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Shelby Cnty Judge of Probate, AL
01/27/2006 03:57:07PM FILED/CERT

PREPARED BY: Damon P. Denney
420 North 20th Street
Suite 3100
Birmingham, Alabama 35203

SUBORDINATION AGREEMENT

This Subordination Agreement is entered into January 25th, 2006 ("Agreement"), by **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 420 North 20th Street, 8th Floor, Birmingham, Alabama 35203 ("Bank"), **COVENANT BANK**, whose address is P.O. Box 309, Leeds, Alabama 35094 ("Creditor") and **MICHAEL R. SUMMERS**, whose address is 7347 Cahaba Valley Road, Birmingham, Alabama 35242 ("Borrower").

Bank has agreed to extend or renew credit to the Borrower on the condition that Creditor enter into this Agreement and to induce the Bank to extend such credit to the Borrower, the Creditor has agreed to enter into this Agreement and to subordinate indebtedness owed it by the Borrower as provided herein.

In consideration of Bank's extension or renewal of credit to Borrower, Bank, Creditor and Borrower agree as follows:

1. **Subordinated Debt:** All now existing or hereafter contracted indebtedness secured by that certain mortgage in favor of Creditor and recorded with the Judge of Probate of Shelby County, as Instrument number 20050701000329240, as corrected by instrument 20050921000490570, and all renewals, increases, extensions and modifications thereof owing by Borrower to Creditor are hereinafter referred to as "Subordinated Debt".
2. **Bank Debt:** All indebtedness of any kind now existing or hereafter contracted and all renewals, extensions and modifications thereof owing by Borrower to Bank are herein after referred to as "Bank Debt".
3. **Agreement to Subordinate:** Creditor and Borrower agree that Bank Debt shall be superior to and, except as otherwise provided herein, shall be paid before any part of the Subordinated Debt is paid.
4. **Payment of Subordinated Debt Prohibited:** Except as expressly permitted by Section 5 below, Borrower shall not, directly or indirectly, make or permit any payment or transfer of property or release any collateral for credit in reduction of Subordinated Debt; Creditor shall not demand, accept or receive any payment in reduction of Subordinated Debt or additional collateral for Subordinated Debt nor act to collect (including but not limited to, making demand or commencing litigation, bankruptcy, reorganization or liquidation proceedings against the Borrower), cancel, set-off, forgive, release, or otherwise discharge any Subordinated Debt. In the event of Borrower's bankruptcy, Bank shall be paid all principal, pre- and post- petition interest and pre- and post- petition costs and expenses to which Bank is entitled under the Bank Debt without regard to the application bankruptcy law or other insolvency law prior to any payment

of Subordinated Debt or from any payment or distribution on account of subordinated debt made to Creditor.

5. Scheduled Payments Excepted: Notwithstanding the foregoing, Borrower may make and Creditor may receive regularly scheduled principal payments in reduction of Subordinated Debt and interest payments on Subordinated Debt, so long as, at the time of each payment, no event or condition which constitutes or which, with notice or the lapse of time, or both, would constitute a default or an event of default with respect to the Bank Debt shall have occurred and be continuing.

6. Limitation on Modification of Subordinated Debt: Borrower and Creditor shall not, without the prior written consent of Bank, modify, extend, supplement or increase Subordinated Debt.

7. No Limitation on Modification of Bank Debt: Bank may, without notice to Creditor, extend, renew, modify or increase Bank Debt and may substitute, exchange or release collateral or letters of credit securing payment of Bank Debt and may add or release any guarantor or surety on Bank Debt.

8. Further Assurance: Creditor and Borrower shall execute and deliver to Bank such further instruments and shall take such further action as Bank may from time to time reasonably request in order to carry out the provisions and intent of this Agreement and to confirm that Bank Debt is entitled to the benefits of this Agreement and shall not act or permit any action prejudicial to or inconsistent with the priority position of Bank Debt over Subordinated Debt created by this Agreement.

9. Rights of Subrogation: Creditor agrees that no payment or distribution to Bank pursuant to the provisions of this Agreement shall entitle the Creditor to exercise any rights of subrogation in respect thereof until Bank Debt is finally and unavoidably paid in full.

10. Representations, Warranties and Covenants: Creditor represents, warrants and covenants that now and until all Bank Debt is fully paid, the Subordinated Debt is owned solely by Creditor and shall not be subject to any set off, security interests, liens, charges, subordinations other than this Agreement, assignments or encumbrances; is payable solely to Creditor; is not and shall not be subject to any guaranty or surety; and is not in default. Creditor covenants that Creditor shall not sell, assign or otherwise transfer Subordinated Debt. Borrower represents and warrants that the Subordinated Debt is due and payable according to its terms.

11. Termination of Subordination: This Agreement and the subordination granted herein shall terminate when Bank Debt is finally and unavoidably paid. Bank Debt shall be deemed not to be paid in full, for purposes of this Agreement, so long as the Bank has any obligation with respect to the Bank Debt, to make further advances to Borrower. However, this Agreement and the subordination granted herein shall continue to be effective or be reinstated if any payment of Bank Debt is rescinded, avoided, or for any reason returned by Bank because of any adverse claim or threatened action as though such payment had not been made.

12. Remedies: Upon violation of this Agreement by Creditor or Borrower, Bank may accelerate the maturity of Bank Debt so that all Bank Debt is immediately due and payable. Creditor shall pay to Bank all sums received by Creditor paid in violation of this Agreement and Bank shall have all remedies of Creditor against collateral for Subordinated Debt. Bank is entitled to specific performance of this Agreement and Borrower and Creditor waive any defense based upon adequacy of remedy at law which may be asserted as a bar to the remedy of specific performance. No failure on the part of Bank to exercise or delay in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any partial exercise of any rights or remedies hereunder preclude any other or further exercise of such or additional rights or remedies. The remedies provided herein are cumulative of any other remedies provided by law or otherwise held against Borrower.

13. Miscellaneous: Waiver of Notice: Creditor waives notice of the acceptance of this Agreement by Bank. **Severability:** If any provision of this Agreement is found to be invalid or unenforceable, the remainder of such provision and all other provisions of this Agreement shall be valid and enforceable as if



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such unenforceable provision were not written. **Notices:** Any notices, demands or requests shall be sufficiently given Creditor whose address is listed on the first page hereof or Bank if in writing and mailed or delivered to Wachovia Bank, National Association, 420 North 20th Street, 8th Floor, Birmingham, Alabama 35203, and Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040, or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or to another address as provided herein and in the event either party hereto changes its address at prior to the date Bank Debt paid in full, that party shall promptly give written notice to the other party of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. **Continuing Agreement:** This Agreement shall be binding upon the parties and their respective successors and assigns. **Assignment:** Bank may assign or transfer its rights with respect to any Bank Debt to any person or entity, and such transferee shall thereupon become vested with all the rights in respect thereof granted to Bank herein. **Modification:** This Agreement is irrevocable and no waiver or modification of any provision of this Agreement shall be valid unless in writing and signed by all parties hereto. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

14. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF CREDITOR AND BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

IN WITNESS WHEREOF, Bank, Creditor and Borrower have signed and sealed this Agreement as of the day and year first above written.



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Covenant Bank

By: *Hayes Parnell, III* (SEAL)

Name: *Hayes Parnell, III*, Title: *Pres. & CEO*

Michael R. Summers
Michael R. Summers

Wachovia Bank, National Association

By: *Maynard C. Brothers* (SEAL)
Maynard C. Brothers, Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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I, undersigned authority, a Notary Public in and for said County in said State, hereby certify that Hayes Parnell III, whose name as President & CEO of COVENANT BANK, a(n) Corp, is signed to the foregoing, 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 national banking association.

Given under my hand and seal, this 25th day of January, 2006.

[Signature]
NOTARY PUBLIC

[SEAL]

My Commission Expires: 4-18-08

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Kerni W. Sheets, a Notary Public in and for said County in said State, hereby certify that Michael R. Summers, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such individual, executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this 27 day of January, 2006.

[Signature]
NOTARY PUBLIC

[SEAL]

My Commission Expires: Oct 25, 2008

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Kerni W. Sheets, a Notary Public in and for said County in said State, hereby certify that Maynard Brothers, whose name as Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, is signed to the foregoing, 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 national banking association.

Given under my hand and seal, this 27 day of January, 2006.

[Signature]
NOTARY PUBLIC

[SEAL]

My Commission Expires: Oct 25, 2008