

SUBORDINATION,  
NON-DISTURBANCE AND  
ATTORNMENMENT AGREEMENT

**#1074 - Crow's Corner, Helena, Alabama**

THIS AGREEMENT made this 10<sup>th</sup> day of May, 2004, among State Farm Life Insurance Company, (hereinafter referred to as "Lender"), Publix Alabama, LLC, an Alabama limited liability company, (hereinafter referred to as "Tenant"), and Crow Mills, LLC, (hereinafter referred to as "Landlord").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have entered into a certain lease (hereinafter referred to as the "Lease") dated 11/27/2002, relating to premises (hereinafter referred to as the "Premises") located or to be located in a shopping center constructed or to be constructed upon the real property described in Exhibit "A" attached hereto and by this reference made a part hereof: and which was modified by an amendment dated 06/09/2003.

WHEREAS, Lender has made or has committed to make a loan to Landlord secured or to be secured by a mortgage or security deed (hereinafter referred to as the "Mortgage") and an assignment of leases and rents from Landlord to Lender covering the Premises; and

WHEREAS, Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage held by Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby is and shall continue to be subject and subordinate in all respects to the Mortgage and to any advance-ments made thereunder and to any renewals, modifications, consolidations, replacements and extensions thereof.

2. Lender does hereby agree with Tenant that, so long as Tenant, is not in default under the Lease and complies with and performs its obligations under the Lease: (i) Lender will take no action which will interfere with or disturb Tenant's possession or use of the Premises or other rights under the Lease; (ii) in the event of any foreclosure sale pursuant to the Mortgage, conveyance in lieu of foreclosure or otherwise, said sale or conveyance shall be made subject to the Lease and this Agreement; and (iii) in the event Lender or any other person or entity becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, the Premises shall be subject to the Lease and Lender or any such other new owner shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof.

3. Tenant does hereby agree with Lender that, in the event Lender, or any other person or entity becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant agrees, from and after such event, to attorn to and recognize Lender or any other person or entity as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to attorn to: (i) Lender when in possession of the premises; (ii) a receiver appointed in an action to foreclose the Mortgage; or (iii) any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure. This provision shall operate automatically without further acknowledgment or instrument of attornment.

4. So long as the Mortgage remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a copy of all notices required to be given to the Landlord by Tenant, including, without limitation, notices pursuant to which Tenant proposes to abate or reduce the rental payable under the Lease or to terminate or cancel the Lease, under and pursuant to the terms and provisions of the Lease and that no such notice to Landlord shall be effective unless a copy of such notice is also mailed to Lender. At any time before the rights of the Landlord shall have been forfeited or adversely affected because of any default of the Landlord, or within the time permitted the Landlord for curing any default under the Lease as therein provided, Lender may, but shall have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the Landlord by the terms of the Lease; and all payments so made and all things so done and performed by Lender shall be as effective to prevent the rights of the Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by the Landlord.

5. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease as security for said loan, and Tenant hereby expressly consents to such assignment.

6. Any provision of this Agreement to the contrary notwithstanding, the Lender shall have no obligation, or incur any liability, with respect to the erection and completion of the building in which the premises demised by the Lease are or are to be located or for the completion of such premises or any improvements for Tenant's use and occupancy.

7. Whenever notice is required or permitted under this Agreement, it shall be in writing and shall be deemed to be properly given upon receipt or refusal if sent by U. S. Postal Service, postage prepaid, by certified or registered mail, return receipt requested, or if personally delivered by hand or sent by nationally recognized overnight courier service. For purposes of this Agreement, delivery of a notice to an address from which the recipient has moved but failed to notify the other parties of modification of such address as hereinafter provided shall be deemed to constitute refusal of such notice by the intended recipient. All notices required or permitted under this Agreement shall be delivered to the party entitled thereto at the following addresses:

Lender:	State Farm Life Insurance Company
	One State Farm Plaza, E-7
	Bloomington, IL 61710
	Attn: Investment Department - Mortgages



Tenant: Publix Alabama, LLC  
3300 Airport Road  
Lakeland, FL 33811-3002  
Attn: John Frazier  
President

With a copy to: Hahn, McClurg, Watson, Griffith  
& Bush, P.A.  
C. V. McClurg Building  
101 South Florida Avenue  
Lakeland, Florida 33801  
Attn: John R. Griffith, Esq.

With a copy to: McClure & McClure  
1708 Peachtree Street, N. W.  
Suite 450  
Atlanta, GA 30309  
Attn: Jay McClure, Esq.

Landlord: Crow Mills, LLC  
2012 6<sup>th</sup> Avenue North  
Birmingham, AL 35203-2781  
Attn: Helen Crow Mills

The foregoing addresses may be modified by delivery of written notice of such modification to the parties entitled thereto, which written notice shall be delivered and deemed effective as set forth herein.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease.

9. Any provision of this Agreement to the contrary notwithstanding:

- (a) except as provided in subparagraph (b) below, neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be liable to Tenant for any act or omission of any prior landlord (including the Landlord);
- (b) neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord) of which Lender had not been notified pursuant to Paragraph 4 hereof;
- (c) neither Lender nor any other party acquiring title to the Premises by foreclosure or conveyance in lieu of foreclosure or otherwise shall be bound by any rent or additional rent which the Tenant might have paid to any prior landlord (including the Landlord) more than thirty (30) days prior to the due date of such payment; and
- (d) Lender shall not be bound by any amendment or modification of the Lease (except those amendments or modifications entered into prior to the date of this Agreement) made without its consent, which modifies any economic term of the Lease or affects in any way the length of the term of the Lease.

10. Any provision of the Mortgage to the contrary notwithstanding, with regard to the property damage insurance required pursuant to the terms and provisions of the Lease, or with regard to condemnation proceeds paid with respect to the Premises, Landlord and Lender agree that all insurance proceeds or condemnation proceeds paid or payable with respect to the Premises and received by Lender shall be applied to and paid for reconstruction or repair of improvements, if either Landlord or Tenant elects or is obligated to restore or repair such improvements, as set forth in and subject to the terms and conditions of the Lease.

11. This Agreement shall be governed by and constructed in accordance with the laws of the State of Alabama.

12. Neither the Mortgage nor any other security instrument executed in conjunction therewith shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs, or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the premises regardless of the manner or mode of attachment thereof.

13. Nothing contained in this Agreement shall be deemed to modify or amend the terms and provisions of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

**LENDER:**

[Signature]  
Witness

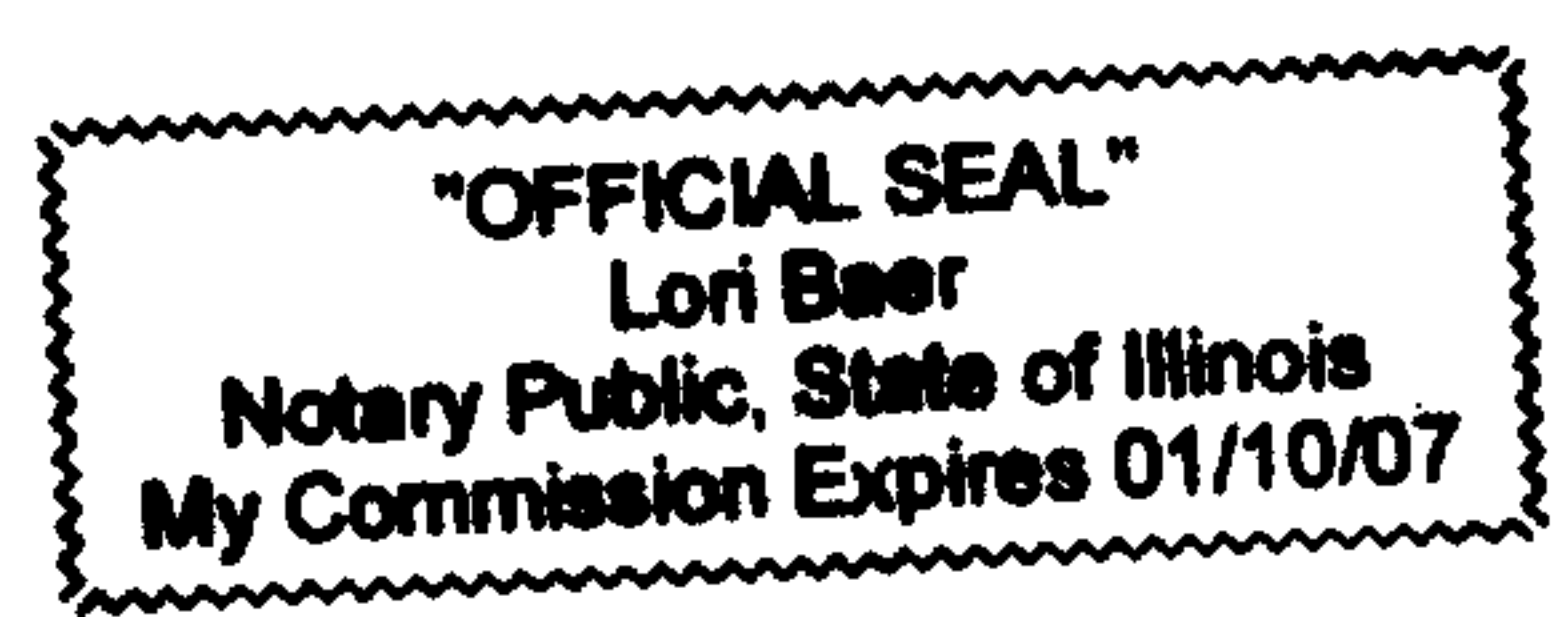
State Farm Life Insurance Company,  
an Illinois corporation

By: [Signature]  
Name: John R. Higgins  
Title: Investment officer

By: [Signature]  
Name: Larry Bottunda  
Title: Assistant Secretary

STATE OF ILLINOIS  
COUNTY OF MCLEAN

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2004, by John R. Higgins, Investment officer and Larry Bottunda, Assistant Secretary of State Farm Life Insurance Company, an Illinois corporation, on behalf of said corporation, who is personally known to me.



[Signature]  
Notary Public State of Illinois  
LORI BAER  
Printed Name                      Commission #  
1/10/07  
Commission Expiration Date

**TENANT**

Publix Alabama, LLC  
an Alabama limited liability company

Vicki Brekke  
Witness  
**VICKI BREKKE**

By: [Signature]  
John Frazier, its President

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 2nd day of March, 2004, by John Frazier, President of PUBLIX ALABAMA, LLC, an Alabama limited liability company, on behalf of said company, who is personally known to me.

[Signature]  
Notary Public



Lisa Marie Clarke  
MY COMMISSION # CC990383 EXPIRES  
December 26, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.

Notary Stamp

**LANDLORD:**

CROW MILLS, LLC  
an Alabama limited liability company

By: [Signature]  
Name: Helen Crow Mills  
Title: President

Janice F. Kent  
Witness

STATE OF ALABAMA  
COUNTY OF Jefferson

The foregoing instrument was acknowledged before me this 16<sup>TH</sup> day of MARCH, 2004, by HELEN CROW MILLS, PRESIDENT of CROW MILLS, LLC a corporation, on behalf of said corporation, who is personally known to me.

[Signature]  
Notary Public State of ALABAMA

JANICE F. KENT  
Printed Name Commission #

8-12-2005  
Commission Expiration Date



STORE NO. : \_\_\_\_\_  
SITE: CR 91 AND CR 17, HELENA,  
SHELBY COUNTY, ALABAMA  
SHOPPING  
CENTER: CROW'S CORNER  
STOREROOM: 44,840 Square Feet

## EXHIBIT "A"

### Shopping Center Tract Legal Description

A parcel located in the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 21, Township 20 South, Range 3 West of the City of Helena, Shelby County, Alabama and being more particularly described as follows:

Commence at the Northwest corner, also known as the Point of Beginning, of Lot 1, Block 3 according to the survey of Shelena Estates as recorded in Map Book 4, Page 25 in the office of the Judge of Probate of Shelby County. Thence travel north along the east boundary of Benton Street a distance of 46.91 feet to the South right-of-way line of Shelby County Road #91; thence turn a interior angle  $100^{\circ}05'30''$  and run in a Easterly direction along said right-of-way for a distance of 111.42 feet; thence turn an interior angle  $181^{\circ}23'29''$  and run in an Easterly direction for a distance of 90.82 feet to the beginning of a curve to the left having a radius of 1,171.15 feet, interior angle of  $28^{\circ}16'44''$ , arc length of 578.03 feet; thence turn an interior angle to the chord of said curve  $193^{\circ}40'25''$  and run along said chord for a distance of 572.18 feet; thence turn an interior angle from chord  $117^{\circ}08'03''$  and run in a Southerly direction for a distance of 159.32 feet; thence turn an interior angle  $41^{\circ}54'10''$  and run in a Westerly direction for a distance of 149.97 feet; thence turn an interior angle  $269^{\circ}57'49''$  and run in a Southerly direction for a distance of 100.02 feet; thence turn an angle  $269^{\circ}59'21''$  and run in an Easterly direction for a distance of 150.11 feet; thence turn an angle  $90^{\circ}05'22''$  and run in an Southerly direction for a distance of 259.95 feet; thence turn an angle  $110^{\circ}08'50''$  and run in an Westerly direction for a distance of 463.29 feet; thence turn an interior angle  $179^{\circ}30'$  and run in an Westerly direction for a distance of 96.10 feet; thence turn an interior angle  $164^{\circ}59'00''$  and run in an Westerly direction for a distance of 89.50 feet; thence turn an interior angle  $172^{\circ}44'00''$  and run in an Westerly direction for a distance of 50.00 feet; thence turn an interior angle  $90^{\circ}00'00''$  and run in a Northerly direction for a distance 400.00 feet; thence turn an interior angle  $270^{\circ}00'00''$  and run in a Westerly direction for a distance of 105.00' to the Point of Beginning. Said Parcel contains 7.0 acres more or less.