

Return to: Landrum & Landrum  
Name: Phil Landrum  
Address: Post Office Box 400  
Jasper, Georgia 30143

Tax Parcel(s): 28-4-19-0-000-004.001  
28-4-19-0-000-004.002  
28-4-19-0-000-004.003  
28-4-19-0-000-004.004  
28-4-19-0-000-004.005  
28-4-19-0-000-004.006

### MORTGAGE SUBORDINATION

Subordination Date: December 26<sup>th</sup>, 2012  
Mortgage Holder: Eugene Borgosz  
Mortgage Information:  
Date of Mortgage: November 28, 2011  
Recording Information: Inst. No. 20111213000376930  
Land Owners: AFK Land, LLC  
Conservation Easement Holder: Pelican Coast Conservancy, LLC  
Address for Notices: 634 South Main Street, Jasper, Georgia 30143



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INTENDING TO BE LEGALLY BOUND, the Holder identified above covenants and agrees as follows for the benefit of the Owners identified above and the Conservation Easement Holder identified above.

### **1. Consent**

Holder consents to the further encumbrance of the Property identified above by a conservation easement (the "Conservation Easement") in favor of Conservation Easement Holder ("CE Holder").

### **2. Sale Subject to Conservation Easement**

Holder confirms and agrees that the Conservation Easement shall survive any sale or other execution upon the Mortgage. The term "Mortgage" when used in this Subordination includes all documents and instruments secured by the Mortgage. No sale of the Property by Holder, or by, through or under the powers vested in Holder pursuant to the Mortgage, shall occur except subject to the Conservation Easement. This covenant applies not only to a sheriff's sale or other judicial sale of the Property on account of a default or other violation of the Mortgage but also to any sale that directly or indirectly benefits the Holder as a creditor of Owner or a secured creditor with respect to the Property. In furtherance of, but without limiting, this covenant, Holder agrees as follows:


- (a) CE Holder must not be named as an interest to be divested in any such sale.
- (b) Any such sale must be advertised as being held subject to the Conservation Easement.
- (c) CE Holder has the right to post signage on the Property or otherwise inform the public that any sale or other transfer of the Property is subject to the Conservation Easement.

### **3. Proportionate Value**

Holder acknowledges that the Conservation Easement vests in CE Holder the right to receive the Proportionate Value of any proceeds of condemnation or other event terminating or extinguishing the Conservation Easement upon all or any part of the Property (a "taking"). The Proportionate Value is the ratio, expressed as a percentage, of the value of the Conservation Easement as established by appraisal compared to the value of the Property as if it were not eased. Notwithstanding anything to the contrary contained in the Mortgage, Holder agrees that proceeds of a taking, to the extent attributable to land only and not improvements, (net of costs of collection) shall be divided as and when received so that CE Holder receives the Proportionate Value and Holder (or Owners, as the case may be) receives the balance.

### **4. Subordination**

This Subordination is intended to constitute the subordination of the Mortgage, and be interpreted as such, for purposes of qualifying the Conservation Easement as a Qualified Conservation Contribution under Section 170(h) of the Internal Revenue Code and applicable regulations. Section 1.170A-14(g)(2) of the Treasury Regulations requires that, in order for the Land Owner's donation of the Easement to be treated as a "qualified conservation contribution," the Holder of any Mortgage outstanding on property subject to such a donation must agree to subordinate its rights in the property to the right of the qualified organization to enforce the

  
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conservation purposes of the donation in perpetuity. The Land Owner has asked that the Holder subordinate its rights in the Property to the Easement in order to comply with these regulatory requirements, and in order to insure that the Easement will, in fact, protect the Property in perpetuity.

Based on the paragraph above, Holder does hereby subordinate the Mortgage to the Conservative Easement. No sale of the Property by Holder, or by, through or under the powers vested in Holder pursuant to the Mortgage, shall occur except subject to the Easement. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished and remains in full force and effect.

#### 5. Notices

Holder agrees to use reasonable efforts to notify CE Holder, at its address for notices identified above, of its intent to foreclose or otherwise sell or transfer the Property; provided, however, Holder's failure to do so shall not prevent Holder from exercising its rights and remedies under the Mortgage or Loan Documents (as defined in the Mortgage).

#### 6. Binding Effect

This Subordination is both a contract and a covenant running with the land. Holder agrees that this Subordination is binding upon Holder and its successors and assigns as owners of the Property or holder of any interest therein by, through, or under Holder. This includes any persons who at any time may own, or hold an interest in, the Property by, through or under Holder including any sale held on account of the Mortgage or the interest of Holder as a secured creditor with respect to the Property.

#### 7. Consideration

Holder confirms that it has received legally sufficient consideration for this Subordination and understands that Owners and CE Holder are relying upon this Subordination in granting and accepting the Conservation Easement.

INTENDING TO BE LEGALLY BOUND, Holder has signed and delivered this Subordination as of the date of execution of the Conservation Easement.

  
EUGENE BORGOSZ


Signed, sealed and delivered  
in the presence of:

  
Witness

Notary Public

(NOTARY SEAL)

Commission Expiration Date: \_\_\_\_\_

  
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