if the Senior Security Documents were properly perfected by the recording and filing of the Senior Security Documents, any related financing statements, and any other necessary documents in all appropriate offices, the taking possession of the Collateral, and the completion of all other acts necessary or desirable for such perfection prior to any such recording, filing, possession or other acts by the Junior Debt Holders with respect to the Junior Security Documents (but irrespective of the actual order of perfection, whether such possession is actually taken, and whether any of such other acts are actually done by the Senior Debt Holder).

**SECTION 2.5 Distributions upon Dissolution, etc.** Upon any payment or distribution of the assets of the Borrower or upon any dissolution, winding up, total or partial liquidation, or reorganization of the Borrower, whether in voluntary or involuntary bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Borrower or otherwise, or upon acceleration or maturity of the Senior Liabilities:

(a) the Senior Debt Holder shall first be entitled to receive payment in full of the principal thereof and interest due thereon, or provision shall be made for such payment in cash, before any Junior Debt Holder is entitled to receive any payment on account of the principal of or interest on the Junior Liabilities;

(b) any payment by, or distribution of the assets of, the Borrower of any kind or character, whether in cash, property or securities, to which any Junior Debt Holder would be entitled except for the provisions of this Section shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee, custodian, agent or other person, directly to the Senior Debt Holder or its representative, to the extent necessary to pay in full all Senior Liabilities, after giving effect to any concurrent payment or distribution (or provision for payment in cash therefor) to or for the Senior Debt Holder, before any payment or distribution is made to any Junior Debt Holder; and

(c) if, notwithstanding the foregoing, any payment by, or distribution of assets of, the Borrower of any kind or character, whether in cash, property or securities, shall be received by any Junior Debt Holder before all Senior Liabilities are paid in full, such payment or distribution shall be held in trust for the benefit of, and shall be paid over to the Senior Debt Holder or its representative for application to the payment of all Senior Liabilities remaining unpaid until all such Senior Liabilities shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision for payment in cash therefor) to the Senior Debt Holder.

**SECTION 2.6 Certain Rights of Senior Debt Holder.** The Junior Debt Holders do hereby irrevocably authorize and empower (without imposing any obligation on) the Senior Debt Holder or its representative, under the circumstances set forth in Section 2.5, to demand, sue for, collect and receive every such payment or distribution described therein and give acquittance therefor, to file claims and proofs of claim in any statutory or nonstatutory proceeding, to vote the full amount of the Junior Liabilities in the Senior Debt Holder's sole discretion in connection with any resolution, arrangement, plan of reorganization, compromise, settlement or extension and to take all such other action (including the right to participate in any composition of creditors and the right to vote the full amount of the Junior Liabilities at creditors' meetings for the election of trustees, acceptances of plans and otherwise), in the name of the Junior Debt Holders or otherwise, as the Senior Debt Holder or its representative may deem necessary or desirable for the enforcement of the provisions of this Agreement. The Junior Debt Holders shall execute and deliver to the Senior Debt Holder and its representative all such further instruments confirming the foregoing authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and shall take all such other actions as may be requested by the Senior Debt Holder or its representative to enable the Senior Debt Holder to enforce all claims upon or with respect to the Junior Liabilities.

**SECTION 2.7 Acceleration of Junior Liabilities.** If any of the Senior Liabilities shall become or be declared to be immediately due and payable, the Junior Liabilities shall also become immediately due and payable, notwithstanding any inconsistent terms of the Junior Debt Documents. No Junior Debt Holder shall, without the prior written consent of the Senior Debt Holder, have any right to accelerate the maturity of, or institute any proceedings to enforce, any of the Junior Liabilities or any of the Junior Debt Documents so long as any of the Senior Liabilities is outstanding.

**SECTION 2.8 Perfection of Senior Debt Holder's Rights.**

(a) The Junior Debt Holders do hereby: (i) deliver to the Senior Debt Holder the Junior Notes and all other notes or other instruments now evidencing any of the Junior Liabilities, duly endorsed to the Senior Debt Holder; (ii) authorize and direct the Senior Debt Holder to take such action as the Senior Debt Holder may deem necessary or appropriate to effectuate the subordination provided in this Agreement; and (iii) irrevocably appoint and constitute the Senior Debt Holder as the attorney-in-fact of the Junior Debt Holders to perform all acts necessary to effectuate such subordination.

(b) The Junior Debt Holders do hereby pledge and deliver to the Senior Debt Holder and grant to the Senior Debt Holder a security interest in, the Junior Liabilities and the Junior Debt Documents as collateral security for the Senior Liabilities.



(c) The Junior Debt Holders shall, promptly upon receipt thereof, deliver to the Senior Debt Holder, duly endorsed, to be held under the terms of this Agreement, all additional Junior Debt Documents that the Junior Debt Holders may at any time receive evidencing or securing the Junior Liabilities.

**SECTION 2.9 Additional Junior Debt Documents.** The Junior Debt Holders and the Borrower hereby, jointly and severally, agree that: (a) no notes, agreements, instruments or other writings evidencing or securing any of the Junior Liabilities, or any other Junior Debt Documents, shall be executed, issued or delivered by the Borrower without the prior written consent of the Senior Debt Holder; and (b) each and every such note, agreement, instrument or other writing and other Junior Debt Document shall be pledged and endorsed by the Junior Debt Holders and delivered to the Senior Debt Holder contemporaneously with the execution thereof, to be held by the Senior Debt Holder until the termination of this Agreement in accordance with Section 3.9 hereof.

**SECTION 2.10 No Effect on Senior Debt Holder's Rights.** No right of the Senior Debt Holder to enforce the subordination provided herein shall at any time or in any way be released, discharged, impaired, modified or otherwise affected by, the occurrence from time to time of any of the following events, circumstances or conditions, whether or not with notice to, or the consent of, the Junior Debt Holders:

- (a) the invalidity or unenforceability, in whole or in part, of any of the Senior Debt Documents;
- (b) any failure or refusal to give notice to the Junior Debt Holders of the occurrence of any event of default under any of the Senior Debt Documents, except as specifically set forth in this Agreement;
- (c) any modification, amendment or supplement (whether material or otherwise) of any obligation, covenant or agreement contained in any of the Senior Debt Documents;
- (d) any assignment or transfer (whether voluntarily or by operation of law) in whole or in part of any of the Senior Liabilities or of any of the Senior Debt Documents or of any interest therein or thereunder;
- (e) any compromise, settlement, release or termination of any or all the obligations, covenants or agreements of any Obligor under any of the Senior Debt Documents;
- (f) any waiver of payment, performance or observance by any Obligor of any of such Obligor's obligations, covenants or agreements under any of the Senior Debt Documents;
- (g) any consent, extension, indulgence or other action or inaction (including any lack of diligence or failure to mitigate damages) under or with respect to any of the Senior Debt Documents, or any exercise or non-exercise of any right, remedy, power or privilege under or with respect to any of the Senior Debt Documents;
- (h) any failure, omission, delay, neglect or lack of diligence on the part of the Senior Debt Holder, or any assignee or successor thereto, to enforce, assert or exercise any right, power, privilege or remedy conferred upon the Senior Debt Holder by any of the Senior Debt Documents;
- (i) any extension of time for payment of the principal of, or interest on, any of the Senior Liabilities, or extension of the time for performance of any other obligations, covenants or agreements under any of the Senior Debt Documents;
- (j) any furnishing or accepting of additional collateral, guaranties or other security for any of the Senior Liabilities or the release, modification, substitution, nonexistence, invalidity or lack of value of any Collateral, guaranties or other security for any of the Senior Liabilities;
- (k) the death of, voluntary or involuntary liquidation or dissolution of, sale or other disposition of all or substantially all the assets of, or the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, merger, consolidation, other reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, any Obligor or any of such Obligor's assets, or any action taken by any trustee,

receiver or custodian or by any court in any such proceeding, or the disaffirmance, rejection or postponement in any such proceeding of any Obligor's obligations or undertakings set forth in any of the Senior Debt Documents;

(l) any failure of the Senior Debt Holder, in the event of the occurrence of any of the events specified in subsection 2.10(k) above, to file a claim or proof of claim or otherwise pursue any of its remedies in any proceeding resulting from such event;

(m) any release or discharge (by act or omission of the Senior Debt Holder, operation of law or otherwise) of any Obligor from the performance or observance of any obligation, covenant, agreement, undertaking or condition to be performed by such Obligor under any of the Senior Debt Documents;

(n) any limitation on or exculpation from the liabilities or obligations of any Obligor under any of the Senior Debt Documents (whether pursuant to the terms of any of the Senior Debt Documents or otherwise), any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of any of the Senior Debt Documents or any limitation that may now or hereafter exist with respect to any of the Senior Debt Documents;

(o) any failure on the part of any Obligor for any reason fully to perform or to comply with any term of any of the Senior Debt Documents;

(p) any claim of the Junior Debt Holders against any Obligor;

(q) any understanding or agreement that any other person was or is to execute this Agreement, any similar agreement or any of the Senior Debt Documents or otherwise become liable for, or subordinated to, in whole or in part, any of the Senior Liabilities or any of the Senior Debt Documents; or

(r) any other circumstance, occurrence or condition, whether similar or dissimilar to any of the foregoing, that might be raised in avoidance of, or in defense against an action to enforce, the obligations of the Junior Debt Holders under this Agreement, other than the defense of payment in full of the Senior Liabilities and the termination of this Agreement as set forth in Section 3.9.

**SECTION 2.11 Waiver by Junior Debt Holders.** The Junior Debt Holders, insofar as the obligations of the Junior Debt Holders under this Agreement are concerned, do hereby:

(a) unconditionally waive: (i) notice of the execution and delivery of the Senior Debt Documents; (ii) notice of the Senior Debt Holder's acceptance of and reliance on this Agreement or of the making available by the Senior Debt Holder to the Borrower of the Senior Debt or any part thereof, or of the extension by the Senior Debt Holder to the Borrower of any of the other Senior Liabilities, or the payment by any Obligor of any sums with respect to any of the Senior Liabilities; (iii) notice of any of the matters referred to in Section 2.10; (iv) all notices required by statute, rule of law or otherwise to preserve any rights against the Junior Debt Holders hereunder, including any demand, proof or notice of non-payment of any of the Senior Liabilities by any Obligor and notice of any failure on the part of any Obligor to perform or comply with any term of any of the Senior Debt Documents; (v) any right to the enforcement, assertion or exercise of any right, power or remedy under or with respect to any of the Senior Debt Documents; and (vi) any requirement that any Obligor be joined as a party to any proceeding for the enforcement of any term of any of the Senior Debt Documents, any requirement of diligence on the part of the Senior Debt Holder and any requirement on the part of the Senior Debt Holder to mitigate any damages resulting from any non-payment of any Senior Liabilities or any default or event of default under any of the Senior Debt Documents; and

(b) agree that, until all the Senior Liabilities are paid in full and this Agreement is terminated as provided in Section 3.9, the Junior Debt Holders shall not assert or attempt to enforce any right of subrogation to the Senior Debt Holder's rights against the Borrower, under the Senior Debt Documents or otherwise, or right to require the marshalling of any assets of the Borrower; and the Junior Debt Holders do hereby unconditionally waive all such rights of subrogation or to require marshalling, until all the Senior Liabilities are paid in full and this Agreement is terminated as provided in Section 3.9 below.



**SECTION 2.12 No Changes in Junior Debt Documents.** The Borrower and the Junior Debt Holders, jointly and severally, agree that no amendments or modifications shall be made to the Junior Debt Documents without the prior written consent of the Senior Debt Holder, and no other changes shall be made in any of the terms thereof without such consent unless and until all of the Senior Liabilities shall have been paid in full and this Agreement shall have been terminated as set forth in Section 3.9.

### **ARTICLE 3 - - Miscellaneous**

**SECTION 3.1 Notice.** Any requests, demands or notices provided in this Agreement to be given by either party or the Lender shall be conclusively deemed to have been given and be effective upon hand delivery of the same or three business days after the same shall have been deposited in the United States registered or certified or first class mail, postage prepaid, addressed to the person to whom such request, demand or notice is directed as follows:

- (a) if to the Borrower, addressed to John H. Holcombe at:

Holcombe Home Center, Inc.  
50 Wheat Street  
Harpersville, Alabama 35078

- (b) if to the Junior Debt Holders, addressed to care of John H. Holcombe at:

Holcombe Home Center, Inc.  
50 Wheat Street  
Harpersville, Alabama 35078

- (c) if to the Senior Debt Holder, addressed to National Bank of Commerce of Birmingham, at:

1927 First Avenue North  
Birmingham, Alabama 35203  
Attention: Chris Patty

Five business days' written notice to the Borrower and the Junior Debt Holders as provided above shall constitute reasonable notification to them when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five business days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 3.2 Heirs, Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Borrower and the Junior Debt Holders may not assign or transfer this Agreement without the prior written consent of the Senior Debt Holder; and all covenants, promises and agreements by or on behalf of the Borrower and the Junior Debt Holders that are contained in this Agreement shall bind the Borrower and the Junior Debt Holders, jointly and severally, and the respective heirs, successors and assigns of the Borrower and the Junior Debt Holders and shall inure to the benefit of the successors and assigns of the Senior Debt Holder.

**SECTION 3.3 Costs.** The Borrower and the Junior Debt Holders shall promptly reimburse the Senior Debt Holder for any and all costs and expenses, including the reasonable fees and disbursements of counsel to the Senior Debt Holder, that the Senior Debt Holder may incur in connection with (a) the enforcement of the rights of the Senior Debt Holder in connection with this Agreement, (b) the protection or perfection of the Senior Debt Holder's rights and interest hereunder, (c) the exercise by or for the Senior Debt Holder of any of the rights or powers herein conferred upon the Senior Debt Holder, and (d) the prosecution or defense of any action or proceeding by or against the Senior Debt Holder concerning any matter arising out of, connected with or related to this Agreement.

**SECTION 3.4 Senior Debt Holder May Perform and Pay Claims.** If the Borrower or the Junior Debt Holders shall fail to pay or perform any of their respective obligations contained herein, the Senior Debt Holder may itself pay

or perform, or cause to be paid or performed, such obligations, at the expense of the Borrower and the Junior Debt Holders.

**SECTION 3.5 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama, except as required by mandatory provisions of law.

**SECTION 3.6 Non-Waiver; Modification; etc.** Neither any failure nor any delay on the part of the Senior Debt Holder in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. The Senior Debt Holder may permit the Borrower or the Junior Debt Holders to remedy any default without waiving the default so remedied, and the Senior Debt Holder may waive any default without waiving any other subsequent or prior default by the Borrower or the Junior Debt Holders. No modification, amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower or the Junior Debt Holders therefrom, shall be effective unless the same shall be in writing and signed by the Senior Debt Holder, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower or the Junior Debt Holders in any case shall entitle the Borrower or the Junior Debt Holders to any other or further notice or demand in the same, similar or other circumstances.

**SECTION 3.7 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**SECTION 3.8 Remedies Cumulative.** The rights and remedies of the Senior Debt Holder under this Agreement are cumulative and not exclusive of any other rights or remedies now or hereafter existing at law or in equity.

**SECTION 3.9 Termination of Agreement.** This Agreement and the Senior Debt Holder's rights under this Agreement will not be terminated until one of the Senior Debt Holder's officers signs a written termination agreement. Even if the Borrower should pay all of the Senior Liabilities owing to the Senior Debt Holder at any one time, the Senior Debt Holder's rights under this Agreement will continue to secure any sum the Borrower should later owe the Senior Debt Holder until the written termination agreement referred to above has been executed by the Senior Debt Holder. Except as otherwise expressly provided for in this Agreement, no termination of this Agreement shall in any way affect or impair the representations, warranties, agreements, covenants, obligations, duties and liabilities of the Borrower or the Junior Debt Holders or the powers, rights and remedies of the Senior Debt Holder under this Agreement with respect to any transaction or event occurring prior to such termination, all of which shall survive such termination. In no event shall the Senior Debt Holder be obligated to terminate this Agreement or return or release the Junior Debt Documents or any portion thereof to the Borrower or the Junior Debt Holders (a) until payment in full of the Senior Liabilities then outstanding and the expiration of the applicable period for avoiding or setting aside such payment under bankruptcy or insolvency laws or (b) if the Senior Debt Holder is obligated to extend any other credit to the Borrower. Notwithstanding anything to the contrary set forth above, the provisions of this Section are subject in all respects to the provisions of Section 3.12 below.

**SECTION 3.10 No Third Party Beneficiaries.** Nothing in this Agreement shall give to any person, firm or corporation other than the Senior Debt Holder any benefit or any legal or equitable right, remedy or claim under this Agreement.

**SECTION 3.11 Default.** The Borrower and the Junior Debt Holders agree that any default by the Borrower or the Junior Debt Holders in the observance or performance of any of the provisions of this Agreement shall constitute a default under the terms of and with respect to the Senior Liabilities, and the Senior Debt Holder may thereupon exercise all of its rights and remedies upon default with respect to the Senior Liabilities.

**SECTION 3.12 Reinstatement of Obligations.** This Agreement, and the obligations of the Junior Debt Holders hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time payment in whole or in part of any of the Senior Liabilities by any Obligor is rescinded or must otherwise be restored or returned to any Obligor upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of such Obligor, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to such Obligor or with respect to any part of the property thereof, or otherwise, all as though such payment had not been made.



**SECTION 3.13 Arbitration.** This Agreement incorporates by reference requirements for arbitration of disputes set forth in the Credit Agreement.

**SECTION 3.14 Warrantees.** The Stockholders warrant that they are holders of 100% of the capital stock of the Borrower.

**IN WITNESS WHEREOF,** each of the undersigned has executed this Agreement or caused this Agreement to be executed on the day and year first above written.

**HOLCOMBE HOME CENTER, INC.**

By: *John H. Holcombe*  
Its: President

**STOCKHOLDERS:**

*John H. Holcombe* (SEAL)  
John H. Holcombe

*Howard Holcombe* (SEAL)  
~~John~~ Howard Holcombe

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that *John H. Holcombe*, whose name as President of Holcombe Home Center, Inc., an Alabama corporation, is signed to the foregoing Subordination Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Subordination Agreement, he (she), 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 22<sup>nd</sup> day of August, 2000.

*Ginger Leigh Arnold*  
Notary Public

[AFFIX SEAL]

My commission expires: August 12, 2002

STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John H. Holcombe, whose name is signed to the foregoing Subordination Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Subordination Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 28<sup>th</sup> day of August, 2000.

Angela Leigh Arnold  
Notary Public

[AFFIX SEAL]

My commission expires: August 12, 2002

STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Howard Holcombe, whose name is signed to the foregoing Subordination Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Subordination Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 28<sup>th</sup> day of August, 2000.

Angela Leigh Arnold  
Notary Public

[AFFIX SEAL]

My commission expires: August 12, 2002

This instrument prepared by:

Stephen W. Stallcup, Esq.  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203  
(205) 254-1000