

STATE OF ALABAMA §

COUNTY OF SHELBY §

### LIEN SUBORDINATION AGREEMENT

THIS LIEN SUBORDINATION AGREEMENT ("Agreement"), entered into as of the 7<sup>th</sup> day of April, 2008, by **McCOOL CONCRETE CONTRACTORS, INC.**, an Alabama corporation ("Third Party Lienor"), with a business address of 10996 Monticello Drive, Duncanville, Alabama 35456, and **REGIONS BANK**, an Alabama banking corporation ("Bank"), with a business address of 2222 9<sup>th</sup> Street, Tuscaloosa, Alabama 35401.

A. Third Party Lienor has or may have in the future a lien and security interest in the real property described on **Exhibit A** and any improvements now or hereafter located thereon (collectively, the "Property"), which lien and security interest is or may be evidenced and created by mechanic's and materialmen's liens, claims or notices of lien, mortgages, deed of trusts, deeds to secure debt or security deeds (the mechanic's and materialmen's liens, claims or notices of lien, mortgages, deeds of trust, deeds to secure debt or security deeds, and any other loan documents evidencing Third Party Lienor's lien and security interest in the Property and any monies owing to Third Party Lienor or any other party performing work or providing labor or materials in connection with the Property, together with any and all modifications, amendments, extensions, renewals, replacements and substitutions thereto or therefor, the "Third Party Lien").

B. Bank has extended or has committed to extend credit, and in the future may agree to extend credit (whether one or more present or future extensions of credit, the "Loan") to VALLEYDALE HOSPITALITY, LLC, an Alabama limited liability company, which Loan is or will be secured by the lien and security interest of a mortgage, deed of trust, deed to secure debt or security deed encumbering the Property dated April 7, 2008, and recorded in as Instrument Number 20080408000141480 in the Office of the Judge of Probate for Shelby County, Alabama (the mortgage, deed of trust, deed to secure debt or security deed and any other loan documents evidencing Bank's lien and security interest in the Property, including, without limitation, assignments of rents and profits and financing statements, together with any and all modifications, amendments, extensions, renewals, replacements and substitutions thereto or therefor, the "Bank Mortgage").

C. Bank requires that Third Party Lienor enter into this Agreement as a condition to the Loan.

**NOW, THEREFORE**, in consideration of Ten Dollars in hand paid by each party to the other, the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Subordination of Lien. The Third Party Lien and the lien and security interest evidenced and created by the Third Party Lien in and to the Property shall be subject and subordinate to, and the same is subject and subordinate to the Bank Mortgage and the lien and security interest evidenced and created by the Bank Mortgage in and to the Property, and from

and after the date of this Agreement the Bank Mortgage and the lien and security interest evidenced and created by the Bank Mortgage in and to the Property shall be superior to and have priority over, and the same is superior to and does have priority over the Third Party Lien and the lien and security interest evidenced and created by the Third Party Lien in and to the Property.

Section 2. Loan and Features of Loan. The Loan secured by the Bank Mortgage may be evidenced by one or more now existing and by one or more hereafter existing promissory notes, letter of credit agreements, guaranty agreements, documents, accounts, general intangibles and other evidences of an obligation or obligations. The Loan, and the agreements evidencing the Loan and those securing the Loan, including, without limitation, the Bank Mortgage (collectively, the "Loan Documents"), may have future advance provisions which permit borrowing thereunder from time to time; and the Loan and the Loan Documents may have revolving features which permit the borrowing, repaying and reborrowing from time to time thereunder. The Loan and the Loan Documents may also have variable interest rate features, and they may have features under which the Loan converts from a variable interest rate to a fixed interest rate, or vice versa. The Loan and the Loan Documents may also be subject to prepayment premiums and other fees and charges; they may permit negative amortization; they may permit payment holidays and other forbearances regarding payment and performance thereunder; and they may permit extensions, renewals, amendments, modifications, substitutions and replacements of any and all. Third Party Lienor acknowledges that all of the foregoing types of features, as well as other features, may be a part of the Loan and any one or more of the Loan Documents, and that they are active features that may impact upon the Third Party Lien. Third Party Lienor agrees the foregoing types of features and other types shall not negate and shall not lessen the subordination of the Third Party Lien to the Bank Mortgage as provided in this Agreement, and Third Party Lienor agrees that notwithstanding the existence of some or all of the foregoing types of features and other types of features, the Third Party Lien is and shall remain subordinate to the Bank Mortgage.

Section 3. Third Party Lienor's Representations and Warranties. Third Party Lienor represents and warrants to Bank that it is the holder of the indebtedness secured by the Third Party Lien; that there has been no assignment of Third Party Lienor's rights and interests under the Third Party Lien to any person and there has been no assignment of Third Party Lienor's rights and interests in the indebtedness secured thereby, in both instances to any person; and, with the exception of the Third Party Lien, no agreement covering the Property has been entered into by or entered into or executed and delivered in favor of Third Party Lienor which grants to Third Party Lienor a lien or security interest in the Property which now has or may in the future have priority over the Bank Mortgage and the lien and security interest evidenced and created thereby.

Section 4. Insertion of Bank Mortgage Information. Third Party Lienor agrees that the recording information for the Bank Mortgage may be written on this Agreement at the time this Agreement is recorded or at such other time as may be appropriate, and such insertion shall not negate, or adversely or negatively effect the validity and enforceability of this Agreement.

  
20080508000190170 2/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
05/08/2008 02:17:29PM FILED/CERT

Section 5. Miscellaneous.

5.1. Incorporation of Exhibits. All exhibits, schedules, addenda and other attachments to this Agreement are by this reference incorporated herein and made a part hereof as if fully set forth in the body of this Agreement.

5.2. No Oral Change. This Agreement can be amended or modified only in a writing duly executed by the parties hereto.

5.3. Notices. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth above. Bank and Third Party Lienor may, by written notice given hereunder, designate a different address where communications should be sent.

5.4. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability limited partnerships, limited liability companies, limited liability partnerships, trusts, business trusts, corporations and legal entities, including public and quasi-public bodies, as well as individuals. The recitals are a part of this Agreement.

5.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

5.6. Term of Agreement. The terms and provisions of this Agreement shall terminate upon the cancellation of record of the Bank Mortgage, unless the same is earlier terminated by a termination agreement executed and delivered to Third Party Lienor by Bank.

**[SIGNATURES ON THE FOLLOWING PAGE]**

  
20080508000190170 3/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
05/08/2008 02:17:29PM FILED/CERT

The undersigned have executed this Agreement as of the day and year first above stated.

**McCool Concrete Contractors, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THE STATE OF ALABAMA §**

**TUSCALOOSA COUNTY §**

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William McCool whose name as Pres. of McCool Contracting Co., Inc., a Alabama 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 instrument, he/she, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 27 day of March, 2008.

K.T. Cu  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES JULY 24, 2011

This Instrument Prepared By:

W. Bradford Roane, Jr.  
Rosen Harwood, P.A.  
Post Office Box 2727  
Tuscaloosa, Alabama 35403-2727  
(205) 344-5000



20080508000190170 4/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
05/08/2008 02:17:29PM FILED/CERT

EXHIBIT A

**LEGAL DESCRIPTION**

**Concourse 100**

Lot 2C, according to A Resurvey of Lot 2, An Amendment to Survey of an Amendment To The Concourse at Riverchase, dated January 2006, prepared by Gonzalez-Strength & Associates, Inc., as more particularly described as follows:

A parcel of land situated partly in the Southwest quarter of the Northeast quarter and partly in the Southeast quarter of the Northwest quarter of Section 30, Township 19 South, Range 2 West Shelby County, Alabama, and being a part of lot 2A, A Resurvey Of An Amendment To The Concourse At Riverchase, and being more particularly described by metes and bounds as follows:

Begin at the Northeast corner of Lot 2A, A Resurvey of An Amendment To The Concourse At Riverchase said point also being on the Western-most right of way of Riverchase Parkway, R.O.W. Varies, and also being on the Southern-most right of way of the Woods Of Riverchase Drive (R.O.W. Varies); thence run South along the Western-most right of way of Riverchase Parkway for a distance of 42.16 feet to the point of beginning of a curve turning to the left said curve having a radius of 500.37 feet, a central angle of 27 degrees 20 minutes 23 seconds, and a chord distance of 236.50 feet; thence run along the arc of said curve and along said right of way for a distance of 238.76 feet to the point of beginning of a reverse curve turning to the right, said curve having a radius of 30.00 feet, a central angle of 46 degrees 07 minutes 23 seconds, and a chord distance of 23.50 feet; thence run along the arc of said curve and along said right of way for a distance of 24.15 feet to a point on the Northern-most right of way of Concourse Parkway, (70' R.O.W.); thence turn an interior angle to the left from chord of said curve 133 degrees 52 minutes 38 seconds and run in a Westerly direction along said right of way for a distance of 375.47 feet; thence leaving said right of way turn an interior angle to the left of 104 degrees 03 minutes 54 seconds and run in a Northwesterly direction for a distance of 324.63 feet to a point on the Southern-most right of way of the aforementioned Woods of Riverchase Drive; thence turn an interior angle to the left of 63 degrees 13 minutes 36 seconds and run in a Southeasterly direction along said right of way for a distance of 182.79 feet to the point of beginning of a curve turning to the left, said curve having a radius of 223.97 feet, a central angle of 30 degrees 37 minutes 25 seconds, and a chord distance of 118.29 feet; thence run along the arc of said curve and along said right of way for a distance of 119.71 feet to the point of tangency of said curve; thence run along a line tangent to said curve and along said right of way for a distance of 97.98 feet to the point of beginning of a curve turning to the right, said curve having a radius of 221.11 feet, a central angle of 42 degrees 18 minutes 55 seconds, and a chord distance of 159.61 feet; thence run along the arc of said curve and along said right of way for a distance of 163.30 feet to the POINT OF BEGINNING. Said parcel contains 135,748 square feet or 3.12 acres more or less.



20080508000190170 5/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
05/08/2008 02:17:29PM FILED/CERT