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Shelby Cnty Judge of Probate, AL
05/04/2005 11:53:47AM FILED/CERT

LOAN NO. 220048501001

PROPERTY NAME: Inverness Heights Shopping Center

PREPARED BY AND UPON RECORDATION RETURN TO:

Robert Hempstead, Esq.
Sills Cummis Epstein & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102-5400
File Number: 09720014/000009

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "**Assignment**") is made as of April 29, 2005, by INVERNESS HEIGHTS SHOPPING CENTER, LP, an Alabama limited partnership (the "**Assignor**"), whose address is 1830 Craig Park Court, Suite 101, St. Louis, Missouri 63146, in favor of MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation (the "**Assignee**"), whose address is 250 Vesey Street, 16th Floor, New York, New York 10080 Attention: Commercial Mortgage Financing. All capitalized terms not defined herein shall have the same meanings set forth in the Mortgage (as hereinafter defined).

WITNESSETH:

WHEREAS, Assignee has made a Loan in the original principal amount of EIGHTEEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$18,200,000.00) to Assignor, which Loan is evidenced by the Note dated the date hereof, made by Assignor in favor of Assignee in the amount of the Loan; and

WHEREAS, the Note is secured by that certain fee and leasehold mortgage, security agreement, assignment of rents and fixture filing dated the date hereof, given by Assignor to Assignee (the "**Mortgage**"), encumbering that certain real property situated in the County of Shelby, State of Alabama as is more particularly described on Exhibit A attached hereto and all Improvements thereon (said real property and Improvements are hereinafter sometimes collectively referred to as the "**Property**"); and

WHEREAS, as a condition of the Loan, Assignor agreed to further secure the performance of the terms, covenants and agreements of the Loan Documents by entering into this Agreement.

NOW, THEREFORE, in consideration of Assignee making the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby irrevocably, absolutely and unconditionally, bargain, transfer, pledge, convey, sell, assign, set over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to (a) the Leases; (b) the Rents; (c) all security deposits, guarantees and other security held by Assignor in connection with the Leases; (d) all credits, rights, options, claims and causes of action in connection with the Leases and Rents; (e) all

proceeds from the sale or other disposition of the Leases; (f) the right to receive and apply the Rents to the payment of the Debt; (g) any award or other payment which Assignor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any present or future tenant or lessee under a Lease for any portion of the Property ("**Tenant**"); (h) any and all payments made by or on behalf of any Tenant in lieu of Rent and (i) all rights to insurance proceeds, condemnation awards and similar payments under Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, the parties hereby agree as follows:

1. This instrument is an absolute, unconditional and present assignment of the Leases and the Rents and grant of the powers of Assignee set forth herein, and not an assignment for security. As long as there is no Event of Default, Assignor is hereby granted a revocable license by Assignee to collect the Rents and to take all actions with respect to all Leases, subject to the terms of the Loan Documents (the "**License**"). Upon the occurrence of an Event of Default, the License shall automatically be revoked without notice to Assignor. Assignee may thereafter, without taking possession of the Property, collect the Rents. From and after such revocation of the License, Assignor shall be the agent of Assignee for collection of the Rents. Any Rents so collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee. Assignor shall, within one (1) business day after receipt of any Rents, pay the same to Assignee to be applied by Assignee as hereinafter set forth. The existence or exercise of the License to collect Rent shall not operate to subordinate this Assignment to any subsequent assignment. This Assignment shall be fully operative without any further action on the part of any Person.

2. Upon revocation of the License, Assignee shall have the right and authority, without any notice to or demand on Assignor and without releasing Assignor from any obligation hereof, to: (a) manage and operate the Property, with full power to employ agents to manage the Property; (b) enter into Leases, service contracts and other agreements; obtain insurance; provide utility service; pay all taxes, brokerage commissions and other expenses in connection with the Property, including the Debt; make repairs and improvements to the Property and do all other acts relating to the management of the Property; (c) demand, collect, receive and sue for the Rents, including those past due and unpaid (d) dispose by the usual summary proceedings any Tenant in default; (e) at its option, and to the extent not prohibited by law, require Assignor to (i) pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in the possession of Assignor, and (ii) vacate and surrender possession of the Property to Assignee or to such receiver; or if Assignor is in default hereof, evict Assignor by summary proceedings or otherwise; and (f) irrevocably be Assignor's attorney-in-fact, coupled with an interest by virtue of this Assignment and appear in any proceeding and collect any award or payment to Assignor, in connection with the Property so long as any sums are outstanding under the Loan.

3. Assignee may apply the Rents received by Assignee, after deducting the costs of collection therefrom, including, without limitation, attorneys' fees and management fees, in such order or priority as Assignee may determine in its sole discretion, to (a) amounts

expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Assignee incurs in connection with the operation and management of the Property and (b) the Debt.

4. Any sum advanced by Assignee for any purpose, together with interest thereon at the Default Rate from the date advanced by Assignee until repaid by Assignor, shall immediately be due and payable to Assignee by Assignor on demand and shall constitute part of the Debt. The execution of this Assignment constitutes and evidences the irrevocable consent of Assignor to the entry upon and taking possession of the Property and the Equipment by Assignee. The exercise by Assignee of the rights granted hereunder and the collection and application of the Rents as provided herein shall not (a) be considered a waiver by Assignee of any default under the Loan Documents, (b) prevent foreclosure of any liens on the Property or (c) make Assignee liable under any of the Leases. All of Assignee's rights and privileges under the Loan Documents are expressly reserved as though this Assignment had not been entered into.

5. Assignor agrees to deliver to Assignee, within ten (10) days after Assignee's request, a complete list of the Leases, the amount of security and other deposits held in connection with each Lease certified pursuant to an Officer's Certificate identifying the demised premises, the names of the Tenants, the Rent payable under the Leases, the date to which such Rents have been paid, the terms of the Leases, the dates of occupancy, the dates of expiration, any Rent concessions, work obligations or other inducements granted to Tenants and any renewal options. Assignor shall also deliver on demand a copy of any Lease not previously delivered to Assignee.

6. This Assignment shall not operate to place responsibility upon Assignee (a) for the management, upkeep, care, repair or control of the Property, (b) for the performance of any of the terms and conditions of any of the Leases, (c) for any waste committed on the Property by the Tenants or any other party, (d) for any dangerous or defective condition of the Property, (e) for any negligence in the management, upkeep, care, repair or control of the Property or (f) to account for Rents other than Rents that are actually received by Assignee. Except for Assignee's gross negligence or willful misconduct, Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or from any other act or omission of Assignee in the management, upkeep, care, repair or control of the Property.

7. Assignor hereby indemnifies and holds Assignee harmless from and against any and all liability, loss, cost, expense or damage (collectively, "**Costs**") which may be incurred by reason of this Assignment, including, without limitation, claims, actions, suits, proceedings or demands ("**Claims**"): (a) of Tenants for security deposits not paid to Assignee or (b) asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. Should Assignee incur any liability by reason of this Assignment or in defense of any Claim for any Cost, the amount paid or incurred by Assignee shall: (a) be immediately due and payable to Assignee by Assignor upon demand, (b) incur interest at the Default Rate from the date paid by Assignee until repaid by Assignor and (c) be secured by the Loan Documents.

8. Assignor represents, warrants and covenants to and for the benefit of Assignee that: (a) Assignor is the sole owner of the entire landlord's interest in the Leases, with full right and title to assign the same and the Rents thereunder; (b) the Leases (i) have not been altered, modified or amended in any manner except as previously disclosed in writing to Assignee, (ii) are in full force and effect and (iii) are the valid and binding obligations of Assignor and, to the knowledge of Assignor, of the Tenants thereto; (c) none of the Rents have been (i) previously assigned, pledged or hypothecated, (ii) discounted, released, waived, compromised or otherwise discharged or (iii) prepaid for more than one (1) month in advance; (d) there are no material defaults now existing under any of the Leases by the landlord or Tenants and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases by the landlord or Tenants, except as previously disclosed in writing to Assignee; (e) there are no offsets, claims or defenses to the payment of any portion of the Rents; and (f) Assignor has and shall duly and punctually observe and perform all covenants, conditions and agreements in the Leases on the part of the landlord to be observed and performed thereunder.

9. Assignor covenants and agrees that Assignor shall not, without the prior written consent of Assignee: (a) accept Rents (exclusive of security deposits) for more than one (1) month in advance, (b) do or permit anything to impair the value of the Leases as security for the Debt; (c) amend or modify any Lease, except as permitted under Section 6.2 of the Mortgage; (d) enter into any Lease not in conformity with Section 6.2(a) of the Mortgage; (e) take or omit to take any action or exercise any right or option which would permit the Tenants to cancel or terminate said Lease or accept the surrender or assignment of any Lease; (f) permit any Lease to become subordinate to any lien other than the lien of the Mortgage; (g) further pledge, transfer, mortgage or otherwise encumber or assign the Leases or future payments of Rents; (h) cancel or terminate any Lease (other than for non-payment of rent or any other material default thereunder); or (i) discount, release, waive, compromise or otherwise discharge any Rents payable or other obligations under any Lease. However, Assignor may take any of the actions described in subsections (h) and (i) so long as such actions are taken by Assignor in the ordinary course of business, are consistent with sound customary leasing and management practices for similar properties and prompt notice thereof is given to Assignee.

10. At its sole cost and expense, Assignor shall appear in and defend any Claim in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or Tenants thereunder. Assignor shall pay on demand all Costs, including, without limitation, reasonable attorneys' fees and disbursements, which Assignee may incur in connection with Assignee's appearance, voluntary or otherwise, in any such Claim, together with interest thereon at the Default Rate from the date incurred by Assignee until repaid.

11. Assignee may notify Tenants or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct Tenants to pay all unpaid and future Rents to Assignee upon written demand from Assignee. Assignor hereby agrees that Tenants may rely upon such demand without any inquiry into whether there exists an Event of Default or whether Assignee is otherwise entitled to said Rents. Any such payment shall discharge the Tenant's obligation to make such payment to Assignor. Assignor hereby waives all rights and Claims it may now or hereafter have against Tenants by reason of such payment of Rents to Assignee.



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12. Assignee may (a) take or release any security for the Debt, (b) release any Person primarily or secondarily liable for the Debt, (c) grant extensions, renewals or indulgences with respect to the Debt and (d) apply any other security held by it to the satisfaction of any portion of the Debt, all without prejudice to any of its rights hereunder.

13. Assignee shall have the right to (a) institute suit and obtain a protective or mandatory injunction against Assignor to prevent a default hereunder; (b) sue for specific performance to enforce the observance of the agreements, covenants, terms and conditions contained herein; and (c) receive damages occasioned by any default by Assignor. Upon application to a court of competent jurisdiction, Assignee shall be entitled, as a matter of absolute right, to the appointment of a receiver to obtain and secure the rights and benefits intended to be provided to Assignee hereunder, without regard to the adequacy of the security under the Loan Documents and without further notice.

14. The acceptance of this Assignment and the collection of the Rents by Assignee in the event the License is revoked shall be without prejudice to Assignee. The rights of Assignee hereunder are cumulative and concurrent, may be pursued separately, successively or together and may be exercised as often as occasion therefor shall arise.

15. This Assignment shall be in full force and effect continuously from the date hereof until (a) final judgment of foreclosure; or (b) payment in full of the Debt and release of the Mortgage.

16. This Assignment shall not be construed as: (a) making Assignee a mortgagee-in-possession; (b) subordinating the Loan Documents to any Lease; provided, however, that any action or proceeding by Assignee to foreclose its liens encumbering the Property, enforce any other remedy contained in the Loan Documents or take any action by way of entry into possession after an Event of Default shall not operate to terminate any Lease unless Assignee so elects in writing or (c) constituting or evidencing any payment on account of the Debt. The Debt shall be reduced only to the extent of cash payments applied by Assignee in reduction of the Debt.

17. This Assignment is governed by and hereby incorporates by reference the Rules of Construction contained in Article XV of the Mortgage which shall apply with the same import as though fully set forth herein.

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IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

ASSIGNOR:

Borrower's Organizational
Identification Number:

None

BORROWER:

INVERNESS HEIGHTS SHOPPING
CENTER, LP,
an Alabama limited partnership

By: IH MGMT, Inc.,
an Alabama corporation,
its general partner

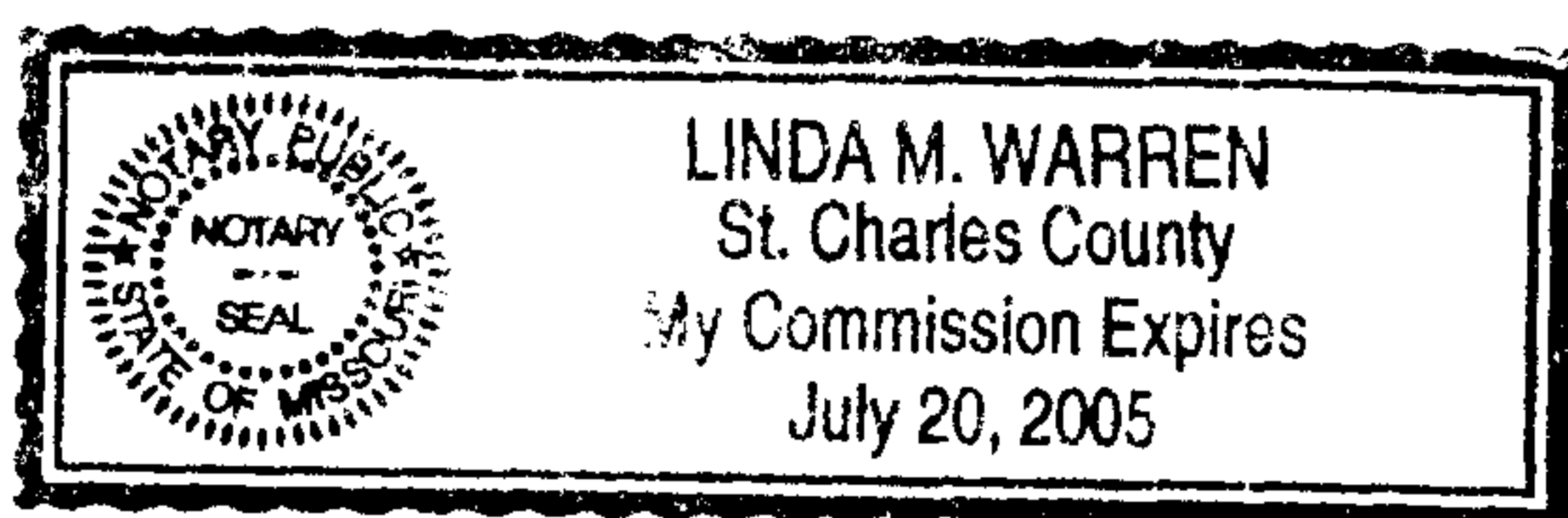
By: 

Thomas R. Green, President

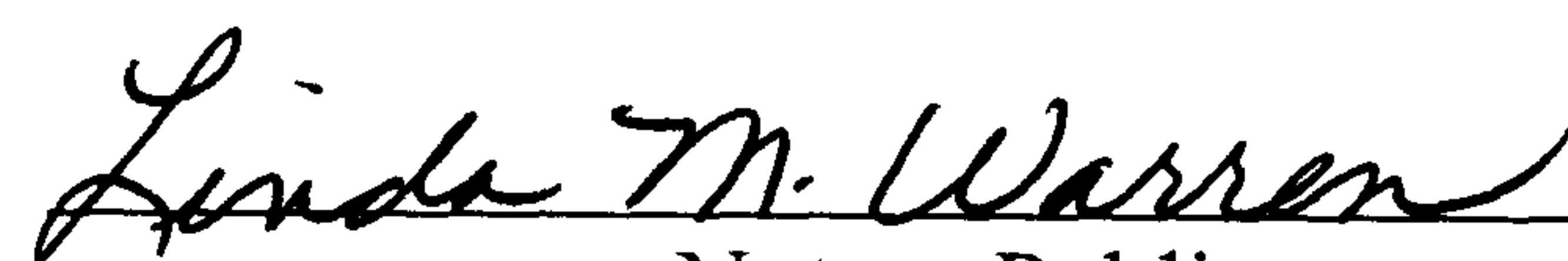
STATE OF MISSOURI)
 :
COUNTY OF ST. LOUIS)

I, the undersigned, a notary public in and for said County in said State, hereby certify that Thomas R. Green, whose name as president of IH MGMT, Inc., an Alabama corporation, in its capacity as general partner of INVERNESS HEIGHTS SHOPPING CENTER, LP, an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner of said limited partnership for and as the act of said partnership.

Given under my hand and official seal this the 28th day of April, 2005.



[NOTARIAL SEAL]


Notary Public

My commission expires: _____



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EXHIBIT A

(Legal Description)

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.