


This instrument is recorded as additional security for the indebtedness secured by the mortgage recorded at 20050504000213310 in the Office of the Judge of Probate of Shelby County, AL on which mortgage tax was paid on \$18,200,000 of the indebtedness secured.

THIS INSTRUMENT 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

  
20060630000315300 1/16 \$56.00  
Shelby Cnty Judge of Probate, AL  
06/30/2006 09:49:14AM FILED/CERT

The Document is Recorded as Additional Security  
for the debt described in the Mortgage and Security  
Agreement dated of even date.

### **CROSS-DEFAULT, CROSS-COLLATERALIZATION AND CONTRIBUTION AGREEMENT**

THIS CROSS-DEFAULT, CROSS-COLLATERALIZATION AND CONTRIBUTION AGREEMENT (this "Agreement"), made as of April 29, 2005, by INVERNESS HEIGHTS SHOPPING CENTER, LP, an Alabama limited partnership ("First Borrower"), and PARKWAY CROSSING EAST SHOPPING CENTER, L.P., a Virginia limited partnership ("Second Borrower"), (First Borrower and Second Borrower are referred to herein individually as a "Borrower", and collectively as the "Borrowers"), each having an address at 1830 Craig Park Court, Suite 101, St. Louis, Missouri 63146, for the benefit of MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation, and its successors and assigns ("Lender"), having an address at 250 Vesey Street, 16<sup>th</sup> Floor, New York, New York 10080, attention: Commercial Mortgage Financing.

### **WITNESSETH:**

**WHEREAS**, concurrently with the execution of this Agreement, First Borrower has executed and delivered to Lender its Promissory Note in the original principal amount of \$18,200,000.00 the "First Borrower Note", in evidence of a loan in such amount (the "First Borrower Loan");

**WHEREAS**, concurrently with the execution of this Agreement, Second Borrower has executed and delivered to Lender its Promissory Note in the original principal amount of \$23,200,000.00 (the "Second Borrower Note"), in evidence of a loan in such amount (the "Second Borrower Loan"; the First Borrower Note and the Second Borrower Note are, individually, "Note" and collectively, the "Notes"), in evidence of a loan in such amount (the "Second Borrower Loan"; the First Borrower Loan and the Second Borrower Loan are, collectively, the "Loans");

**WHEREAS**, the First Borrower Loan and First Borrower's obligations with respect thereto are further evidenced and/or secured by (i) Fee and Leasehold Mortgage, Security Agreement Assignment of Rents and Fixture Filing (the "First Borrower Mortgage"), encumbering the real property located in Hoover, Alabama described on Exhibit A-1 attached hereto and made a part hereof and recorded in the real property records of Shelby County, Alabama, together with all improvements thereon and certain other property described in the First Borrower Mortgage (collectively, the "First Borrower Property"), and (ii) certain other documents and instruments (the First Borrower Note, the First Borrower Mortgage



and such other documents and instruments, as the same from time to time may be amended, consolidated, extended, renewed, modified, restated or replaced, collectively, the "First Borrower Loan Documents";

**WHEREAS**, the Second Borrower Loan and Second Borrower's obligations with respect thereto are further evidenced and/or secured by (i) a Fee and Leasehold Deed of Trust, Security Agreement Assignment of Rents and Fixture Filing (the "Second Borrower Mortgage"), encumbering the real property located in Woodbridge, Virginia described on Exhibit A-2 attached hereto and made a part hereof and recorded in the real property records of Prince William County, Virginia, together with all improvements thereon and certain other property described in the Second Borrower Mortgage (collectively, the "Second Borrower Property"; the First Borrower Property and the Second Borrower Property, being sometimes referred to individually as the "Property" and collectively as the "Properties"), and (ii) certain other documents and instruments (the Second Borrower Note, the Second Borrower Mortgage and such other documents and instruments, as the same from time to time may be amended, consolidated, extended, renewed, modified, restated or replaced, collectively, the "Second Borrower Loan Documents"; the First Borrower Loan Documents and the Second Borrower Loan Documents are collectively the "Loan Documents");

**WHEREAS**, Lender has required that this Agreement be executed and delivered as a condition to making each of the Loans; and

**WHEREAS**, each Borrower (a) desires to execute and deliver this Agreement to induce Lender to make the Loans to be made to it and to the other Borrowers, (b) acknowledges that it will benefit from Lender making each of such Loans, and (c) intends and understands that in making the Loans to the Borrowers Lender will be relying on such Borrower's representations, warranties, covenants, agreements, acknowledgements, indemnities and other undertakings set forth therein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Cross-Default and Cross-Collateralization.** Each of the Mortgages and the other Loan Documents are hereby amended and modified (such amendment and modification, a "Cross-Collateralization") as follows:

a. an Event of Default under the First Borrower Note, the First Borrower Mortgage or any of the other First Borrower Loan Documents (as the term "Event of Default" is defined therein) shall, at Lender's option, constitute an Event of Default under the Second Borrower Note, the Second Borrower Mortgage and the other Second Borrower Loan Documents (as the term "Event of Default" is defined therein);

b. an Event of Default under the Second Borrower Note, the Second Borrower Mortgage or any of the other Second Borrower Loan Documents (as the term "Event of Default" is defined therein) shall, at Lender's option, constitute an Event of Default under the First Borrower Note, the First Borrower Mortgage and the other First Borrower Loan Documents (as the term "Event of Default" is defined therein);

c. the First Borrower Mortgage also shall secure the Second Borrower Note, the Second Borrower Mortgage and the other Second Borrower Loan Documents;

d. the Second Borrower Mortgage also shall secure the First Borrower Note, the First Borrower Mortgage and the other First Borrower Loan Documents.



2. Contribution.

a. Each of the Borrowers hereby acknowledges and agrees that, due to the fact that the Loans will be cross-defaulted as of the date hereof, each of the Borrowers has a direct and material interest in preventing the occurrence of an Event of Default under any of the Loan Documents (as the term "Event of Default" is defined therein). Accordingly, from and after the date hereof, each of the Borrowers is willing to commit to make or receive loans (each an "Intra-Borrower Loan", and collectively, the "Intra-Borrower Loans") in order to provide for the payment of all amounts due under the Loan Documents and, in so doing, to avoid an Event of Default thereunder. The Borrowers each acknowledge and agree that the Lender is an intended third party beneficiary of the Borrowers' obligations hereunder. In the event and to the extent that the proceeds from the Property of any Borrower (the "Creditor") are applied with respect of any payments due with respect to the Loan secured by the Property owned by another Borrower (the "Debtor") from and after the date hereof, then the Creditor shall be deemed to have made an Intra-Borrower Loan to Debtor in the amount of such proceeds so applied (the "Intra-Borrower Loan Amount"). Such Intra-Borrower Loan shall be deemed to be made on a non-recourse basis and shall be repaid out of the future proceeds of the Property owned by the Debtor, together with interest thereon at a rate to be agreed upon from time to time among the Borrowers.

b. All Intra-Borrower Loans deemed to be made under this Agreement shall be evidenced by this Agreement, shall be an obligation of the Debtor which owes such Intra-Borrower Loan solely by its execution of this Agreement and shall not be evidenced by any separate instrument. Each Borrower hereby waives presentment, notice of dishonor, protest and notice of non-payment or non-performance with respect to each Intra-Borrower Loan for which it is liable under this Agreement. Interest and principal on Intra-Borrower Loans shall be paid solely out of net proceeds from the Property owned by the Debtor and shall be subject in all cases to the terms and conditions of the Loan Documents, and the payments from such sources shall be the sole and exclusive remedy available to any Creditor during the term of the Loans. A Debtor shall not make any payment with respect to an Intra-Borrower Loan after the occurrence of an Event of Default with respect to the Mortgage to which the Debtor is a party. Each such payment of principal or interest on Intra-Borrower Loans shall be subordinate and subject to the prior payment of all amounts payable under the Loan Documents. To the extent such sources of payment are insufficient to pay interest and principal on any Intra-Borrower Loan, the Creditor owed such Intra-Borrower Loan shall not have any claim against the Debtor which owes such Intra-Borrower Loan for such amounts or any lien on or security interest in any of the assets of such Debtor and no further or additional recourse shall be available against the Debtor. All payments pursuant to Intra-Borrower Loans shall be made on a net basis. All payments received on account of any Intra-Borrower Loan under this Agreement shall be credited first to interest, then to principal. Accrued but unpaid interest shall not be compounded.

3. **Documents to be Delivered to Lender.** In connection with the Cross-Collateralization contemplated hereby, the Borrower shall cause to be delivered to Lender:

a. endorsements to the title insurance policies issued at the closings of the Loans insuring the liens of the First Borrower Mortgage, and the Second Borrower Mortgage, which endorsements shall be in form and substance satisfactory to Lender and shall (i) provide for "tie-in" coverage under such policies up to the aggregate outstanding principal amount of the First Borrower Note and the Second Borrower Note; and (ii) include "First Loss" and "Last Dollar" endorsements; and

b. such other documents and instruments as Lender reasonably may require.



4. **Costs and Expenses.** Borrowers shall be responsible for and shall pay, all reasonable out-of-pocket costs and expenses incurred by Lender in connection with a Cross-Collateralization, including, without limitation, reasonable attorneys' fees and expenses, title insurance search fees and premiums, filing and recording fees and taxes, if any.

5. **Default.** Any default by any Borrower in fulfilling any of its obligations hereunder shall constitute an Event of Default under each of the First Borrower Loan Documents and the Second Borrower Loan Documents (as the term "Event of Default" is defined therein).

6. **Further Assurances.** Borrowers agree to execute and deliver any further documents and instruments as Lender may reasonably require to effectuate the Cross-Collateralization contemplated hereby. Borrowers further acknowledge and agree that Lender may (a) unilaterally terminate this Agreement in whole; (b) unilaterally terminate or sever this Agreement in part as to one or more Loans, from time to time, in order to further secure any one or more of the Properties or for any other reason, including combining one or more of the Loans into separate securitization pools, each as Lender may determine in its sole discretion. Borrowers further acknowledge and agree to execute, upon Lender's request, one or more cross-collateralization agreements in similar form to this Agreement or amend this Agreement from time to time as may be reasonably required to effectuate the purposes hereof. Without limiting the foregoing, Borrowers will (a) cooperate in any manner that may reasonably be requested by Lender or its counsel, from time to time, and (b) execute and deliver all documentation and take all actions reasonably requested by Lender (i) in order to effectuate the cross-collateralization of any one or more of the Loans or (ii) to release any one or more of the Loans from this Agreement or (iii) combine one or more of the Loans into separate securitization pools by virtue of one or more cross-collateralization agreements in similar form, satisfactory to Lender and its counsel. In addition, each Borrower hereby agrees that it shall promptly execute and deliver such additional agreements, amendments and other instruments and promptly take such additional action as Lender may, at any time and from time to time, reasonably request in order for Lender to obtain the full benefits and rights granted or intended to be granted in connection herewith.

7. **Termination of Agreement.** This Agreement shall remain in full force and effect until such time as the (i) no Event of Default, nor any event, which with the passage of time or the giving of notice would constitute an Event of Default) has occurred; (ii) First Borrower Property and the Second Borrower Property each achieve a minimum occupancy of 90% of tenants on leases approved by Lender, paying the rent required by their respective leases and open for business to the general public in their respective premises; and (iii) (A) the debt service coverage ratio applicable to the First Borrower Loan is equal to, or greater than 1.20:1.0, as determined by Lender based on tenants on leases approved by Lender, paying the rent required by their respective leases and open for business to the general public in their respective premises and (B) the debt service coverage ratio applicable to the Second Borrower Loan is equal to, or greater than 1.20:1.0, as determined by Lender based on tenants on leases approved by Lender, paying the rent required by their respective leases and open for business to the general public in their respective premises ((i), (ii) and (iii) collectively, "Occupancy Requirement"). Upon satisfaction of the Occupancy Requirement, as determined by Lender, in its sole discretion, the Guaranteed Obligations shall be deemed satisfied and discharged in full and Lender shall provide Borrowers with an appropriate instrument, suitable for recordation at the expense of Borrowers, releasing their respective properties from the terms of this Agreement.

8. **Commingling of Funds.** While any one or more of the Loans are cross-collateralized pursuant to this Agreement, Lender or its servicer shall be permitted to commingle amounts held thereunder for each Loan within a securitization pool with amounts held for any other Loans in the same pool, in its reasonable discretion. In addition, Lender, at its option, may readjust from time to time the



balances in any of the Reserve by debiting the Reserves for one Loan within a securitization pool and crediting the Reserves under another Loan in the same pool. In addition, with respect to any Loans cross-collateralized pursuant to this Agreement the calculations of "debt service coverage ratio" shall be based on the aggregate of all Properties and Loans cross collateralized pursuant to this Agreement and not on a per Property or per Loans basis.

9. **Election of Remedies.** Upon the occurrence and during the continuance of an Event of Default under any of the Loan Documents, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrowers under any Mortgage or any of the other Loan Documents relating to any Loan at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Loans shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to any of the Properties secured by the Mortgages. Any such actions taken by Lender shall be cumulative and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrowers agree that if an Event of Default is continuing (i) Borrowers hereby waive any "one action", "antideficiency" or "election of remedies" law or rule to the fullest extent permitted by law, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against any of the Properties secured by the Mortgages and each Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Loans, the Loans has been paid in full or the Agreement has been otherwise terminated in accordance with this Agreement; and

Nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any particular Property for the satisfaction of any of the Loans in preference or priority to any other Property secured by any of the Mortgages, and Lender may seek satisfaction out of each and every Property or any part thereof, in its absolute discretion in respect of the Loans. In addition, following the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time, as determined by Lender in its sole discretion, to partially foreclose one or more of the Mortgages in any manner and for any amounts of the Loans secured by the Mortgages then due and payable. Notwithstanding one or more foreclosures or partial foreclosures, each and every Property or part thereof, not subjected to said foreclosure shall remain subject to the Mortgages to secure payment of the Loans not previously recovered.

10. **Guarantor Provisions.** As a result of the cross-collateralization and cross-default provisions of this Agreement, each Borrower may be deemed to be a guarantor of the obligations of the other Borrower. To the extent that either Borrower (such Borrower is sometimes hereinafter referred to as "**Guarantor**") is a guarantor of the obligations (collectively, the "**Guaranteed Obligations**") of the other Borrower (such Borrower is sometimes hereinafter referred to as the "**Guaranteed Borrower**"), such Guarantor makes the following agreements which are deemed to be incorporated into the Loan Documents:

a. Guarantor hereby waives, to the extent permitted by law: (i) all notices to Guarantor or to any other person, including, but not limited to, notices of acceptance or the creation, renewal, extension or modification of the Guaranteed Obligations, or of default in the performance of the Guaranteed Obligations (or any portion thereof) and enforcement of any right or remedy with respect



thereto or notice of any other matters relating thereto; and (ii) diligence and demand of performance. Guarantor further agrees that Lender may enforce the Guaranteed Obligations upon the occurrence and during the continuance of any Event of Default notwithstanding the existence of any dispute between the Guaranteed Borrower and the Lender with respect to the existence of such Event of Default or performance of the Guaranteed Obligations (or any portion thereof) or any counterclaim, set-off or other claim which the Guaranteed Borrower may allege against the Lender with respect thereto. Moreover, Guarantor agrees that Guarantor's obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

b. Guarantor further agrees that the exercise of any rights under any of the Loan Documents executed by Guaranteed Borrower in connection with any of the Loans shall not constitute a legal or equitable discharge of Guarantor. Guarantor hereby fully and completely waives and relinquishes any right of subrogation against the Guaranteed Borrower prior to the full repayment of the Guaranteed Obligations and Guarantor understands and acknowledges that Guarantor may therefore incur a partially or totally non-reimbursable liability hereunder; nevertheless, Guarantor hereby authorizes and empowers the Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the Guaranteed Obligations shall be absolute, independent and unconditional under any and all circumstances.

c. Guarantor agrees that until the termination of this Agreement (i) it shall have no right of subrogation, reimbursement, or contribution against the Guaranteed Borrower or against any collateral or security provided for in any of the Loan Documents for payment or performance of any or all of the Guaranteed Obligations and (ii) it shall not have any such right of subrogation, reimbursement, or contribution against the Guaranteed Borrower now or in the future in connection with the Guaranteed Obligations. Guarantor hereby forever waives and relinquishes any and all such subrogation, reimbursement and contribution rights, whether or not the Guaranteed Obligations owed to Lender under any of the Loan Documents have been fully performed and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security until repayment in full of the Loans. Guarantor further agrees that to the extent the waiver of his rights of subrogation, reimbursement and/or contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement and/or contribution Guarantor may have against the Guaranteed Borrower or against such collateral or security shall be junior and subordinate to any rights Lender may have against the Guaranteed Borrower and to all right, title and interest the Lender may have in such collateral or security. Lender may use, sell or dispose of any item of collateral or security in its sole discretion without regard to any subrogation, reimbursement and/or contribution rights that Guarantor may have pursuant to the immediately preceding sentence, and upon any disposition or sale, any such rights of subrogation, reimbursement and/or contribution Guarantor may have shall terminate.

d. Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Lender may also bid at any such sale and in the event such collateral is sold to Lender in whole or partial satisfaction of the Guaranteed Borrower's obligations under any of the Loan Documents, including the Guaranteed Obligations (or any portion thereof), Guarantor shall not have any further right or interest with respect thereto.

e. Guarantor expressly waives any defense or benefits arising out of any federal or state bankruptcy, insolvency, or debtor relief laws, including, without limitation, under Sections 364 or 1111(b)(2) of the United States Bankruptcy Code.



f. Guarantor expressly waives the benefits of any statutory or other provisions limiting the liability of a surety.

g. Guarantor also expressly waives the benefits of any statutory provision limiting the right of Lender to receive a deficiency judgment, or to otherwise proceed against any person or entity obligated for payment of indebtedness, after any foreclosure or trustee's sale of any Security for the costs.

h. Guarantor shall continue to be liable for the Guaranteed Obligations notwithstanding: (i) any modification, agreement or stipulation between the Guaranteed Borrower and Lender, or their respective successors and assigns, with respect to any of the Loan Documents or the obligations encompassed thereby, including, without limitation, the Guaranteed Obligations; (ii) the Lender's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents or in any modification thereof; (iii) any release of the Guaranteed Borrower from any liability with respect to the Guaranteed Obligations or any portion thereof; (v) any release or subordination of any real or personal property then held by Lender as security for the performance of the Guaranteed Obligations or any portion thereof; or (vi) Lender's enforcement of, or failure to enforce, any other guaranty executed in connection with the Loans.

i. Representations of Guarantor. Guarantor hereby represents and warrants as follows: (i) Guarantor now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Loan Documents or referred to therein, the value of the assets owned or to be acquired by the Guaranteed Borrower, the Guaranteed Borrower's financial status and its ability to perform the Guaranteed Obligations; (ii) Guarantor has reviewed and approved copies of the Loan Documents for both of the Mortgages and is fully informed of the remedies Lender may pursue under any of the Loan Documents; and (iii) so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, Guarantor shall keep itself fully informed as to all aspects of the Guaranteed Borrower's financial condition and the performance of the Guaranteed Obligations.

j. Choice of Remedies. Guarantor agrees that Lender may enforce the Loan Documents without the necessity of resorting to or exhausting any security or collateral securing the Guaranteed Obligations and without the necessity of proceeding against the Guaranteed Borrower. Guarantor hereby waives the right to require the Lender to proceed against the Guaranteed Borrower, to foreclose any lien on any real or personal property securing the Guaranteed Obligations, to exercise any right or remedy under any of the Loan Documents (including, without limitation, any other guaranty executed in connection with the Guaranteed Loan), or to pursue any other remedy or to enforce any other right.

k. Waiver of Rights Created by Lender's Election of Remedies. Notwithstanding anything contained herein to the contrary, Guarantor further hereby waives all rights and defenses arising out of an election of remedies by the Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against Borrower.

11. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

a. BORROWERS, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMIT TO PERSONAL JURISDICTION IN THE COUNTY AND STATE WHERE ANY PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREE THAT



ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER SUCH COUNTY AND STATE, (C) SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND, (D) TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWERS AGREE THAT THEY WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM. BORROWERS FURTHER CONSENT AND AGREE TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWERS AT THE ADDRESS FOR NOTICES DESCRIBED IN THE MORTGAGES, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

b. LENDER AND BORROWERS, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWERS, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWERS, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

12. **Survival.** This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Lender under any one or more of the Mortgages or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, any Loan is paid or satisfied in full, or unless terminated earlier pursuant to the terms of this Agreement.

13. **Entire Agreement; Amendment; Severability.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

14. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF IN WHICH THE APPLICABLE PROPERTY IS LOCATED APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, EXCEPT WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO REALIZING UPON THE SECURITY COVERED BY THIS AGREEMENT WHICH SHALL BE GOVERNED BY THE LAW OF THE STATE IN WHICH EACH PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF IN WHICH THE APPLICABLE PROPERTY IS LOCATED SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF THE LOAN DOCUMENTS AND THE DEBT AND OBLIGATIONS THEREUNDER. IN CASE ANY OF THE PROVISIONS OF THIS AGREEMENT SHALL AT ANY TIME BE HELD BY A COURT OF COMPETENT JURISDICTION TO BE ILLEGAL, INVALID, OR UNENFORCEABLE FOR ANY REASON, SUCH ILLEGALITY,



INVALIDITY OR UNENFORCEABILITY SHALL NOT AFFECT THE REMAINING PROVISIONS OF THIS AGREEMENT, AND THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED AS IF ALL SUCH ILLEGAL, INVALID OR UNENFORCEABLE PROVISIONS HAD NEVER BEEN INSERTED HEREIN.

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Shelby Cnty Judge of Probate, AL  
06/30/2006 09:49:14AM FILED/CERT

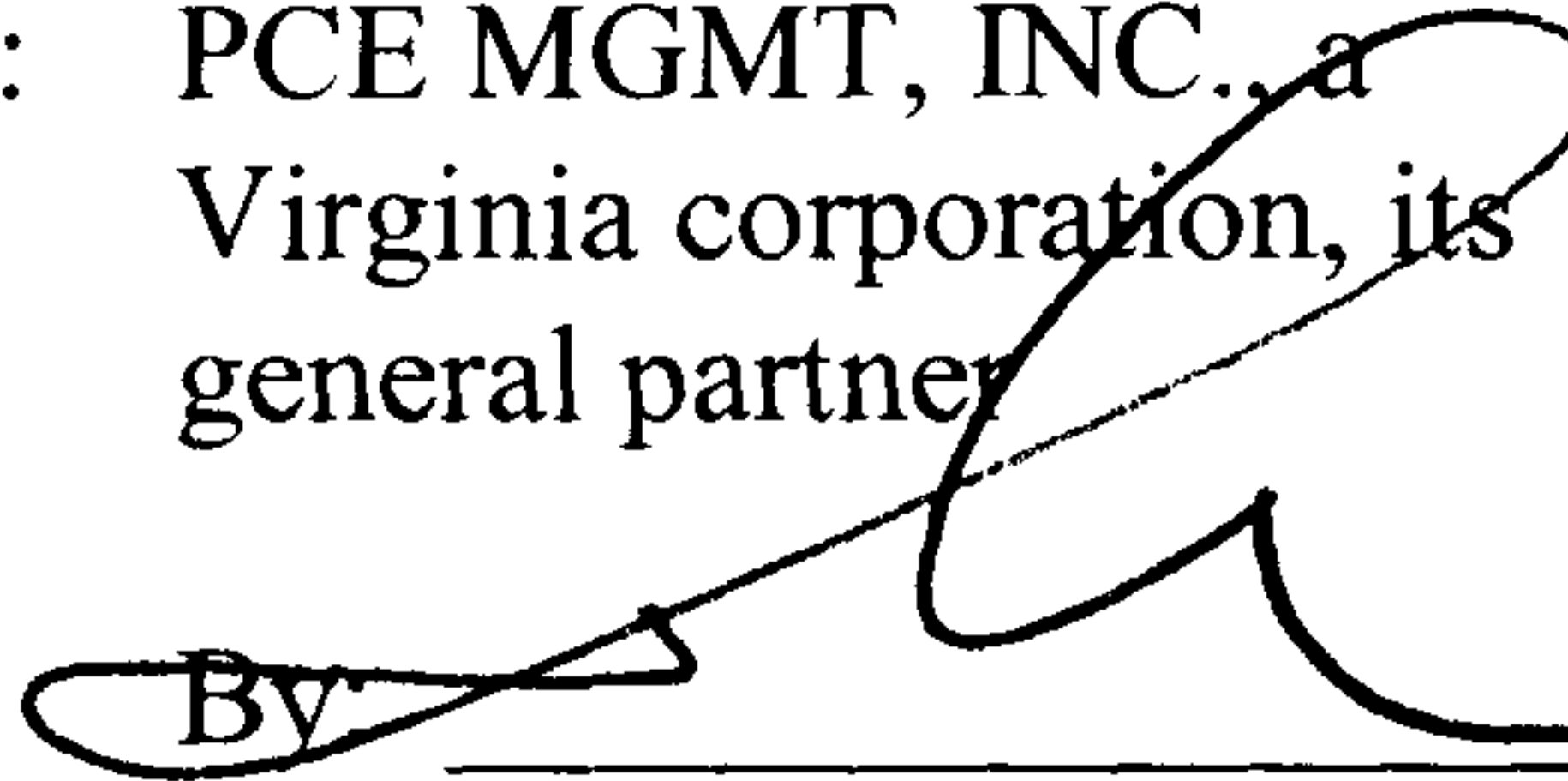


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Shelby Cnty Judge of Probate, AL  
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**BORROWER:**

PARKWAY CROSSING EAST SHOPPING CENTER,  
L.P., a Virginia limited partnership

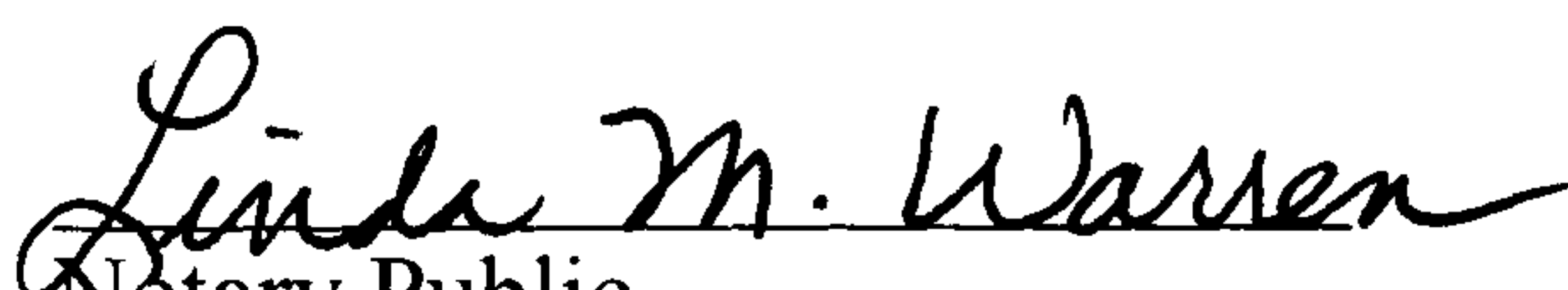
By: PCE MGMT, INC., a  
Virginia corporation, its  
general partner

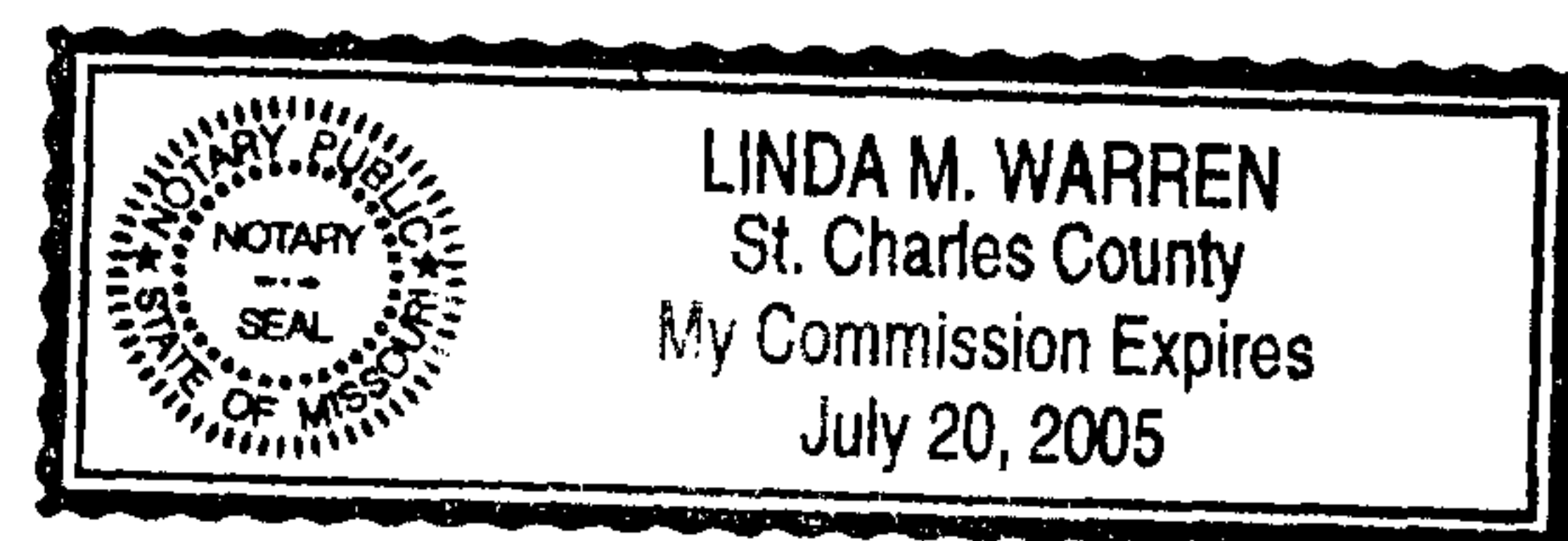
By:   
Thomas R. Green, President

STATE OF MISSOURI       )  
                                  ) ss.:  
COUNTY OF ST. LOUIS    )

On this 28th day of April, 2005, personally appeared before me Thomas R. Green, who executed the foregoing instrument as the President of PCE MGMT, Inc., a Virginia corporation, the general partner of Parkway Crossing East Shopping Center, L.P., a Virginia limited partnership on behalf and by authority of said limited partnership.

WITNESS my hand and official seal.

  
Notary Public





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

**BORROWER:**


INVERNESS HEIGHTS SHOPPING  
CENTER, LP, an Alabama limited partnership

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

By: 

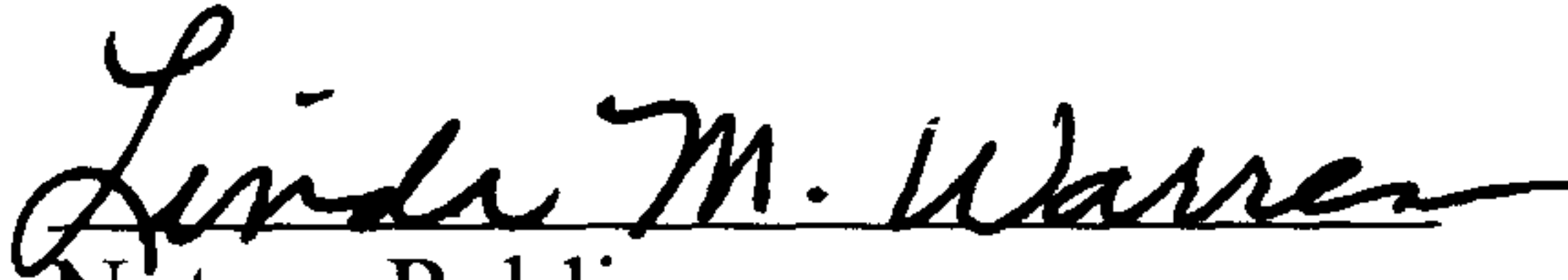
Thomas R. Green, President

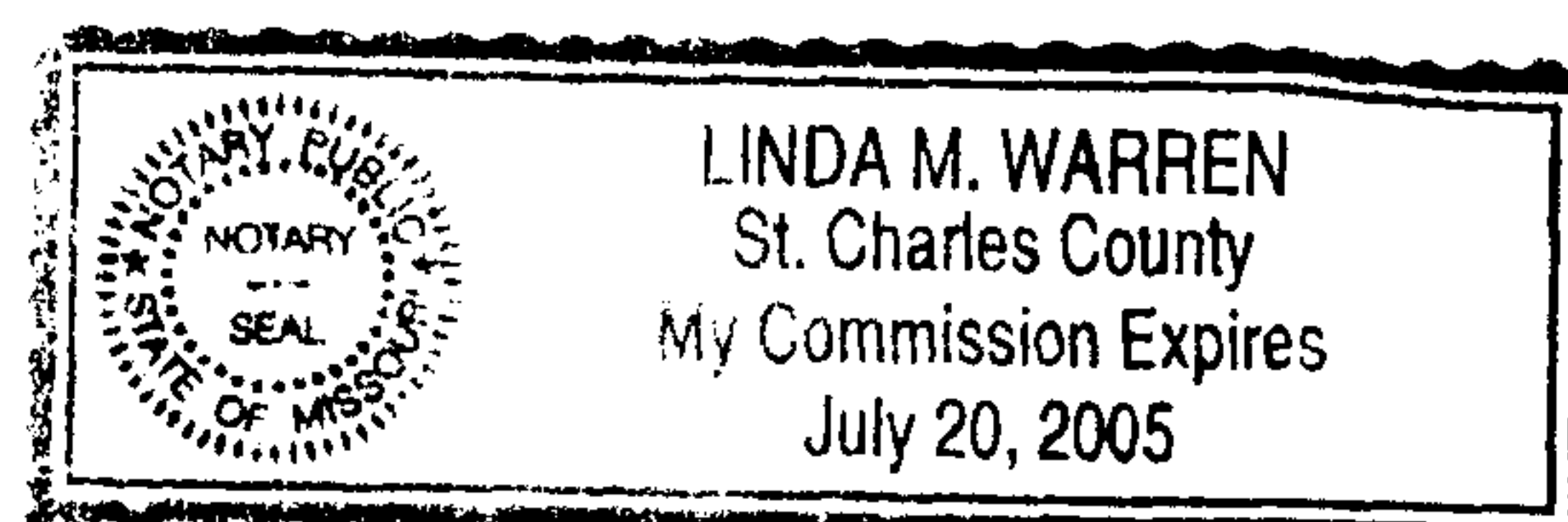
STATE OF MISSOURI           )  
  ) ss.:  
COUNTY OF ST. LOUIS       )

  
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Shelby Cnty Judge of Probate, AL  
06/30/2006 09:49:14AM FILED/CERT

On this 28<sup>th</sup> day of April, 2005, personally appeared before me Thomas R. Green, who executed the foregoing instrument as the President of IH MGMT, Inc., an Alabama corporation, the general partner of Inverness Heights Shopping Center, LP, an Alabama limited partnership on behalf and by authority of said limited partnership.

WITNESS my hand and official seal.

  
Notary Public







20060630000315300 12/16 \$56.00  
Shelby Cnty Judge of Probate, AL  
06/30/2006 09:49:14AM FILED/CERT

Signed and acknowledged  
in the presence of:

[Signature]  
Print Name: Thomas L. Meryphew

[Signature]  
Print Name: J. Lugosch

LENDER:

MERRILL LYNCH MORTGAGE LENDING,  
INC., a Delaware corporation

By: [Signature]  
Name: ELI HATTEM  
Title: V.P.

STATE OF New York )  
COUNTY OF New York ) ss.:


On this 28<sup>th</sup> day of April, 2005 before me, a Notary Public in and for said County and State, personally appeared Eli Hattem, known to me to be the person who signed the foregoing instrument, as Vice President of Merrill Lynch Mortgage Lending, Inc., the Lender named therein, who, being by me first duly sworn, acknowledged to me that he executed the foregoing instrument on behalf of said company, being duly authorized by resolution of its members, and as his and its free and voluntary act and deed for the purposes set forth therein.

WITNESS my hand and official seal.

[Signature]  
Notary Public

ANA E. ROSU  
Notary Public, State of New York  
No. 01RO6030260  
Qualified in Nassau County  
Commission Expires 09/07/20 05



  
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**EXHIBIT A-1**

**INVERNESS HEIGHTS 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.



EXHIBIT A-2

PARKWAY CROSSING LEGAL DESCRIPTION

All of those lots or parcels of land located in Prince William County, Virginia and more particularly described as follows:

Parcel A containing 0.6109 acres, more or less; Parcel B containing 0.7113 acres, more or less; Lot 3, containing 16.8175 acres, more or less; Lot 4 containing 0.7505 acres, more or less; Lot 5 containing 1.2086 acres, more or less; and Lot 6, containing 1.1826 acres, more or less; as shown on a plat entitled "Plat Showing Subdivision and Dedication of Various Easements, Parcels 53A1B, The Property of AutoNation USA Corporation, Occoquan Magisterial District, Prince William County, Virginia" attached to the Deed of Subdivision and Easement, recorded as Instrument No. 200208080102377 (and as shown on Plat recorded as Instrument No. 20020808102378) and re-recorded as Instrument No. 200208140104694, among the land records of Prince William County, Virginia.

Together with a non-exclusive thirty (30) foot Ingress-Egress Easement as more particularly set forth within that certain Reciprocal Easement Agreement dated October 6, 1995, by and between Parkway Crossing Associates, L.L.C. and Mobil Oil Corporation, recorded in Deed Book 2279, at page 1959, among the aforesaid land records.

ALSO BEING DESCRIBED AS FOLLOWS:

METES AND BOUNDS DESCRIPTION

BEGINNING AT A POINT ON THE NORTHERLY RIGHT—OF—WAY LINE OF CATON HILL ROAD, (VARIABLE WIDTH); SAID POINT AT THE INTERSECTION OF PRINCE WILLIAM PARKWAY, ROUTE 3000, (VARIABLE WIDTH), SAID POINT ALSO BEING THE BEGINNING OF RAMP TO PRINCE WILLIAM PARKWAY, ROUTE 3000, (VARIABLE WIDTH); THENCE DEPARTING THE SAID CATON HILL ROAD, (VARIABLE WIDTH) AND RUNNING WITH THE SAID PRINCE WILLIAM PARKWAY, ROUTE 3000, (VARIABLE WIDTH) N27°49'32" E A DISTANCE OF 51.35' TO A POINT ON THE SOUTHERLY LINE OF LOT 1, AUTONATION USA CORPORATION; THENCE RUNNING FIRST WITH THE SOUTHERLY LINE OF LOT 1, AUTONATION USA CORPORATION THEN WITH THE SOUTHERLY LINE OF LOT 2, AUTONATION USA CORPORATION THE FOLLOWING COURSES AND DISTANCES: S 61°31'25" E A DISTANCE OF 135.21' TO A POINT; N 28°28'35" E A DISTANCE OF 18.44' TO A POINT; S 58°01'30" E A DISTANCE OF 39.90' TO A POINT; WITH A CURVE TURNING TO THE RIGHT, A RADIUS OF 248.01', AND AN ARC LENGTH OF 157.03' A CHORD BEARING OF S 39°53'10" E, AND A CHORD LENGTH OF 154.42' TO A POINT; WITH A CURVE TO THE RIGHT, A RADIUS OF 24.00', AND AN ARC LENGTH OF 7.23'. A CHORD




BEARING OF S 13°07'11" E, AND A CHORD LENGTH OF 7.20' TO A POINT, S 69°56'41" E A DISTANCE OF 293.09' TO A POINT; N 20°03'19" E A DISTANCE OF 39.02' TO A POINT; S 69°56'41" E A DISTANCE OF 134.61' TO A POINT; N 56°28'47" E A DISTANCE OF 105.19' TO A POINT ON THE WESTERLY LINE OF THE NOW OR FORMERLY VIRGINIA ELECTRIC POWER COMPANY PROPERTY; THENCE WITH THE WESTERLY LINE OF THE NOW OR FORMERLY VIRGINIA ELECTRIC POWER COMPANY PROPERTY THE FOLLOWING COURSES AND DISTANCES: S 33°31'13" E A DISTANCE OF 374.09 FEET TO A POINT; S 56°09'12" E A DISTANCE OF 59.13 FEET TO A POINT ON THE WESTERLY RIGHT—OF—WAY LINE OF INTERSTATE ROUTE 95 (VARIABLE WIDTH); THENCE WITH THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 95 (VARIABLE WIDTH) THE FOLLOWING COURSES AND DISTANCES: S 29°35'05" W A DISTANCE OF 152.24' TO A POINT; S 17°39'30" W A DISTANCE OF 200.62 FEET TO A POINT; S 22°48'19" W A DISTANCE OF 430.66 FEET TO A POINT BEING A NORTHEASTERLY CORNER OF THE NOW OR FORMERLY THOMAS F. PUMPELLY PROPERTY; THENCE WITH THE NORTHERLY LINE OF THE NOW OR FORMERLY THOMAS F. PUMPELLY PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 67°11'41" W A DISTANCE OF 361.58 FEET TO A POINT; S 52°45'11" W A DISTANCE OF 176.99 FEET TO A POINT ON THE EASTERLY RIGHT—OF—WAY LINE OF RESEARCH COURT (68 FEET WIDE); THENCE WITH THE EASTERLY RIGHT OF WAY LINE OF RESEARCH COURT (68 FEET WIDE) THE FOLLOWING COURSES AND DISTANCES: WITH A CURVE TO THE LEFT WITH A RADIUS OF 68.00 FEET, AND AN ARC DISTANCE OF 119.13 FEET, A CHORD BEARING OF N 18°13'40" W, AND A CHORD LENGTH OF 104.47 FEET TO A POINT; WITH A CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET, AND AN ARC DISTANCE OF 22.09 FEET, A CHORD BEARING OF N 43°06'18" W, AND A CHORD LENGTH OF 21.38 FEET TO A POINT; N 17°47'35" W A DISTANCE OF 249.76 FEET TO A POINT ON THE NORTHERLY RIGHT—OF—WAY LINE OF CROSSING PLACE, (VARIABLE WIDTH); THENCE RUNNING WITH THE SAID NORTHERLY RIGHT—OF—WAY LINE OF CROSSING PLACE, (VARIABLE WIDTH) TURNING TO THE RIGHT A RADIUS OF 585.00 FEET, AND AN ARC DISTANCE OF 389.95' FEET, A CHORD BEARING OF S 87°58'16" W AND A CHORD LENGTH OF 382.77 FEET TO A POINT AT A SOUTHERLY CORNER TO THE NOW OR FORMERLY BOROOZI, TRUSTEE PROPERTY; THENCE DEPARTING THE SAID NORTHERLY RIGHT OF WAY LINE OF CROSSING PLACE, (VARIABLE WIDTH) AND RUNNING WITH THE EASTERLY LINE OF THE SAID NOW OR FORMERLY BOROOZI, TRUSTEE PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 17°04'02" E A DISTANCE OF 254.84' TO A POINT; N 62°10'28" W A DISTANCE OF 171.00' TO A POINT ON THE AFOREMENTIONED EASTERLY RIGHT—OF—WAY LINE OF PRINCE WILLIAM PARKWAY, ROUTE 3000, (VARIABLE WIDTH); THENCE FIRST WITH THE EASTERLY RIGHT—OF—WAY LINE OF PRINCE WILLIAM PARKWAY, ROUTE 3000, (VARIABLE WIDTH) THEN WITH THE EASTERLY RIGHT—OF—WAY LINE OF THE RAMP FROM CATON HILL ROAD, (VARIABLE



WIDTH) THE FOLLOWING COURSES AND DISTANCES: N 27°49'32"E A DISTANCE OF 343.80' TO A POINT; WITH A CURVE TURNING TO THE LEFT A RADIUS OF 191.00', AND AN ARC LENGTH OF 725.85', WITH A CHORD BEARING OF N 72°09'28" E, AND A CHORD LENGTH OF 361.47' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT A RADIUS OF 518.46', AND AN ARC LENGTH OF 223.73', WITH A CHORD BEARING OF N 49°15'23" W, AND A CHORD LENGTH OF 222.00' TO A POINT; N 61°37'12" W A DISTANCE OF 24.22' TO THE POINT OF BEGINNING.

Together with a non-exclusive thirty (30) foot Ingress-Egress Easement as more particularly set forth within that certain Reciprocal Easement Agreement dated October 6, 1995, by and between Parkway Crossing Associates, L.L.C. and Mobil Oil Corporation, recorded in Deed Book 2279, at page 1959, among the aforesaid land records.

  
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