

05039032

(SUB.MTG)

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT made this , by and between Eugene H. Borgosz and Janice Borgosz ("the first lender") and M & T MORTGAGE CORPORATION. ("second lender").

WHEREAS, Eugene H. Borgosz and Janice Borgosz is the beneficiary under a Mortgage dated September 13, 2004 from MARVIN L. HARRELL, JR. and YOLANDA DANETTE HARRELL ("Debtor") to First Lender, conveying certain real property in Shelby County, State of Alabama, known as 99 SOUTHERN HILL PKWY CALERA, ALABAMA 35040 and as more particularly described in Exhibit "A" attached hereto (the "Premises") the first Mortgage being recorded among the Land Records of Shelby County in Liber No. 2004, folio 51429 and having been given to secure a debt in the original sum of \$100,000.00.

WHEREAS, Second Lender has made a loan of (\$124,204.00) One Hundred Twenty-Four Thousand Two Hundred Four and 00/100 to Debtor, which loan is secured by a Mortgage on the Premises of even date herewith from Debtor to Second Lender (the "Second Mortgage"); and

WHEREAS, Second Lender was unwilling to make the aforesaid loan unto Debtor unless the First Lender agreed to subordinate the First Mortgage to the Second Mortgage, and the First Lender has so agreed.

NOW THEREFORE, THIS SUBORDINATION AGREEMENT WITNESSETH, that for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do agree and covenant as follows:

1. First Lender, as mortgagee/beneficiary under the First Mortgage, does hereby subordinate its First Mortgage to the Second Mortgage to the end that the Second Mortgage will be superior to the First Mortgage.

2. First Lender hereby covenants and agrees that the First Mortgage shall continue to be subject and subordinate to the lien, terms, covenants and conditions of the Second Mortgage in the aggregate principal amount of One Hundred Twenty-Four Thousand Two Hundred Four and 00/100 (\$124,204.00), with interest thereon and to all advances heretofore made or which hereafter may be made thereon (including, but not limited to, all sums advanced for the purpose of protecting or further securing the lien thereof or for any other purpose expressly permitted pursuant to the Second Mortgage) and all advances, extensions, renewals, modifications, replacements, consolidations or substitutions thereof (individually a "Modification"). Any Modification may be made without the consent of the First Lender except for a Modification which increases the original principal amount of the Second Mortgage which shall require the consent of the First Lender.

3. The First Lender represents and warrants that

(a) the maximum principal amount of the First Mortgage as of the date hereof is \$100,000.00.

(b) no default under the First Mortgage has occurred and is continuing as of the date hereof; and

(c) no event has occurred and is continuing as of the date hereof, which, with the giving of notice and/or the passage of time, would constitute a default under the First Mortgage.

4. During the term of the First Mortgage and until such time as the lien of the First Mortgage has been extinguished, the First Lender agrees that:

(a) the First Lender shall deliver to the Second Lender (i) written notice of any default under the First Mortgage at the same time as, and whenever any such notice of default shall be sent to the Debtor and (ii) written notice of the commencement of any foreclosure of the First Mortgage and true copies of all notices delivered and all papers served or entered in such foreclosure at the same time as, and whenever such notices or papers are served or entered in connection with such foreclosure.

(b) The Second Lender shall have the right but not the obligation, to pay all sums due under the First Mortgage, and to do any other act or thing required of the Debtor under the First Mortgage or necessary or proper to cure or prevent a default under the First Mortgage, at the time

and in the manner hereafter provided; and

(c) In the event that the Debtor fails to cure or commence to cure any default specified in any notice sent by the First Lender to the Debtor after the expiration of applicable cure periods provided to the Debtor under the First Mortgage, the Second Lender shall have the option to cure any such default. The First Lender hereby agrees to notify the Second Lender of any default and the failure of the Debtor to cure any such default within the time period allowed for such cure. Within ten (10) business days of receipt of such notice the Second Lender shall notify the First Lender whether it intends to cure the default specified in such notice. If the Second Lender notifies the First Lender that it intends to cure the default, then no default by the Debtor shall be deemed to exist so long as such default is such a nature that it is capable of being cured by the Second Lender and the Second Lender commences within such time as shall be reasonably necessary in the Second Lender's reasonable discretion (i) to cure the default and prosecute the same to completion or (ii) if the default is such that possession of the Premises is required in order to cure the default, then to the extent permitted under the Second Mortgage, to institute foreclosure proceedings pursuant to the Second Mortgage and to obtain possession directly or through a receiver or, at the election of the Second Lender, to obtain possession directly or through a trustee without instituting foreclosure proceedings, and to prosecute such proceedings and, upon obtaining such possession to commence to cure the default; provided however, that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the obligations of the Debtor under the First Mortgage to the extent they are susceptible of being performed by the Second Lender are being duly performed. However, at any time, the Second Lender may notify the First Lender in writing that it does not intend to cure any default and/or it is relinquishing possession of the premises or that it will not institute foreclosure or other proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the Second Lender shall have no further liability from and after the date it delivers such notice to the First Lender and, thereupon, the Second Lender shall have the right to take any action it deems appropriate by reason of such default.

5. In the event of (a) a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Premises (collectively, a "Taking") or (b) the occurrence of a fire or other casualty resulting in damage to all or a portion of the Premises (collectively, a "Casualty"), at any time or times when all or any of the Second Mortgage remains a lien on the Premises: (i) the First Lender hereby waives any right to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of any claims resulting from the Taking or Casualty, provided however, that the Second Lender acknowledges and agrees that the First Lender shall have the right to consult with the Second Lender with respect to any of the foregoing matters, but the Second Lender shall in all events make all final determinations as to the settlement of any claims; (ii) all proceeds received or to be received on account of a Taking and/or Casualty shall be applied in a manner or manners determined by the Second Lender in accordance with the provisions of the Second Mortgage; provided however, that if the Second Lender elects to apply such proceeds in reduction of outstanding principal balance of the Second Mortgage, any proceeds remaining after the satisfaction in full of the Second Mortgage shall be applied by the First Lender in accordance with the applicable provisions of the First Mortgage, and (iii) the First Lender hereby agrees to execute and deliver, at its sole expense, any documents, instruments, agreements or further assurances required to effectuate the foregoing agreements.

6. The First Lender hereby agrees that all original policies of insurance required pursuant to the Second Mortgage shall be held by the Second Lender, notwithstanding provisions to the contrary contained in the First Mortgage or any documentation in connection with the First Mortgage.

7. Upon the request of the Second Lender from time to time, the First Lender shall promptly execute whatever instruments and/or documents that are required by the Second Lender in order to evidence that the First Mortgage is subordinate to the lien, covenants and conditions of the Second Mortgage as the same may from time to time be renewed, extended, replaced, consolidated, substituted for and/or modified.

8. To the extent the rights and/or remedies under the Second Mortgage limits, precludes or preempts the rights and/or remedies of the First Lender, then the rights and/or remedies under the Second Mortgage shall control, and the First Lender shall do no act or deed which, either directly or indirectly adversely affects such rights and/or remedies of the Second Lender, and to the extent the terms, covenants and/or conditions of the First Mortgage are contrary to or inconsistent with the terms, covenants or conditions of the Second Mortgage, with the result that the Debtor's performance or compliance with such terms, covenants and/or conditions shall constitute default under the Second Mortgage, then such contrary or inconsistent terms, covenants and/or conditions

under the First Mortgage shall be null and void.

9. This Agreement (a) shall be governed by and interpreted in accordance with the laws of the State of Alabama, (b) may not be changed or terminated orally, and (c) shall bind and inure to the benefit of parties hereto and their respective successors and assigns. The word "party" shall be construed as if it reads "parties" whenever the sense of this Agreement so requires.

10. In the event that any provision of this Agreement or application thereof to the First Mortgage or any circumstance in any jurisdiction governing this Agreement shall, to any extent, be invalid or unenforceable under any applicable statute, regulation or rule of law, such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the same affect the validity or enforceability of any other provision of this Agreement.

11. The waiver or acquiescence in or by the Second Lender of any breach by the First Lender or the failure of this Second Lender to insist upon strict performance by the First Lender of any terms, provisions, conditions, covenants or agreements in this Agreement shall not constitute a waiver of any subsequent or other breach of the Second Lender and such failure shall not be deemed a waiver of such rights.

12. The rights and remedies provided to the Second Lender under this Agreement shall be deemed cumulative and not exclusive and are in addition to and not in derogation, substitution or limitation of any of the rights and remedies provided by general law and equity. In no event shall the Debtor be deemed a beneficiary of any of the terms, covenants or conditions set forth in this Agreement.

13. Any notice or other communication required or permitted to be given under this Agreement will be deemed sufficient and effective only if in writing, sent by registered or certified mail, to the following addresses (or such other addresses designated in a notice given as herein required) and shall be deemed effective on the second business day following the date when deposited in the United States mail:

If to First Lender:

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If to Second Lender:

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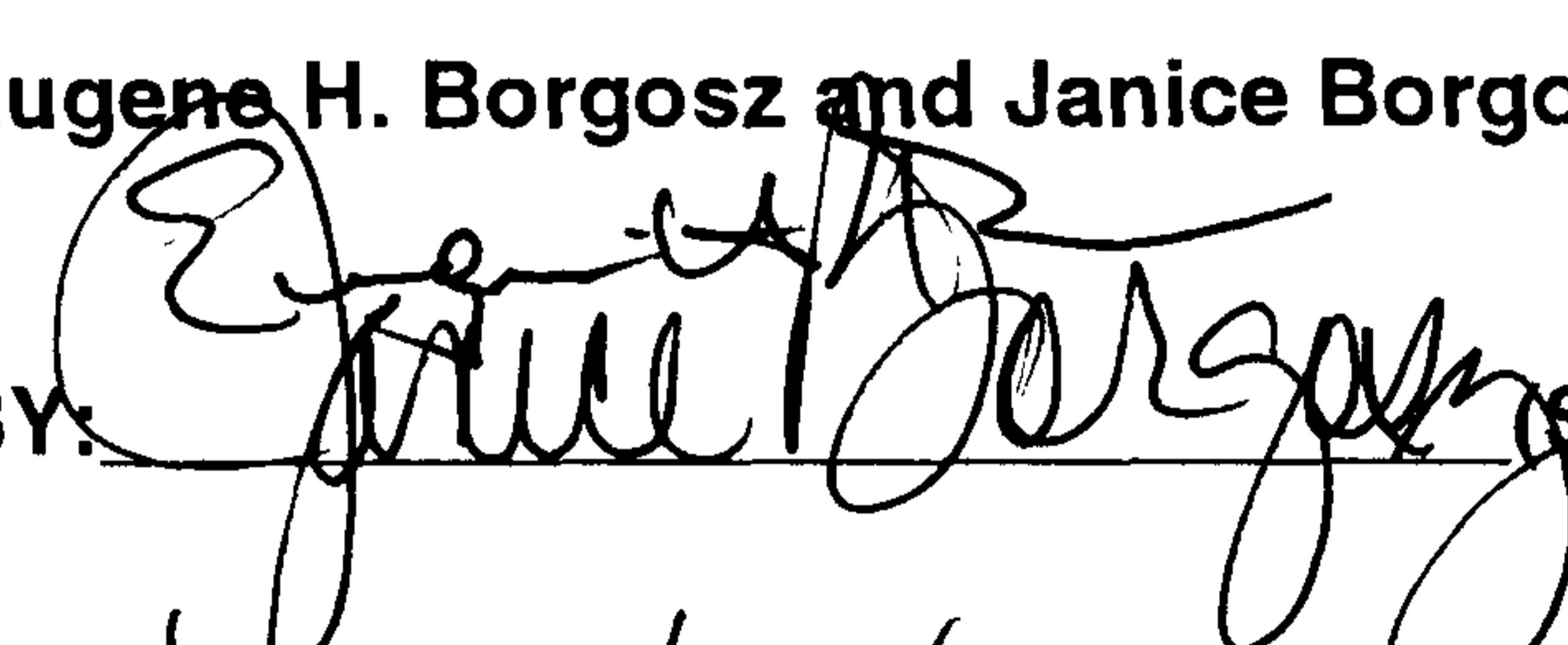
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WITNESS the following hands and seals as of the year first above written.

Eugene H. Borgosz and Janice Borgosz

BY:

  
(SEAL)

ACKNOWLEDGED AND AGREED THIS 2<sup>nd</sup> day of November, 2005.

State of Alabama, Jefferson County, to wit:

20051220000655840 3/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
12/20/2005 02:13:04PM FILED/CERT

I hereby certify, that on this 2nd day of November, 2005, before me, the subscriber, a Notary Public of the State of Alabama personally appeared for the benefit of Eugene H.

Borgosz and Janice Borgosz, known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged the foregoing Agreement to be his/her/their act, and in my presence signed and sealed the same.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission Expires: 4-29-07

Rose R. Glasgow

NOTARY PUBLIC

Rose R. Glasgow

RETURN TO:

RESOURCE REAL ESTATE SERVICES, LLC  
300 RED BROOK BOULEVARD, SUITE 300  
OWINGS MILLS, MARYLAND 21117  
(410) 654-5550  
05039032

PREPARED BY:  
MILLARD S. RUBENSTEIN  
300 Red Brook Blvd., Ste. 300  
Owings Mills, MD 21117

  
20051220000655840 4/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
12/20/2005 02:13:04PM FILED/CERT

## EXHIBIT A

Commitment No. 05042950

**THE FOLLOWING DESCRIBED REAL ESTATE, LYING AND BEING IN THE COUNTY OF SHELBY, STATE OF ALABAMA, TO-WIT:**

**LOT 1, ACCORDING TO THE SURVEY OF SOUTHERN HILLS, SECTON 4, AS RECORDED IN MAP BOOK 15 PAGE 72 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA.**

**THE IMPROVEMENTS THEREON BEING COMMONLY KNOWN AS 99 SOUTHERN HILLS PARKWAY, CALERA, ALABAMA 35040.**

**BEING THE SAME LOT OR PARCEL OF GROUND WHICH BY DEED DATED November 6, 1998 AND RECORDED AMONG THE LAND RECORDS OF SHELBY COUNTY IN INSTRUMENT #1998-44185, WAS GRANTED AND CONVEYED BY CORBIN VANCE WHITE AND DARLENE WHITE, HUSBAND AND WIFE, UNTO MARVIN L. HARRELL, JR. AND YOLANDA DANETTE HARRELL, HUSBAND AND WIFE.**

20051220000655840 5/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
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