

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made as of this 14<sup>th</sup> day of ~~December~~ January 2012, by and among Cantor Commercial Real Estate Lending, L.P, a Delaware limited partnership (hereinafter "Lender"), Stein Mart, Inc., a Florida corporation (hereinafter "Tenant"), and Colonial Realty Limited Partnership, a (hereinafter "Landlord").

### WITNESSETH:

WHEREAS, Tenant and Landlord are parties to that certain Lease dated as of October 12, 2001 (the "Lease"), covering the premises described in the Lease consisting of approximately a 34,000 square foot space (the "Premises") in that certain building located at 2792 John Hawkins Parkway, Hoover, AL 35244 in the Colonial Promenade Shopping Center (the "Property") and more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, Lender has made or is about to make a loan to Landlord secured by a mortgage or deed of trust (hereinafter, the "Mortgage") encumbering the Property and an assignment of Landlord's interest in the Lease owned by Landlord (hereinafter, the "Assignment"); and

WHEREAS, a copy of the Lease has been delivered to Lender, the receipt of which is hereby acknowledged; and

WHEREAS, the Lease requires that the holder of any mortgage or deed of trust at the time the Lease is executed deliver to Tenant a non-disturbance agreement certifying that the rights of Tenant under the Lease, including, but not limited to, the right of possession, shall not be disturbed or impaired so long as the Lease remains in full force and effect and Tenant is not in default beyond applicable notice and cure periods; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the lien of the mortgage and to provide for the non-disturbance of Tenant by Lender.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Tenant covenants and agrees with Lender that the Lease is and shall continue to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended), subject to the provisions of this Agreement.

2. Lender agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable notice and cure periods:



- (a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.
- (b) The possession by Tenant of the Premises and Tenant's rights under the Lease shall not be disturbed, affected or impaired by, nor will the Lease, the term thereof or any rights of Tenant thereunder be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by Lender, or by any judicial sale or execution or other sale of the Property, or by any deed given to Lender by any other documents or as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby, or (iii) Lender's exercise of any right under the Mortgage prior to foreclosure or prior to the date Lender may succeed to the interest of Landlord.

3. Lender hereby acknowledges and agrees that all fixtures and equipment whether owned by Tenant or any subtenant or leased by Tenant and installed in or on the Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant and may, subject to the provisions of the Lease, be removed by Tenant at any time. In no event (including a default under the Lease or Mortgage) shall Lender have any liens, rights or claims in Tenant's fixtures and equipment, whether or not all or any part thereof shall be deemed fixtures, or in Tenant's merchandise or other personal property located in the Premises; and Lender expressly waives all rights of levy, distraint, or execution with respect to said fixtures and equipment arising out of the Mortgage.

4. If Lender shall become the owner of the Property by reason of foreclosure of the Mortgage or otherwise, or if the Property shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as Tenant thereunder, and the then owner of the Property (including Lender), as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

- (a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as the landlord under the Lease and such new owner shall accept such attornment; and
- (b) If Tenant is not then in default under the Lease beyond any applicable notice and cure periods, such new owner shall be bound to Tenant under all of the terms,





covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform, provided, however, that Lender or any successor or assignee of Lender shall not (i) be bound by any deposit or rental security paid to any prior landlord under the Lease including, without limitation, the Landlord, unless received and receipted for by Lender or its successor or assignee; (ii) be liable for any act or omission of any prior landlord under the Lease, including, without limitation, the Landlord, except for lease defaults which continue after Lender or such new owner succeeds to Landlord's interest; (iii) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including Landlord, except for any offsets or defenses which Lender had notice of and failed to cure; and (iv) be bound by any amendment of the Lease made without Lender's consent, which such consent will not be unreasonably withheld or delayed.

5. After written notice is given to Tenant by Lender that the rentals due under the Lease are to be paid to Lender, Tenant shall pay to Lender all rentals due to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments.

6. Tenant shall give Lender written notice of any default by Landlord under the Lease. Lender shall have the same period of time provided Landlord under the Lease within which to cure such default.

7. Any notices or communications given under this Agreement shall be in writing and shall be given by hand delivery, served by certified mail, return receipt requested, postage prepaid, or sent by United States express mail or private overnight courier:

(a) if to Lender, at: Cantor Commercial Real Estate Lending, L.P.  
110 East 59<sup>th</sup> Street, 6<sup>th</sup> Floor  
New York, NY 10022  
Attn: Jill Weinstein/Don Habel

(b) if to Tenant, at Stein Mart, Inc.  
1200 Riverplace Boulevard  
Jacksonville, Florida 32207  
Attn: President

with a copy to: Stein Mart, Inc.  
1200 Riverplace Boulevard  
Jacksonville, Florida 32207  
Attn: Vice President – Real Estate

(c) if to Landlord, at: Colonial Realty Limited Partnership  
2101 6<sup>th</sup> Avenue North, Suite 750  
Birmingham, AL 35202-1687

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by a subsequent written agreement between the parties.

10. Each of Tenant, Lender and Landlord hereby irrevocably waive all right to trial by jury in action, proceeding, or counterclaim arising out of or relating to this Agreement.

11. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

12. This Agreement and all obligations of Tenant hereunder shall terminate upon the release and satisfaction of the Mortgage.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

The parties have signed and delivered this Agreement as of the date first written above.

LENDER: CANTOR COMMERCIAL REAL ESTATE LENDING, L.P.,  
a Delaware limited partnership

By: Jill Weinstein  
Name: Jill Weinstein  
Title: Secretary

LENDER'S ACKNOWLEDGMENT

STATE OF New York )  
COUNTY OF New York )

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Jill Weinstein personally came before me this day and acknowledged that he/she is the Secretary of, a and that he/she as its Secretary, being duly authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this 7 day of January, 2013.

(NOTARY STAMP)


[Signature]  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

W. Turner Booth  
Notary Public, State of New York  
No. 02BO6270194  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires October 15, 2016

W. Turner Booth  
Notary Public, State of New York  
No. 02BO6270194  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires October 15, 2016



TENANT:  
STEIN MART, INC.,  
A FLORIDA CORPORATION

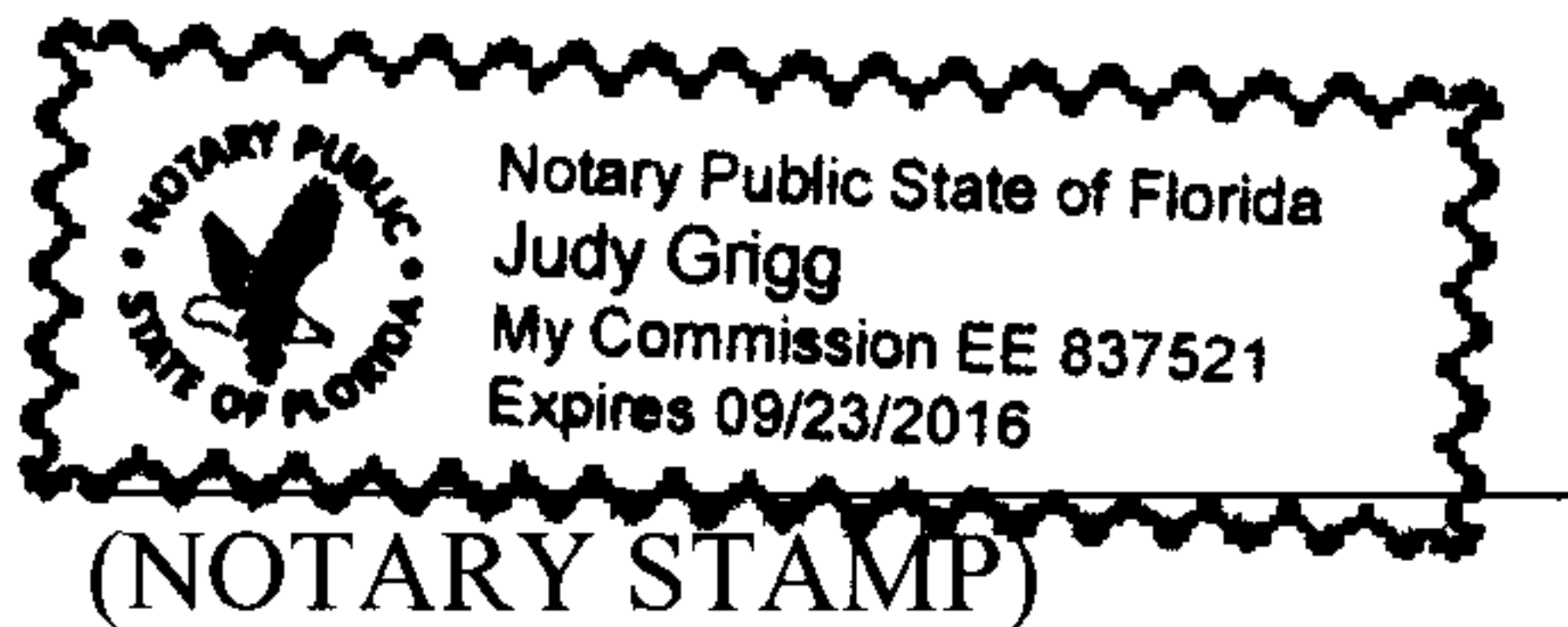
By:   
Name: Steven J. Horowitz  
Title: Vice President – Real Estate

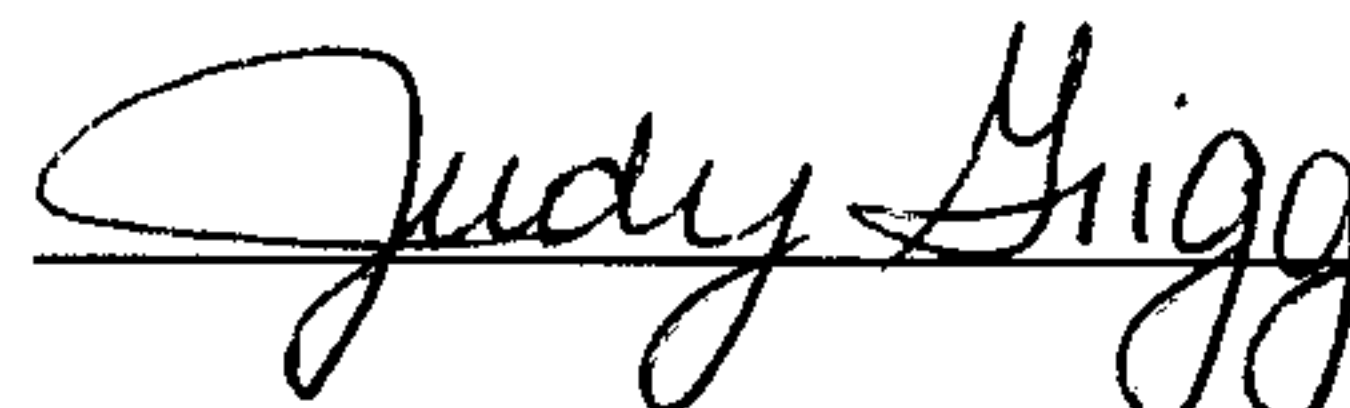
TENANT'S ACKNOWLEDGMENT

STATE OF FLORIDA )  
 )  
COUNTY OF DUVAL )

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Steven J. Horowitz personally came before me this day and acknowledged that he is the Vice President – Real Estate of Stein Mart, Inc., a Florida corporation and that he, as its Vice President – Real Estate of Stein Mart, Inc., a Florida corporation, being duly authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this 10<sup>th</sup> day of December, 2012.



  
Judy Grigg  
NOTARY PUBLIC  
My Commission Expires: 9/23/2016

HIGHWAY 150, LLC, an Alabama limited liability company  
By: HIGHWAY 150 MANAGEMENT, INC.,  
an Alabama corporation  
its Manager

LANDLORD:

By:

Name:

Title:

Scott Marcum

President

LANDLORD'S ACKNOWLEDGMENT

STATE OF ALABAMA )  
COUNTY OF HUNSTON )

I, the undersigned, a Notary Public of the County and State aforesaid, certify that SCOTT personally came before me this day and acknowledged that he/she is the President of and that he/she as its, President, being duly authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this January day of 2013.

J. VINCENT EDGE  
Notary Public, State of Alabama  
Alabama State at Large  
My Commission Expires  
June 14, 2015

(NOTARY STAMP)

J. Vincent Edge  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

[LEGAL DESCRIPTION]

Lots 1, 3, 5 and 6, according to the Final Plat of Colonial Promenade Hoover, Phase III, as recorded in Map Book 37, Page 15, in the Probate Office of Jefferson County, Alabama, Bessemer Division, and in Map Book 29, Page 149, in the Probate Office of Shelby County, Alabama; TOGETHER WITH the non-exclusive easements appurtenant to each of the above described Lots for ingress, egress, parking of motor vehicles and the installation, use, maintenance and repair of utility lines over Lot 2 (over such Lot 2 is shown on the plat recorded in Map Book 37, Page 6, in the Probate Office of Jefferson County, Alabama, Bessemer Division), which easements are created by and more particularly described in the Easement with Covenants and Restrictions Affecting Land ("ECR"), dated March 1, 2001, recorded in Bessemer Instrument 200162/4737 in the Probate Office of Jefferson County, Alabama, Bessemer Division and re-filed in Instrument 2001-37349 in the Probate Office of Shelby County, Alabama.



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Shelby Cnty Judge of Probate, AL  
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