

Prepared by, and after recording, return to:  
Vinson & Elkins L.L.P.  
Attn: Glenn Koury  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201

## **MEMORANDUM OF POST-CLOSING CONSTRUCTION AND LEASING MATTERS**

This Memorandum of Post-Closing Construction and Leasing Matters is executed as of June 23, 2004, between **KIMCO BIRMINGHAM L.P.**, an Alabama limited partnership ("**Seller**"), and **THIRD CREEK, L.L.C.**, a Missouri limited liability company, **MATTHIAS D. RENNER FAMILY, L.L.C.**, a Missouri limited liability company, and **KENNETH J. WEBER FAMILY, L.L.C.**, a Missouri limited liability company (collectively, "**Purchaser**").

### **SELLER AND PURCHASER HEREBY GIVE NOTICE AS FOLLOWS:**

1. **Purchase and Sale Agreement.** On the date hereof, Seller has conveyed to Purchaser certain improved real property known as Inverness Heights Shopping Center located in Shelby County, Alabama, as described on Exhibit A hereto (the "**Property**"), pursuant to a Purchase and Sale Agreement dated May 28, 2004, between Seller and Purchaser (such Purchase and Sale Agreement and any amendments thereto being herein referred to as the "**Purchase Agreement**").

2. **Construction Matters; Access to Property; Leasing.** Pursuant to the Purchase Agreement, construction of the improvements (the "**Improvements**") that are part of the Property and the leasing of the Improvements are ongoing as of the date hereof, and the closing of the sale of the Property to Purchaser has been consummated notwithstanding the incompleteness of the construction of the Improvements or status of the leasing thereof. Article 12 and Article 13 of the Purchase Agreement set forth, among other things, the agreement of Seller and Purchaser regarding the completion of the Improvements and the leasing of the Improvements following the closing of the sale of the Property to Purchaser. Subject to the rights of tenants in possession under their respective leases, at all times from and after the date hereof, Seller, its contractors, subcontractors, agents, employees and representatives shall have, and Purchaser hereby grants to Seller and such other parties, the full unrestricted right and license to enter the Property for purposes of completing the construction of the Improvements, including, without limitation, vehicular and pedestrian ingress and egress and the right to store construction materials and equipment thereon.

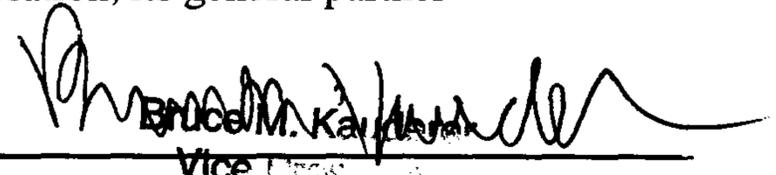
3. **Purpose of Memorandum; Governing Law.** This Memorandum is executed for the purpose of recordation and to provide notice of the rights of Seller and Purchaser under the Purchase Agreement regarding the completion of the Improvements and the leasing of the Improvements and shall neither alter nor affect in any way the rights and obligations of Seller and Purchaser under the Purchase Agreement. In the event of any inconsistency between this Memorandum and the terms of the Purchase Agreement, the terms of the Purchase Agreement shall control. This Memorandum shall be governed by the laws of the State of Alabama.

[Signature pages follow this page]

[Seller's Signature Page]

**KIMCO BIRMINGHAM L.P.**, an Alabama limited partnership

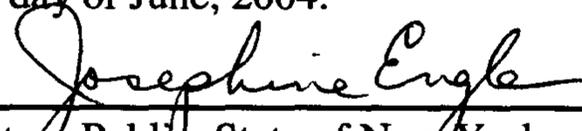
By: **KD Birmingham 1035, Inc.**, an Alabama corporation, its general partner

By:   
Name: Bruce M. Kauderer  
Title: Vice President

THE STATE OF NEW YORK §  
  §  
COUNTY OF NASSAU §

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Bruce M. Kauderer, whose name as Vice President of KD Birmingham 1035, Inc., an Alabama corporation, the general partner of Kimco Birmingham L.P., an Alabama limited partnership, is signed to the foregoing instrument, and is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner of said limited partnership and for and as the act of said limited partnership.

Given under my hand this the 16<sup>th</sup> day of June, 2004.

  
Notary Public, State of New York  
My commission expires: \_\_\_\_\_

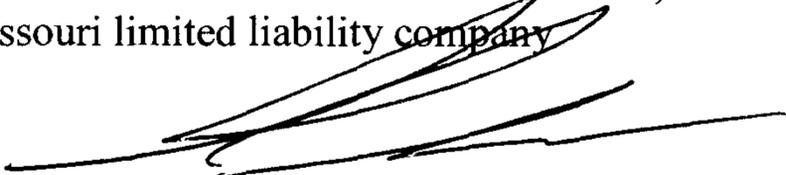
**JOSEPHINE ENGLE**  
Notary Public, State of New York  
No. 01EN6098873  
Qualified in Nassau County  
My Commission Expires 9/22/ 2007

[Purchaser's Signature Page]

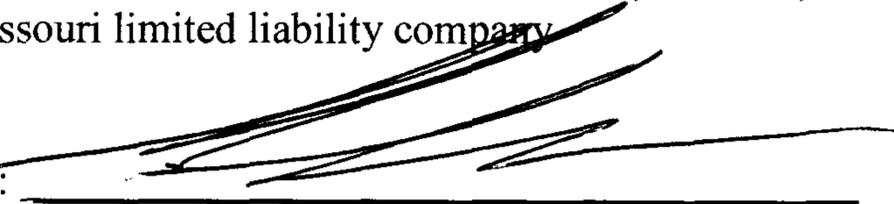
**THIRD CREEK, L.L.C.**, a Missouri limited liability company

By:   
Matthias D. Renner, Manager

**MATTHIAS D. RENNER FAMILY, L.L.C.**, a Missouri limited liability company

By:   
Matthias D. Renner, Manager

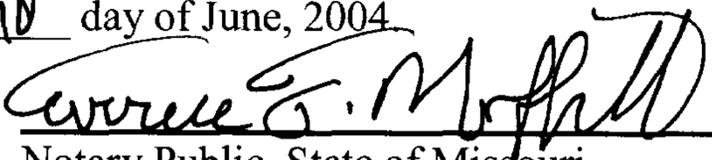
**KENNETH J. WEBER FAMILY, L.L.C.**, a Missouri limited liability company

By:   
Matthias D. Renner, Manager

THE STATE OF MISSOURI     §  
  §  
COUNTY OF ST. LOUIS     §

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Matthias D. Renner, whose name as Manager of Third Creek, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument, and is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 22<sup>nd</sup> day of June, 2004.

  
Notary Public, State of Missouri  
My commission expires: \_\_\_\_\_

TERRENCE F. MOFFITT  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Aug. 20, 2004

THE STATE OF MISSOURI §

§

COUNTY OF ST. LOUIS §

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Matthias D. Renner, whose name as Manager of Matthias D. Renner Family, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument, and is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 22<sup>nd</sup> day of June, 2004.

*Terrence F. Moffitt*

Notary Public, State of Missouri

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

TERRENCE F. MOFFITT  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Aug. 20, 2004

THE STATE OF MISSOURI §

§

COUNTY OF ST. LOUIS §

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Matthias D. Renner, whose name as Manager of Kenneth J. Weber Family, L.L.C., a Missouri limited liability company, is signed to the foregoing instrument, and is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 22<sup>nd</sup> day of June, 2004.

*Terrence F. Moffitt*

Notary Public, State of Missouri

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

TERRENCE F. MOFFITT  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Aug. 20, 2004

**EXHIBIT A**

**Description of the Property**

Lots 1, 2 and 3, according to the Survey of Cypress Equities Addition to Hoover, as recorded in Map Book 31 page 79, in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.