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Shelby Cnty Judge of Probate, AL  
05/12/2005 10:01:40AM FILED/CERT

LOAN NO.: 20048501001

TENANT: Party City of Birmingham, LLC

SUBORDINATION,  
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into by and among Party City of Birmingham, LLC, a ("Tenant"), whose address is 956 Montclair Rd, #114, Birmingham, AL 35213, ~~#114 Inverness Heights Shopping Center, LP~~ ("Landlord"), whose address is 1830 Craig Park Ct. St. Louis, MO 63146, and MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation ("Lender"), whose address is 250 Vesey Street, 16<sup>th</sup> Floor, New York, NY 10080.

WITNESSETH:

WHEREAS, Landlord is the owner in fee simple of the real property described in Exhibit A attached hereto, together with the improvements thereon (the "Property");

WHEREAS, Landlord or its predecessor and Tenant have entered into a certain lease dated 6-18-2003, [and amended/modified/extended/renewed by 1<sup>st</sup> Amendment, dated undated], (as the same may hereafter be amended, modified, renewed, extended or replaced, the "Lease"), leasing to Tenant a portion of the Property (the "Premises");

WHEREAS, Lender has agreed to make a certain mortgage loan to Landlord (the "Loan"), which will be evidenced by Landlord's Promissory Note in such amount (the "Note") and secured by, among other things, a certain Mortgage [Deed of Trust], Assignment of Rents, Security Agreement and Fixture Filing (as the same may hereafter be amended, modified, extended or recast, the "Mortgage") and a certain Assignment of Leases and Rents (the "Assignment of Leases") encumbering the Property, which Mortgage and Assignment of Leases are to be recorded simultaneously herewith;

WHEREAS, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Subordination. The Lease, including all of the terms thereof, is and shall be subject and subordinate to the lien and all of the terms of the Mortgage to the full extent of all amounts secured by the Mortgage and interest thereon.

2. Attornment. Tenant agrees that it will attorn to and recognize any purchaser of the Property at a Mortgage foreclosure sale or any transferee who acquires the Property by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage (in any such case, the "New Owner") and the successors and assigns of such purchaser or transferee, as its landlord for the #Third Creek, LLC Matthias D. Renner Family, LLC and Kenneth J. Weber Family, LLC

Cahaba Title, Inc.



unexpired balance (and any extensions or renewals, if exercised) of the term of said Lease upon the same terms and conditions set forth in said Lease.

3. Non-Disturbance. Provided there is no default under the Lease after any applicable grace period, such New Owner will not terminate the Lease or disturb Tenant's possession of the Premises under the Lease or the right to quiet enjoyment thereof, but the Lease shall continue in accordance with its terms as a direct lease between Tenant and New Owner.

4. Cure by Lender of Landlord Defaults. Tenant agrees to give Lender or its agent, servicer or designee (in accordance with Paragraph 7 hereof) a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease, provided that prior to such notice Tenant has been notified in writing of the address of the Lender, or its agent, servicer or designee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

5. Payments to Lender and Exculpation of Tenant. Tenant is hereby notified that the Lease and the rent and all other sums due thereunder have been assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and directs that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such direction without inquiry and pay its rent and all other sums due under the Lease in accordance with such notice. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord. Tenant is hereby instructed to disregard any notice to the contrary received from or at the behest of Landlord.

6. Limitation of Liability. If the New Owner acquires the interest of Landlord under the Lease, pursuant to a Mortgage foreclosure sale or by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage, the New Owner shall not be:

- (a) liable for any act or omission of any prior landlord (including current Landlord);
- (b) subject to any claims, offsets, defenses or counterclaims which Tenant might have against any prior landlord (including current Landlord);
- (c) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including current Landlord);
- (d) liable for the return of any security deposit not actually received by New Owner;
- (e) bound by any amendment or modification of the Lease made without the written consent of Lender;
- (f) bound by any covenant to undertake or complete any improvement to or restoration of the Premises or the Property, except to the extent insurance proceeds or condemnation awards are made



available to New Owner to cover the cost of the improvement.

Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

7. Notice. Any notice, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and if to Lender, with a copy to Merrill Lynch Mortgage Lending, Inc. at 250 Vesey Street, 16th Floor, New York, NY 10080, Attention: George Kok. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party can change its address or party to receive notice by giving at least fifteen (15) days prior notice to the other parties hereto in accordance with this provision. Tenant agrees to send a copy of any notice or statement under the Lease to Lender at the same time such notice or statement is sent to Landlord.

8. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(c) Amendment. This Agreement shall be deemed to amend any provisions of the Lease which are inconsistent with the terms hereof.

(d) Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

(e) Non-disturbance. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.



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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

**LANDLORD:**

THIRD CREEK, L.L.C.

By:   
Name: Matthias D. Renner

Date: 3/17, 2005

Title Manager

MATTHIAS D. RENNER FAMILY L.L.C.

By:   
Name: Matthias D. Renner

Date: 3/17, 2005

Title Manager

KENNETH J. WEBER FAMILY L.L.C.

By:   
Name: Matthias D. Renner

Date: 3/17, 2005

Title Manager

**TENANT:**

By: Dr Stanley Rubenstein

Date: 2-16, 2005

**LENDER: MERRILL LYNCH MORTGAGE LENDING, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2005

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## ACKNOWLEDGEMENTS

~~STATE OF NEW YORK~~  
~~COMMONWEALTH OF~~

COUNTY OF ~~SS~~: NEW YORK

On this the 4 day of May, 2005, before me, the undersigned officer, personally appeared George H. KOL, who acknowledged himself to be the representative of the Lender, MERRILL LYNCH MORTGAGE LENDING, INC., and he/she as such being authorized to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Lending Institution by himself/herself as representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Valencia Love  
NOTARY PUBLIC

STATE OF MISSOURI)

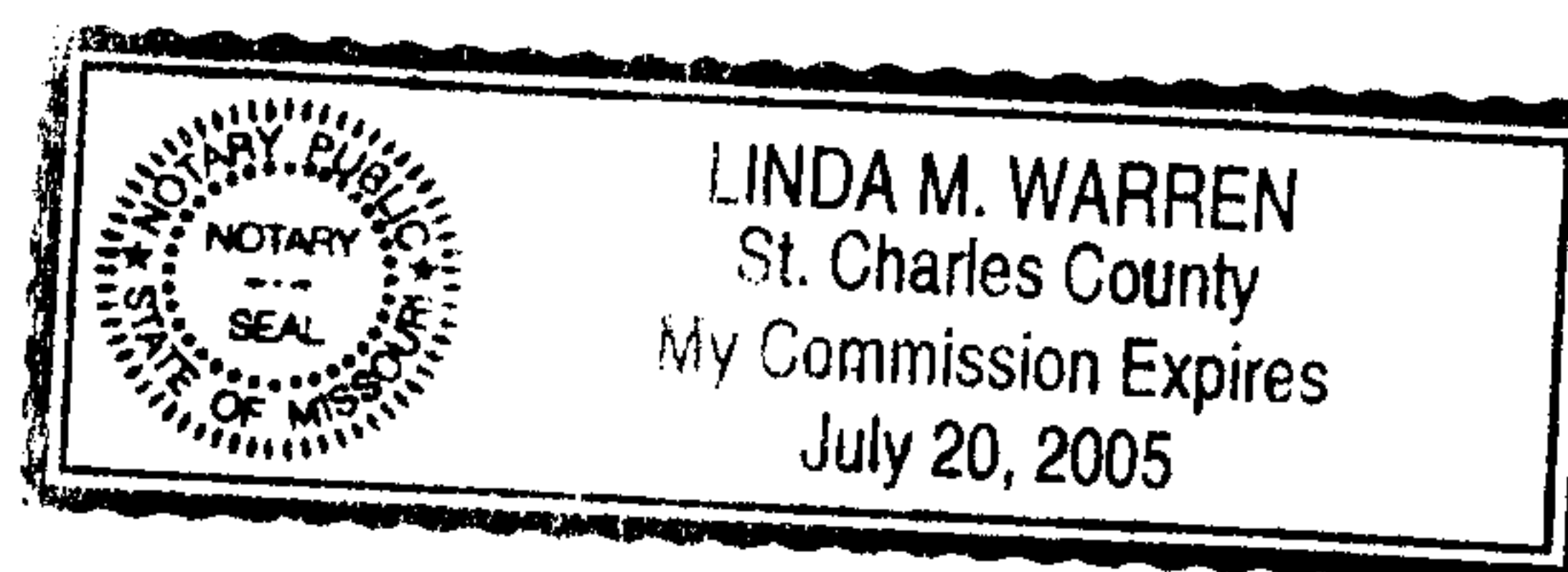
COUNTY OF ST. LOUIS) SS

VALENCIA LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
No. [REDACTED]  
QUALIFIED IN KINGS COUNTY  
MY COMMISSION EXPIRES MAY 24, 2008

On this the 17<sup>th</sup> day of March, 2005, before me, the undersigned, personally appeared Matthias D. Renner, who acknowledged himself to be the Manager of all three (3) of the following entities: THIRD CREEK, L.L.C., Matthias D. Renner Family, L.L.C. and Kenneth J. Weber Family, L.L.C. all being Missouri limited liability companies, and that he, as such Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability companies by himself as Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Linda M. Warren  
NOTARY PUBLIC





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## ACKNOWLEDGEMENTS

STATE OF: Alabama

COUNTY OF: Jefferson

On this the 16<sup>th</sup> day of February, 2005, before me, the undersigned person, personally appeared Dr. Stanley Rubenstein, who acknowledged himself/herself to be the representative of the Tenant, and he/she as such being authorized to do, executed the forgoing instrument for the purposes therein contained, by signing by himself/herself as representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marcie Y. Lidcock  
NOTARY PUBLIC

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



Exhibit "A"

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SHOPPING CENTER (LEGAL DESCRIPTION)

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.