


Prepared by:

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20110629000188690 1/7 \$30.00  
Shelby Cnty Judge of Probate, AL  
06/29/2011 11:00:38 AM FILED/CERT

## SUBORDINATION AGREEMENT

This **SUBORDINATION AGREEMENT** is effective as of March 11, 2011 (this "Agreement") by and among **Estate of William Larry Clayton** (the "Estate"), **Bryant Bank**, an Alabama banking corporation (the "Bank"), and **Shelby Springs, LLC**, an Alabama limited liability company (the "Mortgagor").

William Larry Clayton, deceased, previously made a loan to the Mortgagor in an original principal amount of \$1,000,000.00 (the "Shelby Springs Loan") that is secured by, among other things, a Future Advanced Mortgage dated June 5, 2001 by the Mortgagor in favor of William Larry Clayton and recorded in the Office of the Judge of Probate for Shelby County, Alabama (the "Recording Office") on June 6, 2001 as Instrument 2001-23160 (as amended, the "Shelby Springs Mortgage"), which encumbers certain real property owned by the Mortgagor in Shelby County, Alabama and described in more detail in the Shelby Springs Mortgage (the "Mortgaged Property").

Pursuant to a Term Loan and Security Agreement dated March 11, 2011 between the Borrowers (as hereinafter defined) and the Bank (the "Loan Agreement"), the Bank has made (a) a term loan to Timberline Development, LLC ("Timberline Development") in an original principal amount of \$2,805,797.38 ("Term Loan I"), (b) a term loan to Timberline Investments, LLC ("Timberline Investments") in an original principal amount of \$1,058,059.45 ("Term Loan II") and (c) a term loan to TL Development, LLC ("TL Development") and, together with Timberline Development and Timberline Investments, collectively, the "Borrowers") in an original principal amount of \$1,097,839.74 ("Term Loan III") and, together with Term Loan I and Term Loan II, collectively, the "Loans"). The Loans are secured by, among other things, a Mortgage and Security Agreement dated March 11, 2011 executed by Mortgagor in favor of the Bank (the "Senior Mortgage"), which was recorded in the Recording Office and encumbers the Mortgaged Property.

The Bank agreed to make the Loans to the Borrowers on the condition that the Estate enter into this Agreement and subordinate the Shelby Spring Loan to the Loans as provided herein.

In consideration of the Bank's extension of credit to the Borrowers, the parties hereto hereby agree as follows:

**Subordinated Debt:** All indebtedness of any kind now existing or hereafter contracted owing by Mortgagor to the Estate, including, without limitation, the Shelby Springs Loan, and all renewals, extensions and modifications thereof, are hereinafter referred to as the "Subordinated Debt".

**Subordinated Mortgage.** Any mortgage, deed to secure debt, deed of trust, assignment of leases and/or rents or security agreement securing payment of the Subordinated Debt, including, without limitation, the Shelby Springs Mortgage, and all renewals, extensions and modifications thereof, are hereinafter referred to collectively as the "Subordinated Mortgage".



**Bank Debt:** All indebtedness of any kind now existing or hereafter contracted owing by the Borrowers to the Bank, including, without limitation, the Loans, and all renewals, extensions and modifications thereof, are herein after referred to as the "Bank Debt".

**Agreement to Subordinate:** The Estate and the Mortgagor hereby agree that all Bank Debt shall be superior to the Subordinated Debt. Notwithstanding any provision of the Subordinated Mortgage or the Senior Mortgage to the contrary, any and all liens affecting the Mortgaged Property now, heretofore or hereafter granted by the Mortgagor to, or arising in favor of, the Estate are hereby, and shall at all times hereafter continue to be, subordinated in lien and priority to all liens now, heretofore, or hereafter granted by the Mortgagor to, or arising in favor of, the Bank, notwithstanding the date, time, manner or order of perfection or attachment of such liens or the recording of the instruments and financing statements creating or perfecting such liens (including, without limitation, the Shelby Springs Mortgage and the Senior Mortgage), and notwithstanding the usual application of the priority provisions of the Uniform Commercial Code as in effect in any jurisdiction or any other applicable law or judicial decision of any jurisdiction.

**Payment of Subordinated Debt:** Notwithstanding the subordination provisions contained herein, Mortgagor may repay the Subordinated Debt at any time, and the Estate may accept any payment or satisfaction of any kind on the Subordinated Debt.

**No Limitation on Modification of Bank Debt:** Bank may, without notice to the Estate, 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.

**Further Assurance:** The Mortgagor and the Estate 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 the Bank Debt over the Subordinated Debt as created by this Agreement.

**Termination of Subordination:** This Agreement and the subordination granted herein shall terminate at the earliest to occur of (i) the termination of the Mortgage, (ii) the release of the Mortgaged Property from the lien created by the Mortgage or (iii) the payment in full of the Bank Debt. The Bank Debt shall not be deemed to be paid in full, for purposes of this Agreement, so long as Bank has any obligation with respect to the Bank Debt to make further advances to the Borrowers. Notwithstanding the foregoing, this Agreement and the subordination granted herein shall continue to be effective or be reinstated if any payment of the 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.

**Remedies:** Upon violation of this Agreement by the Estate or the Mortgagor, Bank is entitled to specific performance of this Agreement and the Mortgagor and the Estate 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 the Mortgagor.

**Miscellaneous: Waiver of Notice:** The Estate 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 such unenforceable provision were not written. **Notices:** Any notices, demands or requests shall be

sufficiently given in accordance with the Loan Agreement and other Collateral Documents (as defined in the Loan Agreement). **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 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, 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. **Final Agreement.** This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

[ *signatures appear on next page* ]



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

**THE ESTATE:**

**ESTATE OF WILLIAM LARRY CLAYTON**

Cathy Goff Clayton  
Cathy Goff Clayton, as Co-Personal Representative  
of the Estate of William Larry Clayton, deceased

Delton Lane Clayton  
Delton Lane Clayton, as Co-Personal Representative  
of the Estate of William Larry Clayton, deceased

Diedra Clayton O'Neal  
Diedra Clayton O'Neal, as Co-Personal Representative  
of the Estate of William Larry Clayton, deceased

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Cathy Goff Clayton, whose name as a Co-Personal Representative of the Estate of William Larry Clayton, 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, she, in such capacity and with full authority, executed the same voluntarily for and as the act of said estate.

Given under my hand and official seal the 22nd day of June, 2011.

Law Pierce  
Notary Public

[NOTARIAL SEAL]

My commission expires 11-3-2012

[ signatures continue on next page ]

STATE OF ALABAMA

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SHELBY COUNTY

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I, the undersigned, a notary public in and for said county in said state, hereby certify that Delton Lane Clayton, whose name as a Co-Personal Representative of the Estate of William Larry Clayton, 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, in such capacity and with full authority, executed the same voluntarily for and as the act of said estate.

Given under my hand and official seal the 22nd day of June, 2011.

Law Pierce

Notary Public

[NOTARIAL SEAL]

My commission expires 11-3-2012

STATE OF ALABAMA

)

:

SHELBY COUNTY

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Diedra Clayton O'Neal, whose name as a Co-Personal Representative of the Estate of William Larry Clayton, 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, she, in such capacity and with full authority, executed the same voluntarily for and as the act of said estate.

Given under my hand and official seal the 22nd day of June, 2011.

Law Pierce

Notary Public

[NOTARIAL SEAL]

My commission expires 11-3-2012

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THE BANK:

**BRYANT BANK**

*Brian Ethridge*

By: Brian Ethridge  
 Its: Executive Vice President

STATE OF ALABAMA )  
 :  
 JEFFERSON COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Brian Ethridge, whose name as Executive Vice President of Bryant 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 instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal the 1<sup>st</sup> day of June, 2011.

*Heather Michelle Chen*  
 Notary Public

[NOTARIAL SEAL]

My commission expires \_\_\_\_\_

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
**MY COMMISSION EXPIRES: Nov 17, 2014**  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS**

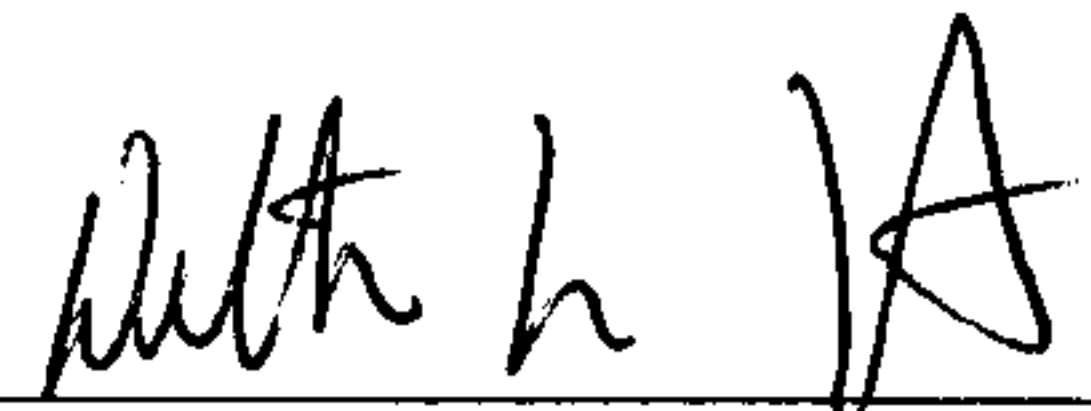
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**THE MORTGAGOR:**

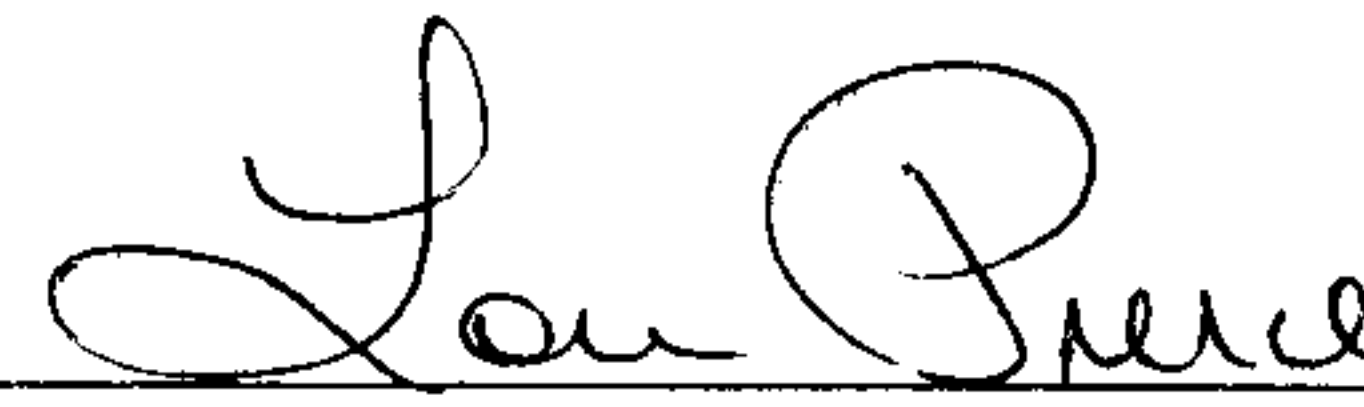
**SHELBY SPRINGS, LLC**

  
 By: Delton L. Clayton  
 Its: Manager

STATE OF ALABAMA )  
 :  
 SHELBY COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Delton L. Clayton, whose name as Manager of the Shelby Springs, LLC, 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 instrument, she, in such capacity 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 the 22nd day of June, 2011.

  
 Notary Public

[NOTARIAL SEAL]

My commission expires 11-3-2012