

This Instrument Prepared By:  
Calvert C. Sullins, Esq.  
Burr & Forman LLP  
420 N. 20th Street, Suite 3100  
Birmingham, Alabama 35203

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") executed by and between Compass Bank, an Alabama banking corporation ("Lender") and TACALA, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease dated April 11, 2005 and lease amendment number 1 dated May 6, 2005 (collectively, the "Lease") with Alabaster Moon Bell, L.L.C., an Alabama limited liability company ("Landlord"), relating to certain premises located in the City of Alabaster, Shelby County, Alabama (the "Premises"), said Premises being more particularly described in said Lease and being situated on the real property described in EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Lender has made a loan to Landlord in the principal amount of Two Million One Hundred Thousand and 00/100 Dollars (\$2,100,000), secured by that certain Mortgage (the "Mortgage") dated June 30, 2005, covering the Premises, which Mortgage was recorded in the real property records of Shelby County, Alabama as Instrument 2005084000395190; and

WHEREAS, Tenant and Lender desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, for itself and its successors and assigns, and Tenant hereby agree as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. In the event of foreclosure of the Mortgage or should Lender obtain title by deed in lieu thereof, or otherwise, Lender, for itself and its successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, and Tenant shall not be disturbed in its quiet use, possession and occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable

notice and cure period. Lender agrees not to name Tenant as a party defendant in any foreclosure action.

3. Subject to the foregoing provisions, Tenant agrees to attorn to: (a) Lender when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Lender, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Lender (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises.

4. So long as the Mortgage remains outstanding and unsatisfied, Tenant will deliver to Lender a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Lender shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

5. If Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interest of Landlord under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets, defenses or abatements which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Lender and given Lender an opportunity to cure as provided in Paragraph 5 above; or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord).

6. Lender consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

7. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of each of the parties.

8. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for

overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Tenant: Tacala, LLC  
4268 Cahaba Heights Court  
Birmingham, Alabama 35243

To Lender: Compass Bank  
P.O. Box 10566  
Birmingham, Alabama 35296  
Attention: Birmingham Corporate Banking Department

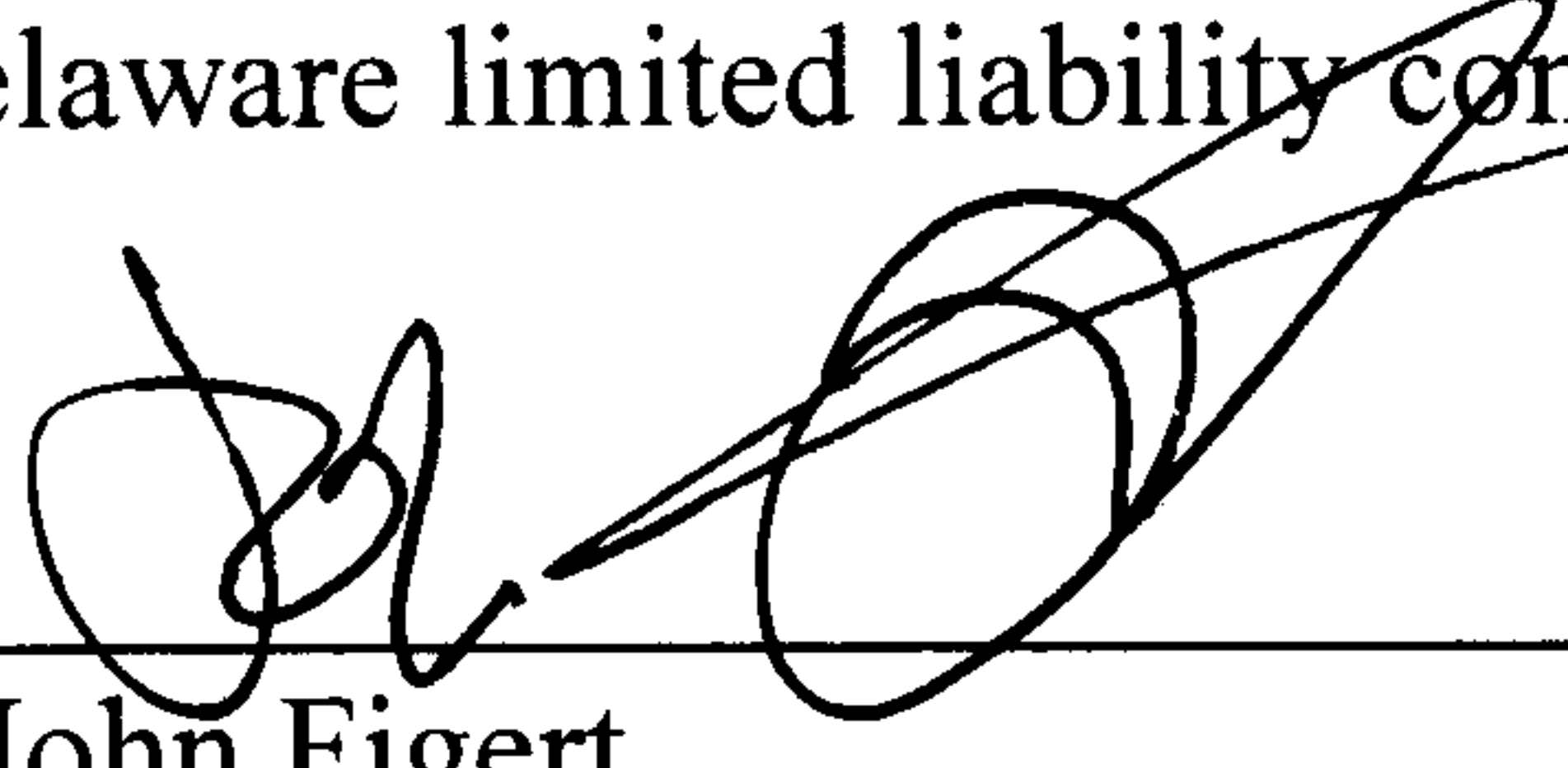
The notice shall be deemed to have been given, in the case of hand delivery, on the date of delivery, and in the case of delivery by commercial delivery service or United States Postal Service, on the date of receipt or refusal as evidenced by the carrier's or courier's receipt.

9. This Agreement may be executed and delivered in counterparts for the convenience of the parties.

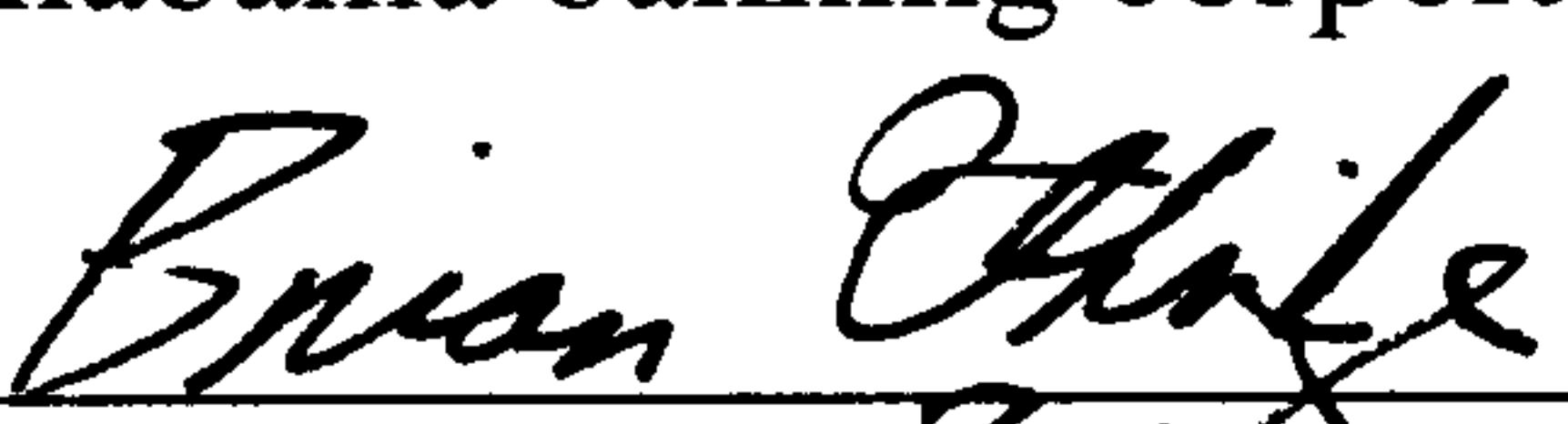
[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

**TENANT:**  
TACALA, LLC,  
a Delaware limited liability company

By:   
John Figert  
Its Vice President of Development

**LENDER:**  
COMPASS BANK,  
an Alabama banking corporation

By:   
Print Name: Brian Ethridge  
Its: S.V.P.

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, Brandy Lee Reid, a Notary Public in and for said County in said State, hereby certify that JOHN FIGERT, whose name as Vice President of Development of **TACALA, LLC**, 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 or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 10 day of January, 2006.

Brandy Lee Reid  
NOTARY PUBLIC

[SEAL]

My Commission Expires: 10-27-08

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Brian Ethridge whose name as SVP 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 or she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corp.

Given under my hand and seal, this 26<sup>th</sup> day of January, 2005.

Dorothy H. McFarland  
NOTARY PUBLIC

[SEAL]

My Commission Expires: 5-23-09

20060313000117420 6/6 \$26.00  
Shelby Cnty Judge of Probate, AL  
03/13/2006 03:59:03PM FILED/CERT

EXHIBIT A  
TO SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT

Legal Description of the Property

**Lot 10A, according to the Survey of Final Plat of Colonial Promenade Alabaster Survey, as recorded in Map Book 35, page 102 A & B, in the Probate Office of Shelby County, Alabama.**