

STATE OF ALABAMA)
COUNTY OF SHELBY)

SPACE ABOVE FOR
RECORDER'S USE

Inst # 2001-49673

11/15/2001-49673
03:22 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 CH 35.00

**SUBORDINATION, ATTORNMENT, NON-DISTURBANCE,
WAIVER AND PARTIAL RELEASE AGREEMENT**

THIS SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, WAIVER AND THIS SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, WAIVER AND PARTIAL RELEASE AGREEMENT (the "Agreement") is made and entered into as of November 14, 2001, by and between **WORLD WIDE GOB, L.L.C.**, an Alabama limited liability company ("Lessee") and **COMPASS BANK**, an Alabama banking corporation (the "Lender"), with reference to and based upon the following:

WITNESSETH:

WHEREAS, B H Properties, L.L.C., an Alabama limited liability company ("Lessor"), and Lessee have entered into a certain lease dated NOVEMBER 6, 2001 (the "Lease") covering the premises (the "Premises") situated on the real property (the "Property") more particularly described in Exhibit "A" attached to and incorporated in this Agreement; and

WHEREAS, Lender is the mortgagee under that certain mortgage dated November 14, 2001, made by Lessor as mortgagor, recorded on 11-15-, 2001, in Book 2001, at Page 49672 in the office of the Judge of Probate of Shelby County, Alabama, securing the obligations of Lessor under that certain Promissory Note dated or to be dated as of November 14, 2001, in the sum of \$1,400,000 (the "Mortgage"). Lender is also the assignee under that certain Assignment of Rents and Leases dated as of November 14, 2001, made by Lessor as assignor, recorded _____, 2001, in Book _____, at Page _____ in the aforesaid office of the Judge of Probate of Shelby County, Alabama (the "Assignment"), further securing the obligations of Lessor under the Promissory Note; and

WHEREAS, Lessee acknowledges that the Mortgage, when recorded, will constitute a lien

or charge upon the Premises that is unconditionally prior and superior to the Lease and the leasehold interest of Lessee under the Mortgage; and

WHEREAS, Lender has been requested by Lessee and by Lessor to enter into a non-disturbance agreement with Lessee;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Lessee hereby agree as follows:

1. The Lease and any extensions, renewals, replacements, or modifications thereof, and all of the right, title and interest of Lessee under the Lease in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained in the Mortgage, and to any renewals, modifications, replacements, consolidations and extensions of the Mortgage.

2. Lender consents to the Lease and, if Lender comes into possession of or acquires title to the Premises as a result of the foreclosure or other enforcement of the Mortgage or the Note, or as a result of any other means, Lender agrees that, so long as Lessee is not then in default under the Lease beyond any applicable notice and cure period, Lender will recognize Lessee and all of its rights under the Lease and will not disturb Lessee in its possession of the Premises for any reason other than one that would entitle Lessor to terminate the Lease under its terms or would cause, without any further action by Lessor, the termination of the Lease or would entitle Lessor to dispossess Lessee from the Premises. Lessee agrees, however, upon written request by Lender, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Lessee shall acknowledge that attornment and shall set forth the terms and conditions of its tenancy.

3. Lessee agrees with Lender that if the interests of Lessor in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or any other manner, or shall be conveyed thereafter by Lender or shall be conveyed pursuant to a foreclosure sale of the Premises, and in connection with that transfer Lender assumes the executory obligations of Lessor under the Lease, Lessee shall be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the term of the Lease remaining and any extensions or renewals of the Lease that may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the Lessor under the Lease, and Lessee does hereby attorn to Lender as its Lessor, that attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Lease immediately upon Lender succeeding to the interest of Lessor in the Premises. Lessee agrees, however, upon written request by Lender, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Lessee shall acknowledge that attornment and shall set forth the terms and conditions of its tenancy.

4. Lessee agrees with Lender that if Lender shall succeed to the interest of Lessor under

the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord (including Lessor) or any other party with whom Lessee has dealt concerning the Premises, other than liability for defaults under the Lease and then only to the extent that the defaults exist on or after the date Lender comes into possession of or acquires absolute title to the Premises, or (b) subject to any offsets or defenses that Lessee might have against any such prior landlord, or (c) bound by any rent or additional rent that Lessee might have paid for more than the current month to any such prior landlord, or (d) bound by any security deposit or last month rent that Lessee may have paid in an aggregate amount greater than two (2) times the rent for the then-current month, and in any event, Lender shall not be liable or accountable for any security deposit required by Lessor under the Lease, unless those sums have actually been received by Lender as cash security for Lessee's performance of the Lease, or (e) bound by any amendment or modification of the Lease made without Lender's written consent, or (f) bound by any notice of termination given by Lessor to Lessee without Lender's written consent thereto, or (g) personally liable under the Lease (Lessor and Lessee expressly agreeing that any liability of Lender under the Lease shall be limited to the ownership interest of Lender in the Premises).

5. If Lessor shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Lessee shall give written notice of the default to Lender and Lender shall have the right (but not the obligation) to cure the default. Lessee shall not take any action for such default under the Lease, including any action to terminate, rescind, or void the Lease, or to withhold any rental thereunder, for thirty (30) days after receipt of the written notice by Lender (the "Cure Period"), that period to continue for an additional period:

- (a) If Lender has commenced and is diligently pursuing the remedies necessary to cure any such act or omission (including, without limitation, commencement of foreclosure proceedings, if necessary to cure any such act or omission); and
- (b) For any period of time during which Lender is prevented from commencing or pursuing such foreclosure proceedings because of bankruptcy or other judicial proceedings initiated by Lessor or any other party.

6. Lessor has agreed in the Mortgage and in the Assignment that the rentals payable under the Lease shall be paid directly by Lessee to Lender on the occurrence of a default by Lessor under the Mortgage beyond any applicable notice and cure period. Accordingly, after notice is given by Lender to Lessee that the rentals under the Lease should be paid to or on the directions of Lender, Lessee shall pay to Lender, or in accordance with the directions of Lender, all rentals and other moneys due and to become due to Lessor under the Lease, or amounts equal to them. Lessee shall have no responsibility to ascertain whether that demand by Lender is permitted under the Mortgage or the Assignment. Lessor hereby waives any right, claim or demand it may now or hereafter have against Lessee by reason of the payment to Lender, and any such payment to Lender shall discharge the obligations of Lessee to make that payment to Lessor.

7. Lessee hereby covenants and agrees directly with Lender that Lender shall have the benefit of all of the rights of the holder of a mortgage provided for in the Lease.

8. Lessee represents as of the date hereof that:

- (a) The Lease is in full force and effect and there are no amendments, modifications, or supplements thereto, and the Lessor's rights and Lessee's obligations under the Lease are not subject to or affected by any separate agreement, including any agreement between Lessee and Lessor or any party affiliated with Lessor;
- (b) Lessee has accepted and taken possession of the Premises and is in occupancy of the Premises, except for the building to be constructed;
- (c) Lessor has satisfied all commitments made to induce Lessee to enter into the Lease and Lessor is not in any respect in default in the performance of the terms and provisions of the Lease;
- (d) There are no existing defenses that the undersigned has against the full enforcement of the Lease by Lessor, and there are no offsets or credits against rentals payable under the Lease, and no free periods of rent or other concessions have been granted to Lessee; and
- (e) Lessee is not in any respect in default in the performance of the terms and conditions of the Lease.

9. Lessee declares, agrees and acknowledges that:

- (a) Lender, in making disbursements pursuant to any agreement relating to the Loan, is under no obligation or duty to, nor has Lender represented that it will, see to the application of the proceeds by the person or persons to whom Lender disburses those proceeds, and shall not defeat the subordination herein made in whole or in part; and
- (b) Lessee intentionally and unconditionally waives, relinquishes and subordinates the Lease and its leasehold interest under it in favor of the lien or charge upon the land of the Mortgage, and that in consideration of this waiver, relinquish, and subordination, specific loans and advances are being and will be made by Lender to Lessor and, as part and parcel of those loans, specific monetary and other obligations are being and will be entered into by Lessor and Lender that would not be made or entered into but for the reliance upon this waiver, relinquishment and subordination.

10. This Agreement shall bind and inure to the benefit of the parties to this Agreement, their successors and assigns. As used in this Agreement, the term "Lessee" shall include Lessee, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used in this Agreement shall be deemed to include the acquisition of Lessor's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and the word "Lender" shall include the Lender specifically named in this Agreement and any of its successors, participants and assigns, including any one who shall have succeeded to Lessor's interest in the premises by, through or under foreclosure of the Mortgage.

11. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne, and shall be deemed given when postmarked (or deposited with such carrier, as the case may be) and addressed as follows:

If to Lender: Compass Bank
 15 South 20th Street
 Birmingham, Alabama 35233

 Attention: Brian Ethridge

with a copy to: J. Scott Sims
 Sirote & Permutt, P.C.
 P.O. Box 55727
 Birmingham, Alabama 35255-5727

If to Lessee: World Wide GOB, L.L.C.

or to such other address as shall from time to time have been designated by written notice by that party to the other parties as provided in this Agreement.

12. This Agreement shall be the whole and only agreement between the parties to this Agreement with regard to the subordination of the Lease and the leasehold interest of Lessee under this Lease to the lien or charge of the Mortgage in favor of Lender, and shall supersede and control any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Lease, that provide for the subordination of the Lease and the leasehold interest of Lessee under the Lease to a deed or deeds of trust or to a mortgage or mortgages to be thereafter executed, and shall not be modified or amended and no provision in this Agreement shall be waived except in writing signed by the party against whom enforcement of any such modification or amendment is sought.

13. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect or in any circumstances, that invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if that invalid, illegal or unenforceable provision had never been contained in it. This Agreement shall be governed by and construed in accordance with the law of Alabama.

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

LESSEE:

WORLD WIDE GOB, L.L.C.

By: C.N. Bailey

Name: C. N. BAILEY

Its: MANAGING MEMBER

STATE OF Alabama)
Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that C.N. Bailey, whose name as Managing Member of **WORLD WIDE GOB, L.L.C.**, an Alabama 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 the said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

GIVEN under my hand and seal, this 14 day of November, 2001.

[NOTARIAL SEAL]

Reyella Munka
Notary Public

My Commission Expires Notary Public, Alabama, State at Large
My Commission Expires November 3, 2003

BANK:

COMPASS BANK

By: Brian Ethridge
Brian Ethridge
Vice President

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Brian Ethridge, 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

GIVEN under my hand and seal, this 14 day of November, 2001.

[NOTARIAL SEAL]

Cynthia Munk
Notary Public

My Commission Expires ~~February 2003~~ **Notary Public, Alabama, State at Large**
My Commission Expires November 3, 2003

This instrument prepared by and upon recordation return to:

J. Scott Sims, Esq.
Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

All that tract or parcel of land situated in the Southwest quarter of the Southeast quarter of Section 31, Township 19 South, Range 2 West, in Shelby County, Alabama, being more particularly described as follows, to wit:

Beginning at the Southwest corner of the Southwest quarter of the Southeast quarter of Section 31, Township 19 South, Range 2 West in Shelby County, Alabama and run North along the West line of said Southwest quarter of the Southeast quarter 872.72 feet to a point on the centerline of Cahaba Valley Road (Alabama State Highway 119); thence $60^{\circ} 38'$ to the right and run Northeasterly along the centerline of said Cahaba Valley Road 762.35 feet to a point; thence $88^{\circ} 39' 40''$ to the right and run Southeasterly 99.70 feet to a point on the Southeasterly right of way of Cahaba Valley Road as now established by the Alabama Highway Department, said point also being the point of beginning; thence continue along the last described course in a Southeasterly direction 351.93 feet to a point on the centerline of a creek; thence $105^{\circ} 39'$ to the left in a Northeasterly direction along the approximate centerline of said creek a distance of 5.53 feet to a point; thence $19^{\circ} 53'$ to the right in a Southeasterly direction along the approximate centerline of said creek a distance of 195.15 feet to a point; thence $94^{\circ} 14'$ to the left in a Northwesterly direction a distance of 359.97 feet to a point on the Southeasterly right of way line of Cahaba Valley Road; thence $88^{\circ} 36' 12''$ to the left in a Southwesterly direction along the Southeasterly line of Cahaba Valley Road a distance of 200.00 feet to the point of beginning.

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