

FOR RECORDER'S USE ONLY

PREPARED BY:

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Merrill Lynch Business Financial
Services Inc.
222 North LaSalle Street
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Chicago, Illinois 60601

Inst # 2001-46270

10/26/2001-46270
10:40 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
2005 HEL

TENANT SUBORDINATION AGREEMENT

MADE BY

HOLCOMBE HOME CENTER, INC.
TENANT

FOR THE BENEFIT OF

MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.
MLBFS



TENANT SUBORDINATION AGREEMENT (Agreement") dated as of September 5, 2001 made by **HOLCOMBE HOME CENTER, INC.** ("Tenant") for the benefit of **MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.** ("MLBFS").

Pursuant to one or more leases (as amended, extended or restated from time to time, and whether oral or written, the "Lease"), Tenant has leased from **JOHN H. HOLCOMBE AND NANCY C. HOLCOMBE, JOSEPHINE R. HOLCOMBE AND JOHN HOWARD HOLCOMBE** (Collectively, "Landlord") all or a portion of the real property and improvements thereon commonly known as 50 WHEAT STREET, Harpersville, AL 35078, and more fully described on Exhibit A attached hereto (the "Property"). Landlord has requested MLBFS to provide one or more credit facilities to or for the benefit of Landlord or an affiliated person or entity, which credit facilities will be secured by a mortgage upon the Property, and MLBFS has agreed to provide such credit facilities subject to, among other conditions, this Agreement being executed and delivered by Tenant.

Accordingly, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

(1) **Representations Regarding Lease.** Tenant represents and warrants to MLBFS that (a) Tenant is in continuous possession of the premises leased under the Lease; (b) Tenant is, and, to the knowledge of Tenant, the Landlord is in full compliance with the terms and provisions of the Lease; (c) no default or event of default under the Lease exists or would exist with the giving of notice by one party to the other and/or the passage of time; (d) Tenant has no offsets or defenses to Tenant's performance under the Lease; (e) Tenant does not have the option to purchase the Property or any part thereof; (f) no rentals are accrued and unpaid under the Lease or have been prepaid by Tenant; and (g) Tenant has not assigned, sublet or otherwise transferred or disposed of any interest in the Lease or the premises leased under the Lease.

(2) **Subordination of Lease.** Tenant agrees that all of Tenant's rights, title and interests in and under the Lease are and shall be subordinate to the lien and rights, title and interests of MLBFS in and to the Property, in the same manner as if the Lease had been entered into after the execution, delivery and recording of MLBFS' mortgage on the Property. Without limiting the foregoing, Tenant agrees that in connection with any foreclosure of MLBFS' mortgage on the Property, MLBFS shall have the right to terminate the Lease and Tenant's rights thereunder.

(3) **Attornment.** Notwithstanding the foregoing subordination, at the election of MLBFS at the time of any foreclosure of MLBFS' mortgage, the Lease may be made prior to the lien of MLBFS' mortgage. In such event, Tenant agrees that: (a) it will attorn to MLBFS or any purchaser of the Property at a foreclosure sale as its new landlord, and (b) the Lease will continue in full force and effect as a direct lease between the Tenant and MLBFS or such purchaser, for the remaining term and upon all other terms and conditions set forth in the Lease; provided, however, that in no event will MLBFS any purchaser of the Property at a foreclosure sale be: (i) liable for any act or omission of Landlord; (ii) subject to any offsets or deficiencies which the Tenant might be entitled to assert against Landlord; or (iii) bound by any payment of rent or additional rent made by the Tenant to Landlord for more than one month in advance of such foreclosure.

(4) **Amendment; Modifications.** This Agreement may not be amended or modified other than by a written instrument signed by both MLBFS and Tenant, or by their respective successors in interest.

(5) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of MLBFS and Tenant and their respective successors and assigns.

(6) **Warranty of Authority.** Each party signing this Agreement on behalf of Tenant personally warrants to MLBFS that he or she has the full right, power and authority to do so, and that by signing this Agreement is binding Tenant hereto.

EXHIBIT A
ATTACHED TO AND PART OF TENANT SUBORDINATION AGREEMENT MADE BY
HOLCOMBE HOME CENTER, INC. FOR THE BENEFIT OF MERRILL LYNCH BUSINESS
FINANCIAL SERVICES INC.

**Record Owner of Property: JOHN H. HOLCOMBE AND NANCY C. HOLCOMBE,
JOSEPHINE R. HOLCOMBE AND JOHN HOWARD HOLCOMBE**

**Common Address of Property: 50 WHEAT STREET
Harpersville, AL 35078**

Legal Description of Property: See attached Exhibit

EXHIBIT "A"

PARCEL I:

Commence at the Northwest corner of the NE $\frac{1}{4}$ of Section 33, Township 19 South, Range 2 East, Shelby County, Alabama, and proceed South $87^{\circ}22'43''$ East along the North boundary of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 33 for 580.18 feet; thence South $11^{\circ}50'46''$ West 18.44 feet; thence South $12^{\circ}13'38''$ West 91.60 feet to the point of beginning of herein described parcel of land; thence South $14^{\circ}44'47''$ West 27.68 feet; thence South $0^{\circ}03'47''$ West 184.49 feet; thence South $47^{\circ}09'10''$ East 218.37 feet; thence South $86^{\circ}43'03''$ East 439.90 feet; thence South $87^{\circ}10'30''$ East 626.38 feet; thence North $33^{\circ}32'42''$ East 111.64 feet to a point on the Westerly right of way boundary of U.S. Highway 280 (120'); thence North $50^{\circ}14'09''$ West along said road right of way for 532.25 feet; thence South $2^{\circ}51'35''$ West 128.78 feet; thence North $86^{\circ}59'56''$ West 259.70 feet; thence North $3^{\circ}23'43''$ East 54.66 feet; thence South $87^{\circ}27'26''$ East 13.17 feet; thence North $2^{\circ}50'11''$ East 199.11 feet to a point on the South right of way boundary of the Glaze Ferry Road (45'); thence along said road right of way as follows: thence North $88^{\circ}35'14''$ West 150.13 feet; thence North $87^{\circ}48'38''$ West 143.85 feet; thence North $85^{\circ}34'59''$ West 116.99 feet; thence South $11^{\circ}58'01''$ West 200.09 feet; thence North $82^{\circ}58'20''$ West 180.07 feet, to the point of beginning.

The above described parcel of land is located in the NW $\frac{1}{4}$ - NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ - NE $\frac{1}{4}$ of Section 33 and the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 28, Township 19 South, Range 2 East, Shelby County, Alabama.

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