



20100809000253850 1/8 \$33.00
Shelby Cnty Judge of Probate, AL
08/09/2010 12:08:43 PM FILED/CERT

This instrument prepared by
and upon recording return to:
Murphy McMillan, Esq.
Baker Donelson Bearman
Caldwell & Berkowitz, PC
420 20th Street North
Suite 1600
Birmingham, Alabama 35203

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**"), is made between the **CITY OF CALERA, ALABAMA**, a municipal corporation ("**City**") and **COMPASS BANK**, its successors and/or assigns ("**Lender**").

W I T N E S S E T H:

A. Lender is making a loan (the "**Loan**") to Calera Crossings, LLC, an Alabama limited liability company, its successors or assigns ("**Borrower**"), in the amount of 8,200,000 to be secured by a mortgage lien (the "**Mortgage**") on Borrower's leasehold estate created under the Ground Lease, dated March 3, 2009, between City, as landlord, and Calera Crossings, as tenant under which City is the ground lessor with respect to the real property described in **Exhibit A**, attached (the "**Property**"), which Mortgage was filed for record in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20090305000081470

B. Borrower has proposed to develop the Property by constructing thereon an approximately 58,200 square foot retail shopping center plus outparcels (the "**Project**"). The Project will be anchored by Publix Alabama, LLC ("**Publix**"). Publix will operate a "Publix" grocery store of approximately 45,600 square feet pursuant to the Lease Agreement between Developer, as landlord, and Publix, as tenant (the "**Publix Lease**"), dated as of August 4, 2008.

C. As additional security for the Loan, Lender desires for City to subordinate its fee interest in the Property to the lien of the Mortgage.

D. City has agreed to subordinate its fee interest in the Property to the Mortgage under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other due, good, and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Loan, the parties hereby agree as follows:

1. **Subordination.** City hereby agrees that its fee interest in the Property is and shall remain subordinated to the lien of Lender's Mortgage to the same full extent as if City had signed the Mortgage with Borrower intending that its fee interest in the Property be given as security for the Loan. This subordination shall be operative and effective continuously beginning on the latest to occur of the date that (a) Borrower substantially completes construction of certain minimum improvements on the Property in order to allow Publix to operate its business from the Property in accordance with the terms and conditions of and in order to comply with the Publix Lease (the "**Minimum Required Improvements**"), (b) Publix accepts its premises pursuant to the terms and conditions of the Publix Lease, (c) and Publix opens for business to the public and shall continue until payment in full of the Loan but only as to the Mortgage described above and shall not be effective with respect to any future or existing lien or encumbrance on the Property.

2. **Notification.** Lender agrees to notify City of any default of Borrower and shall allow City the cure such Borrower's default.


3. **Miscellaneous.** This Agreement is absolute and unconditional, and Lender and any title insurer may rely fully upon this Agreement for the purpose of issuing any title insurance policy or executing any loan documents. City further agrees, upon request of Lender to execute any further documents reasonably requested to ratify and further acknowledge this Agreement. This Agreement shall benefit successors and assigns of Lender.

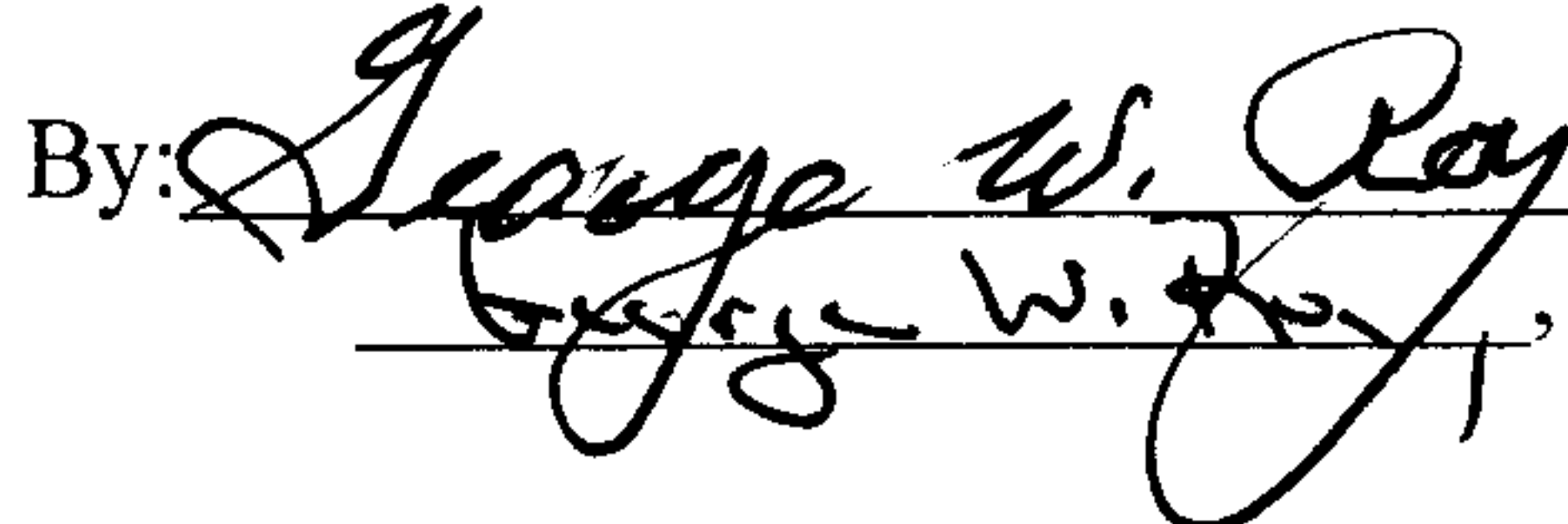
IN WITNESS WHEREOF, the undersigned have executed this Agreement this the 3 day of March, 2009.

CITY:

CITY OF CALERA, ALABAMA

ATTEST:

, City Clerk

By: , Mayor



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STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that George W Roy, whose name as Mayor of the City of Calera, Alabama, a municipal corporation, 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 said instrument, he, as Mayor, and with full authority, executed the same voluntarily for and on behalf of the City of Calera, Alabama.

Given under my hand and official seal this 3 day of March, 2009.

Connie B Payton

Notary Public

My Commission Expires

**NOTARY PUBLIC STATE
OF ALABAMA AT-LARGE
MY COMMISSION EXPIRES
OCT 10, 2012**



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EXHIBIT A

DESCRIPTION OF MORTGAGE PROPERTY

Commence at a 3 inch capped iron found locally accepted to be the Southeast corner of Section 33, Township 21 South, Range 2 West, Shelby County, Alabama; thence run North 01 degrees, 10 minutes, 29 seconds East along the East line of said Section 33 for a distance of 468.18 feet to a 2 inch open top iron found; thence run North 87 degrees, 44 minutes, 46 seconds West for a distance of 596.15 feet to an iron pin set at the point of beginning; thence continue North 87 degrees, 44 minutes, 46 seconds West for a distance of 470.90 feet to a one half inch rebar found; thence run North 89 degrees, 21 minutes, 49 seconds West for a distance of 959.20 feet to a Shiflett Capped Iron found; thence run North 00 degrees, 00 minutes, 07 seconds West for a distance of 263.28 feet to an iron pin set; thence run South 89 degrees, 48 minutes, 23 seconds East for a distance of 162.92 feet to an iron pin set; thence run North 04 degrees, 37 minutes, 59 seconds East for a distance of 335.64 feet to an iron pin set; thence run South 89 degrees, 19 minutes, 36 seconds East for a distance of 279.61 feet to an iron pin set; thence run North 04 degrees, 37 minutes, 59 seconds East for a distance of 200.45 feet to an iron pin set on the South right-of-way of Alabama Highway No. 70 said iron pin set also being on a curve to the right, having a central angle of 14 degrees, 15 minutes, 33 seconds, a radius of 1,403.43 feet, a chord bearing of South 87 degrees, 33 minutes, 59 seconds East and a chord of 348.37 feet; thence run in a Southeasterly direction along the arc of said curve and also along said South right-of-way line for a distance of 349.27 feet to an iron pin set; thence run South 80 degrees, 26 minutes, 15 seconds East along said South right-of-way line for a distance of 512.62 feet to an iron pin set; thence run South 10 degrees, 28 minutes, 18 seconds West for a distance of 443.20 feet to a half inch rebar found; thence run South 89 degrees, 37 minutes, 38 seconds East for a distance of 142.37 feet to an iron pin set; thence run South 00 degrees, 25 minutes, 12 seconds East for a distance of 201.30 feet to an iron pin set on a curve to the left, having a central angle of 87 degrees, 19 minutes, 33 seconds, a radius of 25.00 feet, a chord bearing of South 44 degrees, 04 minutes, 59 seconds East and a chord of 34.52 feet; thence run in a Southeasterly direction along the arc of said curve for a distance of 38.10 feet to an iron pin set; thence run South 87 degrees, 44 minutes, 46 seconds East for a distance of 5.69 feet to an iron pin set; thence run South 02 degrees, 33 minutes, 15 seconds West for a distance of 60.00 feet to the point of beginning; Said parcel containing 20.56 acres, more or less.



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Mayor ProTem Phillips introduced the following Ordinance:

ORDINANCE NO. 2009- 04

AN ORDINANCE AMENDING ORDINANCE NO. 2008-29
WHICH WAS HERETOFORE ADOPTED BY THE MAYOR
AND CITY COUNCIL OF THE CITY OF CALERA, ALABAMA

BE IT ORDAINED by the Mayor and the City Council (the "Council") of the City of Calera, Alabama (the "City") as follows:

WHEREAS, the Council did heretofore on, to-wit, December 22, 2008, adopt Ordinance No. 2008-29, and

WHEREAS, pursuant to Section 7 of Ordinance 2008-29, the Council authorized the Mayor of the City, the City Clerk, the City Treasurer, and all other officers of the City and the Council, to sign any instruments and documents as may be necessary to consummate the transaction described therein, and

WHEREAS, in addition to the documents described with specificity in Section 6 of Ordinance 2008-29, the City has been requested to execute a Future Advance Accommodation Mortgage and Fixture Filing (the "Accommodation Mortgage") of the real property described therein, a copy of which Accommodation Mortgage is on file with the Clerk of the City of Calera, and has been requested to execute an Escrow Agreement for the Accommodation Mortgage and Subordination Agreement, a copy of which is on file with the Clerk of the City of Calera, and

WHEREAS, the Council finds that the function and purpose of the Accommodation Mortgage is consistent with the function and purpose of the Subordination Agreement specified therein:

NOW, THEREFORE, BE IT FURTHER ORDAINED BY THE MAYOR AND THE CITY COUNCIL (THE "COUNCIL") OF THE CITY OF CALERA, ALABAMA (THE "CITY"), as follows:

1. That Section 6 of Ordinance No. 2008-29 be and the same is hereby amended to read as follows:

Section 6. Authorization of Development Agreement, Non-Disturbance Agreement, Consent, Subordination Agreement, the Future Advance Accommodation Mortgage and Fixture Filing (the "Accommodation Mortgage"), and Escrow Agreement for Accommodation Mortgage and Subordination Agreement. The Mayor of the City or, in his absence, the Mayor Pro Tempore, is hereby authorized to execute and deliver, for and in the name and behalf of the City, the Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement in such forms as the Mayor of the City or, in his



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absence, the Mayor Pro Tempore, acting with the advice of counsel to the City, shall determine to be necessary or desirable to carry out fully the transactions contemplated by this ordinance. The Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement shall be in substantially the forms presented to the meeting of the Council at which this ordinance is adopted (which forms shall be preserved in the permanent records of the City pertaining to the said meeting and which forms are hereby adopted in all respects as if the same were set out in full herein), with such changes, not inconsistent with the provisions hereof, as the Mayor of the City or, in his absence, the Mayor Pro Tempore, acting with the advice of counsel to the City, shall determine to be necessary or desirable in order to consummate the transactions authorized by this ordinance, the determination of the definitive forms of the Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement by such officer to be conclusively established by his execution of the same, and the Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement, as executed by the said Mayor or, in his absence, the Mayor Pro Tempore, are hereby approved, and the use thereof is hereby authorized. The City Clerk is hereby authorized and directed to affix the official seal of the City to the Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement, and to attest the same.

2. That Section 7 of Ordinance No. 2008-29 be and the same is hereby amended to read as follows:

Section 7. General Authorization. The Mayor of the City or, in his absence, the Mayor Pro Tempore, the City Clerk, the City Treasurer, and all other officers of the City and of the Council are hereby authorized and directed to execute, deliver, seal, and attest such instruments, agreements, undertakings, documents, and certificates and to take such other actions on behalf of the City as may be necessary to consummate the purchase by the City of the Economic Development Land, the lease of the Economic Development Land pursuant to the Lease, and the execution and delivery of the Lease, the Development Agreement, the Non-Disturbance Agreement, the Consent, the Subordination Agreement, the Accommodation Mortgage, and the Escrow Agreement for Accommodation Mortgage and Subordination Agreement and to carry out fully the transactions contemplated by this ordinance.

3. That all other sections and provisions of said Ordinance 2008-29 shall remain in full force and legal effect.

Council Member Bradshaw moved that unanimous consent of the Council be given for the immediate action upon said Ordinance. Council Member Davis seconded said motion and upon roll call vote the results were:



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Phillips	Yea
Bradshaw	Yea
Davis	Yea
Montgomery	Yea
Roberson	Yea

The Mayor ProTem declared said motion carried and unanimous consent given.

Council Member Roberson moved that Ordinance No. 2009-04 be adopted, which motion was seconded by Council Member Montgomery and upon roll call vote the results were as follows:

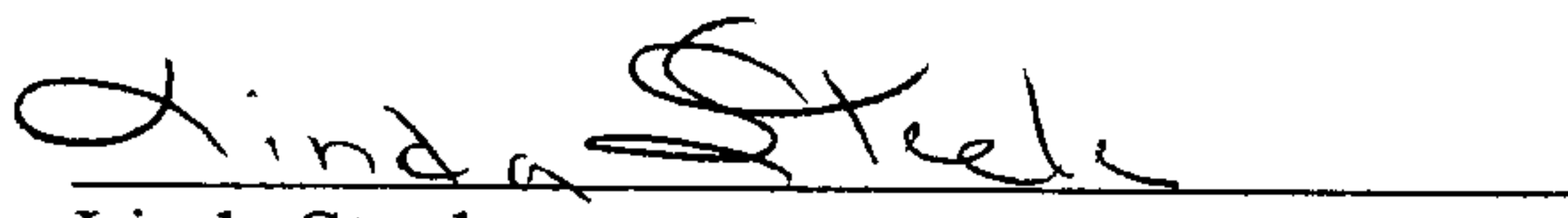
Phillips	Yea
Bradshaw	Yea
Davis	Yea
Montgomery	Yea
Roberson	Yea


Adopted this 2nd day of March 2009.

Mayor ProTem Phillips declared Ordinance No. 2009-04 adopted.


Bobby Phillips, Mayor ProTem

Attest:


Linda Steele
City Clerk


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CERTIFICATION OF POSTING

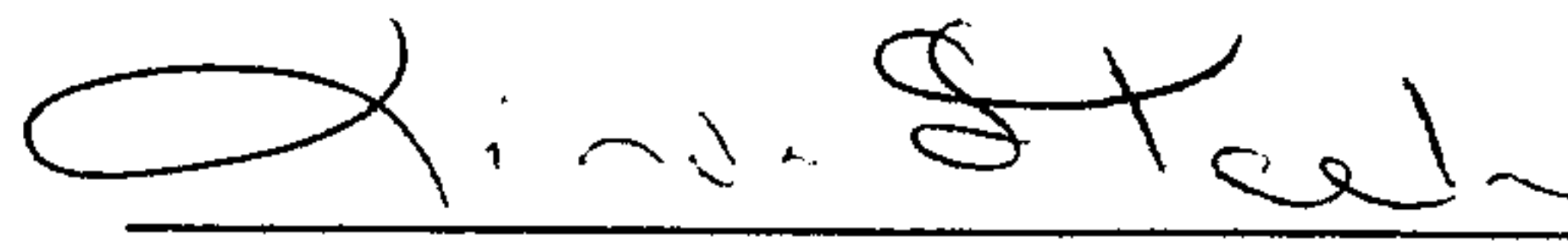
I, Linda Steele, City Clerk of the City of Calera, Alabama do hereby certify that the foregoing Ordinance is a true and correct copy of the Ordinance adopted by the City Council of the City of Calera, Alabama on the 2nd day of March, as the same appears in the official record of minutes of the City of Calera Council meeting.

Given under my hand this 2nd day of March 2009.


Linda Steele, City Clerk

I, Linda Steele, City Clerk of the City of Calera, Alabama do hereby certify that the foregoing Ordinance was duly posted at the following locations:

Calera City Hall
Calera Post Office
Calera Public Library
Associated Foods


Linda Steele, City Clerk

02/03/2009
Date Posted



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