

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is executed as of the 29th day of JULY, 2003 between COMPASS BANK (hereinafter called "**Mortgagee**") and PARTY CITY OF BIRMINGHAM, LLC, an Alabama limited liability company (hereinafter called "**Tenant**").

WITNESSETH:

WHEREAS, Mortgagee has made or is about to make a loan to KIMCO BIRMINGHAM, L.P. (hereinafter called "**Landlord**") secured by a mortgage or deed of trust (hereinafter called the "**Mortgage**") covering a parcel of land owned by Landlord described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes (hereinafter called the "**Mortgaged Property**"); and

WHEREAS, by a certain lease heretofore entered into between Landlord (or its predecessor in title) and Tenant, dated as of June 18, 2003 (hereinafter collectively called the "**Lease**"), Landlord leased to Tenant a portion of the Mortgaged Property (said portion being hereinafter called the "**Demised Premises**"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, Mortgagee is unwilling to make said loan to Landlord unless the Lease is subordinate to the lien of the Mortgage; and

WHEREAS, the Lease provides that the Lease shall become subject and subordinate to the lien of a mortgage placed upon Landlord's interest in the Demised Premises if and when a non-disturbance agreement is entered into with respect to such mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the lien of the Mortgagee and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease.
2. Tenant covenants and agrees with Mortgagee that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, (as may be modified and extended) subject to the provisions of this Agreement.
3. Tenant certifies that the Lease is presently in full force and effect.
4. Mortgagee agrees that so long as the Lease shall be in full force and effect:
 - (a) Except as required by applicable law governing foreclosure and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby;
 - (b) The possession by Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or

the enforcement of any rights under the Mortgage or any other documents held by the Mortgagee, or by any judicial sale or execution or other sale of the Mortgaged Property, or by any deed given to the Mortgagee by any other documents or as a matter of law, or (any default under the Mortgage or the bond or note or other obligation secured thereby.

5. Mortgagee hereby acknowledges and agrees that all fixtures and equipment whether owned by Tenant or any subtenant or leased by Tenant and installed in or on the Leased Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant and may, subject to the provisions of the Lease, be removed by Tenant at any time. In no event (including a default under the Lease or Mortgage) shall Mortgagee have any liens, rights or claims in Tenant's fixtures and equipment, whether or not all or any part thereof shall be deemed fixtures; and Mortgagee expressly waives all rights of levy, distraint, or execution with respect to said fixtures and equipment arising out of the Mortgage.

6. If the Mortgagee shall become the owner of the Mortgaged Property by reason of foreclosure of the Mortgage or otherwise, or if the Mortgaged Property shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as tenant thereunder, and the then owner of the Mortgaged Property, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

- (a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the Lease;
- (b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform;
- (c) Such new owner shall not be liable for any act, omission or conditions of any prior landlord (including the Landlord) which exist or have accrued prior to the date of foreclosure;
- (d) Such new owner shall not be liable for the construction of any initial improvements required of Landlord under the Lease in the event Mortgagee or any such new owner acquires title to the Demised Premises prior to full completion and acceptance by Tenant of improvements required under the Lease; and
- (e) Notwithstanding any provision herein or in the Lease to the contrary, if any judicial action is brought by Tenant to enforce an obligation of such new owner arising under the Lease and such action results in a money judgment against such new owner, Tenant shall satisfy such judgment only by execution or levy against such new owner's Interest in the Mortgaged Property (as hereinafter defined) and no other assets of such new owner shall be subject to levy, execution or other procedures for the satisfaction of Tenant's judgment or decree. For purposes of the foregoing, such new owner's Interest in the Mortgaged Property shall include (to the extent then held by such owner) rents, proceeds of sale, casualty, rent loss and title insurance proceeds and settlements, and condemnation awards.

7. Tenant shall give Mortgagee written notice of any default by Landlord under the Lease. Mortgagee shall have the same period of time provided Landlord under the Lease within which to cure such default.

8. Landlord and Tenant shall not enter into any agreement that provides for a termination or surrender of the Lease (except as provided in the Lease), reduction in rent, or any other material modification of the Lease which affects the term of the Lease or makes the Landlord's obligations thereunder more onerous, without the written consent of Mortgagee.

9. Tenant shall not pay an installment of rent more than thirty (30) days prior to the due date.

10. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as set forth herein, or at such other address as Mortgagee may designate by notice, or (b) if to Tenant, at the address of Tenant as set forth herein, or at such other address as Tenant may designate by notice.

11. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled, except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

13. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

14. **NO UNWRITTEN AGREEMENTS.** THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MORTGAGEE:

COMPASS BANK
8080 N. Central Expressway, Suite 370
Dallas, Texas 75206
Attention: Mr. Robert H. Shore

By: [Signature]
Name: _____
Title: Robert H. Shore, Vice President

TENANT:

PARTY CITY OF BIRMINGHAM, LLC,
400 Commons Way
Rockaway, New Jersey 07866

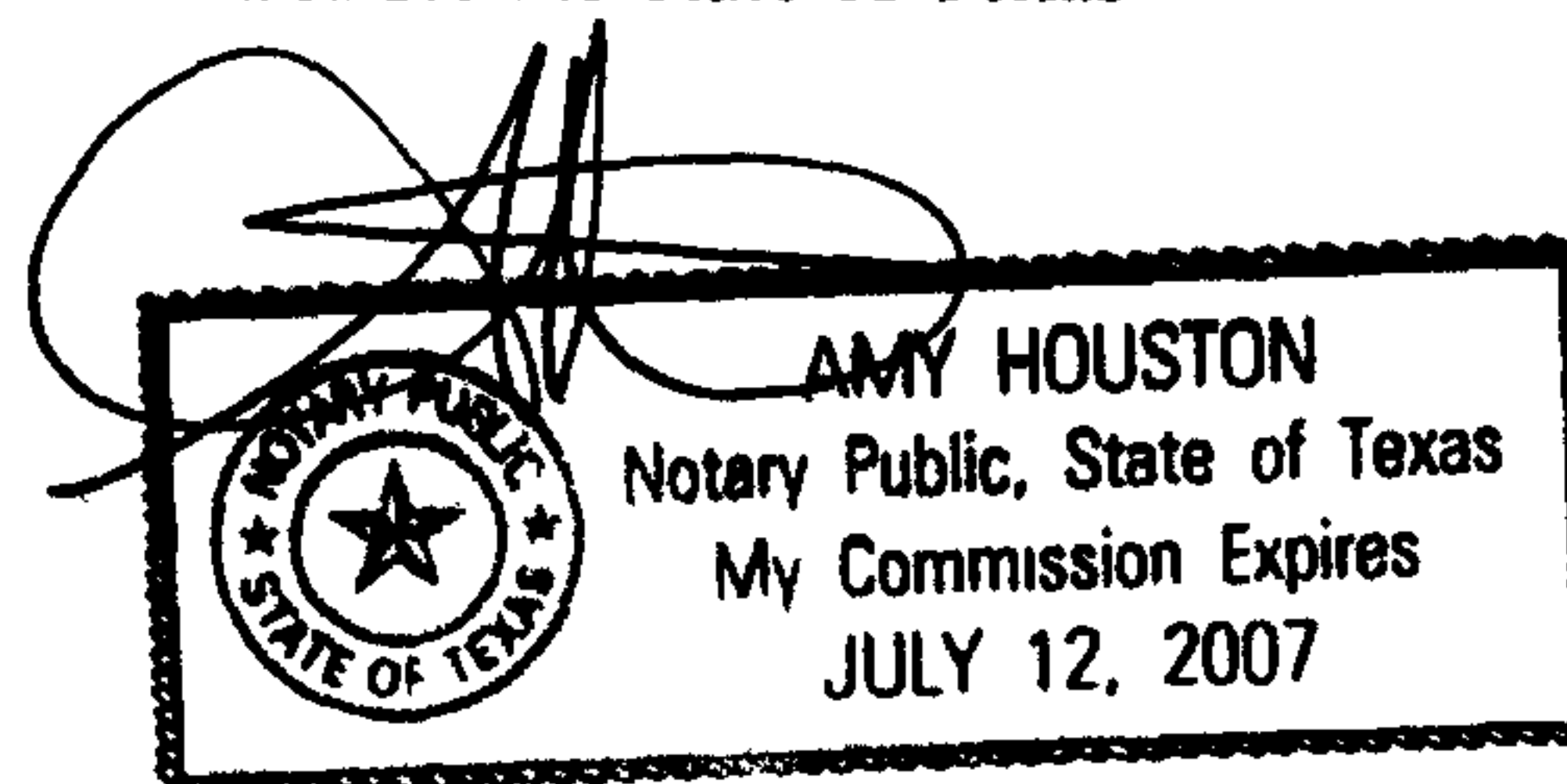
By: Stanley Rubenstein
Name: STANLEY RUBENSTEIN
Title: MANAGER

THE STATE OF TEXAS :
COUNTY OF Dallas :

BEFORE ME, the undersigned authority, in and for said County and State, on this day personally appeared Robert H. Shore of COMPASS BANK, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28 day of JULY, 2003.

Notary Public in and for the State of Texas



THE STATE OF Alabama ;
COUNTY OF Jefferson ;

BEFORE ME, the undersigned authority, in and for said County and State, on this day personally appeared Stanley Rubenstein of PARTY CITY OF BIRMINGHAM, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of May, 2003.

Marcia Y. Pidcock

Notary Public in and for
the State of Alabama

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr 8, 2005
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

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LEGAL DESCRIPTION OF REAL PROPERTY

Proposed Lot 1 of Cypress Equities Addition, an addition to the City of Hoover, according to the plat recorded in _____, Page _____ of the Plat Records of Shelby County, Alabama.

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West and run in a Southerly direction along the west line for a distance of 165.34 feet; thence turn an exterior angle of 90 degrees 17 minutes 26 seconds to the right and run in an Easterly direction for a distance of 419.70 feet; thence turn an interior angle of 75 degrees 55 minutes 04 seconds to the left and run in a Southwesterly direction for a distance of 483.03 feet; thence turn an exterior angle of 165 degrees 36 minutes 34 seconds to the right and run in a Southerly direction for a distance of 152.38 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds to the left and run in a Westerly direction for a distance 251.13 feet; thence turn an exterior angle of 103 degrees 37 minutes 16 seconds to the right and run in a Southwesterly direction for a distance of 138.35 feet; thence turn an exterior angle of 194 degrees 10 minutes 07 seconds to the right and run in a Southwesterly direction for a distance of 266.47 feet to a point on a curve to the right, said curve having a radius of 3124.05 feet, a central angle of 00 degrees 44 minutes 02 seconds, an interior angle of 88 degrees 33 minutes 51 seconds to the left to chord for a chord distance of 40.01 feet; thence run along arc of said curve for a distance of 40.01 feet; thence turn an interior angle of 91 degrees 26 minutes 09 seconds to the left from chord and run in a Northeasterly direction for a distance of 189.66 feet; thence turn an exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 46.45 feet; thence turn a exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 673.90 feet; thence turn an interior angle of 180 degrees 41 minutes 41 seconds to the left and run in a Northwesterly direction for a distance of 19.70 feet to a point on the Easternmost right of way line of Cahaba Beach Road; thence turn an interior angle of 89 degrees 49 minutes 43 seconds to the left and run in a Northeasterly direction along said right of way for a distance of 42.66 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 1220.03 feet, a central angle of 12 degrees 22 minutes 05 seconds, an interior angle of 173 degrees 53 minutes 33 seconds to the left to chord for a chord distance of 262.85 feet; thence run along arc of said curve and along said right of way for a distance of 263.36 feet; thence turn an interior angle of 173 degrees 43 minutes 12 seconds to the left from chord and run in a Northeasterly direction along said right of way for a distance of 289.69 feet to the point of commencement of a non-tangent curve to the left, said curve having a radius of 915.84 feet, a central angle of 10 degrees 04 minutes 28 seconds, an exterior angle of 174 degrees 57 minutes 52 seconds to the right to chord for a chord distance of 160.83 feet; thence run along arc of said curve and along said right of way for a distance of 161.03 feet to a point on the North line of the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West; thence leaving said right of way, turn an interior angle of 122 degrees 20 minutes 33 seconds to the left from chord and run in an Easterly direction along the North line for 242.13 feet to the POINT OF BEGINNING. Said parcel contains 638,712 square feet or 14.66 acres more or less.