11/19/04 BK 105 PG 771 DESOTO COUNTY, MS W.E. DAVIS, SR CLERK

P BK 105 PG 580

PREPARED BY:
Stroock & Stroock & Lavan LLP
3160 Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131-2385
(TEL: 305 789-9311)

V-404 – 09/23/04

SUBORDINATION, NON-DISTURBANCE & ATTORNMENT AGREEMENT

Deed re-recorded to insert book and page below.

THIS AGREEMENT, made and entered into this 13th day of October, 2004, by and between Kroger Limited Partnership I, an Ohio limited partnership, having an address at 800 Ridge Lake Blvd., Memphis, TN 38120 (hereinafter "Tenant"), Southaven Station LLC, a Delaware limited liability company, having an address is 11690 Grooms Road, Cincinnati, OH 45242 (hereinafter "Landlord"), and Lehman Brothers Bank, FSB, having and address at 399 Park Avenue, New York, NY 10022(hereinafter "Mortgagee").

WITNESSETH:

WHEREAS, Landlord, as successor in title to Summit Insured Equity, L.P., and Tenant have entered into a Lease and Lease Agreement, both dated June 6, 1985, as modified by Lease Modification Agreement No. 1, dated February 26, 1987, Lease Amendment No. 1 dated March 11, 2003 and Lease Modification Agreement No. 2, dated March 11, 2003, (hereinafter collectively referred to as "Lease") whereby Tenant leased from Landlord those certain premises located in the City of Southaven County of DeSoto and State of Mississippi, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Demised Premises"); and

WHEREAS, Landlord has made, executed and delivered to Mortgagee its Promissory Note (hereinafter "Note") dated October 13 in the principal amount of Four Million Three Hundred Thousand ——— Dollars ($ 4,300,000.00) secured by a mortgage/deed of trust (hereinafter "Mortgage") of and affecting the Demised Premises, of even date with the Note, which Mortgage is filed for record in the Office of Chancery Clerk, Desoto County, Mississippi in Deed Book 2097 at Page 537; and

WHEREAS, the Note is additionally secured by an assignment of leases and rents (hereinafter "Assignment"), which Assignment is filed for record in the Office of Chancery Clerk, Desoto County, Mississippi, in Deed Book 105 at Page 569, whereby the Lease was assigned by Landlord to Mortgagee; and

WHEREAS, Mortgagee is at this date the owner and holder of the Note secured by the Mortgage and Assignment; and

WHEREAS, the parties hereto wish that the Lease be subordinate to the lien of the Mortgage upon the condition that Mortgagee covenants that Tenant's possession of the Demised Premises will not be disturbed upon foreclosure and upon the further condition that Tenant attorn to and recognize as Landlord the Mortgagee.

NOW, THEREFORE, in consideration of the mutual promises contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which

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are hereby acknowledged, Tenant, Landlord and Mortgagee, intending to be legally bound, warrant, covenant and agree as follows:

1. Tenant's leasehold interest under the Lease is hereby made subject and subordinate to the lien of the Mortgage and to any renewals, extensions or modifications thereof, regardless of priority of recording, subject to the provisions of this Agreement.

2. Mortgagee covenants that so long as Tenant shall not be in default under the Lease beyond any applicable grace or cure period provided in the Lease:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the Note or other obligation secured thereby; and

(b) Mortgagee will affirmatively recognize the validity of the Lease, all of the Lease terms, including renewal periods; and Tenant's possession of the Demised Premises and Tenant's rights thereto and under the Lease shall not be disturbed, affected or impaired by:

(i) any suit, action or proceeding upon the Mortgage or the note or other obligation secured thereby, or by the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents in the possession of the holder of the Mortgage, or by any judicial sale or execution or other sale of the Demised Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or

(ii) any default under the Mortgage or the Note or other obligation secured thereby.

3. In the event Mortgagee obtains title to the Demised Premises through foreclosure or deed in lieu of foreclosure under the Mortgage, Tenant and Mortgagee agree to be bound by all of the provisions of the Lease, and Tenant will attorn to Mortgagee, its successors and assigns, to the same extent and with the same effect as if Mortgagee were the original landlord under the Lease, and Mortgagee shall perform all obligations of Landlord under the Lease to the same extent and with the same effect as if Mortgagee were the original Landlord under the Lease; provided, however, that Mortgagee shall not be subject to any liability or obligation under the Lease or otherwise until Mortgagee shall have acquired the interest of Landlord in the Demised Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Mortgagee has acquired the interest of the Landlord in the Demised Premises, except for those liabilities and obligations of which Mortgagee had written notice prior to its acquisition of Landlord's interest.

4. Tenant covenants not to pay any installment of monthly rent or any part thereof more than thirty (30) days prior to the due date of such installment. Nothing

contained herein, however, shall be construed as limiting either Tenant's right to make deductions or offsets against rents as provided in the Lease or the amount thereof. Tenant and Landlord agree that they will not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, enter into any amendment of the Lease that would reduce the monthly rent or the original term of the Lease. Mortgagee expressly consents to all other amendments to the Lease which consent is hereby self-operative and without further agreement.

5. Tenant agrees to give Mortgagee notice of a Landlord default under the Lease at the same time as Tenant gives notice to the Landlord. Default situations in which there is a reasonable probability of immediate bodily injury or property damage may be corrected by Tenant without notice of Mortgagee. Mortgagee shall be entitled, but shall not be obligated, upon notice of a default by Landlord under the Lease to remedy the default of the Landlord provided that Mortgagee promptly commences action to correct the default within thirty (30) days and Mortgagee proceeds with due diligence and without interruption to complete the action necessary to cure the default.

6. In the event Tenant receives written notice from Mortgagee that rentals due under the Lease are to be paid to Mortgagee, pursuant to the terms of the Assignment, Tenant shall pay to Mortgagee, or in accordance with the directions of Mortgagee, all rentals and other monies due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee, or as otherwise directed by Mortgagee, and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments. The provisions contained herein shall in no way alter, affect or impair Tenant's rights to make deductions from or offsets against rent as provided in the Lease.

7. All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises shall be applied in accordance with the terms of the Lease.

8. All notices required or permitted to be made under this Agreement shall be deemed properly served if delivered in writing personally or if sent by certified or registered mail, return receipt requested to:

Tenant at:	Attn: Real Estate 800 Ridge Lake Blvd. Memphis, TN 38120-9427
Landlord at:	Southaven Station LLC 11690 Grooms Road Cincinnati, OH 45242
Mortgagee at:	Lehman Brothers Bank, FSB 399 Park Avenue New York, NY 10022

or to any subsequent address designated in accordance with this provision. Date of service of a notice shall be the date of personal delivery, or if sent by mail, upon deposit in a post office of the United States Postal Service, or successor governmental agency.

9. This Agreement shall be binding upon and inure to the benefit of Tenant, Landlord and Mortgagee, their respective heirs, personal representatives, successors and assigns.

10. Landlord shall promptly record this Agreement and shall furnish the recording information to Tenant within sixty (60) days of the date hereof.

11. This Agreement constitutes the entire understanding of the parties hereto and is intended to be a full, final and complete integration of all prior or contemporaneous agreements regarding the matters set forth herein. No amendment to this Agreement shall be effective unless it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

TENANT

WITNESSES:

Paula R Kirk

Margaret B Gwen

KROGER LIMITED PARTNERSHIP I,
an Ohio limited partnership

By: KRGP, Inc., its general partner

By: Richard L Tillman
Richard L. Tillman
President
Delta Kroger Marketing Area

LANDLORD

WITNESSES:

Barbara Hood
Barbara Hood

Trisha Smith
Trisha Smith

Southaven Station LLC,
a Delaware limited liability company

By: R. Mark Addy

MORTGAGEE

Lehman Brothers Bank, FSB

By _____

(Tenant Acknowledgment)

STATE OF TENNESSEE)
COUNTY OF SHELBY)

The foregoing instrument was acknowledged before me this 29 day of September, 2004 by Richard L. Tillman, the President of the Delta Marketing Area for KRGP, Inc., the general partner of Kroger Limited Partnership I, an Ohio limited partnership, on behalf of the limited partnership.

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

12/29/04
My Commission expires

Pat Prescott
Notary Public

PAT PRESCOTT NOTARY PUBLIC AT LARGE MY COMM. EXP. 12-29-04 SHELBY CO., TN

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LANDLORD

WITNESSES:

Barbara Hood
Barbara Hood

Tusha Smith

Southaven Station LLC,
a Delaware limited liability company

By: R. Mark Addy

MORTGAGEE

Lehman Brothers Bank, FSB

Keiko Grattam

Richard Gordon
Richard Gordon

By

CHARLENE THOMAS
VICE PRESIDENT

(Tenant Acknowledgment)

STATE OF TENNESSEE)
COUNTY OF SHELBY)

The foregoing instrument was acknowledged before me this 29 day of September, 2004 by Richard L. Tillman, the President of the Delta Marketing Area for KRGP, Inc., the general partner of Kroger Limited Partnership I, an Ohio limited partnership, on behalf of the limited partnership.

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

12/29/04
My Commission expires

Pat Prescott
Notary Public

PAT PRESCOTT
NOTARY PUBLIC AT LARGE
MY COMM. EXP. 12-29-04
SHELBY CO., TN

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P 105 586

MULTI-STATE CORPORATE GENERAL PARTNER ACKNOWLEDGEMENT
(LENDER)

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

On this 12 day of October 2004, before me, the undersigned officer, personally appeared:

(a) Charlene Thomas
(residing at _____*), and

(b) _____
(residing at _____*),

personally known and acknowledged himself/herself/themselves to me (or proved to me on the basis of satisfactory evidence to be the

[a] ✓[Vice] President, and
[b] (Assistant) Secretary [(Assistant) Treasurer**]

respectively of **Lehman Brothers Bank, FSB** (hereinafter, the "Bank"),

and that as such officer(s), being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Bank by himself/herself/themselves in their authorized capacity as such officer(s) as his free and voluntary act and deed and the free and voluntary act and deed of said Bank.

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

Edna Lanahan
Notary Public

Notarial Seal

EDNA LANAHAN
NOTARY PUBLIC, State of New York
No. 01LA6070349
Qualified in New York County
Commission Expires March 4, 2006

My Commission Expires:
3/4/06

* New York only requiremen
** Massachusetts only requirement

WHEN RECORDED RETURN TO:
LANDAMERICA - NCS
1050 Wilshire Dr., Ste. 310
Troy, MI 48084
Case No. 096939

SSL-MIA1 30108849v1

(Landlord Acknowledgment - Corporation)

STATE OF OHIO)
)§:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 6 day of October, 2004, by R. Mark Addy, of Summerville Station LLC a[n] corporation, on behalf of the corporation.

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

4-30-06
My commission expires

Christine Osborne
Notary Public

NOTARY PUBLIC STATE OF OHIO

CHRISTINE OSBORNE
Notary Public, State of Ohio
My Commission Expires
April 30, 2006

(Mortgagee Acknowledgment)

STATE OF)
)§:
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by _____, the _____ of _____, a[n] _____, on behalf of the _____.

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

_____
My commission expires

_____
Notary Public

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EXHIBIT A

PARCEL NO. 1

Lots 1 and 2, Kroger Plaza Shopping Center Subdivision, in Section 24, Township 1 South Range 8 West, City of Southaven, DeSoto County, Mississippi, as shown by plat appearing of record in Plat Book 23, Page 19, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi.

LESS AND EXCEPT:

Beginning at a point that is 82 feet Southerly of and perpendicular to the centerline of survey of Stateline Road relocation at Station 43 + 15 as shown on the plans for Federal Aid Project No. CM-0055-04(050)(100222/201000) at Highway Survey Station 1723 + 13.66; from said point of beginning, run thence South 89 deg. 43'44" West, a distance of 288.613 feet to the Western line of grantor's property; thence run North 00 deg. 03'44" East along said Western property line, a distance of 20.970 feet to the present Southern right-of-way line of said Stateline Road, a distance of 236.265 feet; thence run North 89 deg. 52'29" East along the present Southern right-of-way line of said Stateline Road, a distance of 52.338 feet; thence run South 00 deg. 02'40" West a distance of 19.831 feet to the point of beginning.

PARCEL NO. 2

Easements under instrument recorded in Plat Book 23, Page 19, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi.

PARCEL NO. 3

Easement under Declaration of Easement for Kroger Plaza Shopping Center, Inc., recorded in Power of Attorney Contract and Lease Book 52, Page 745, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi.

The above referenced property is also described as follows:

PARCEL 1

All that certain tract or parcel of land containing 10,500 acres more or less, being a portion of Lots 1 and 2, Kroger Plaza Shopping Center Subdivision, in Section 24, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, as shown on plat appearing of record in Plat Book 23, Page 19, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi;

Commencing at the Northeast corner of Section 24, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi; thence North 89 degrees 02 minutes 23.6 seconds West (record) for a distance of 2017.35 feet (record) to a point; thence South 00 degrees 35 minutes 23 seconds West (record) for a distance of 53.00 feet (record) to a found 1/2 inch iron rod and the POINT OF BEGINNING of herein described tract; thence South 00 degrees 38 minutes 21 seconds West

(Continued on next page)

(record, South 00 degrees 35 minutes 23 seconds West) for a distance of 699.29 feet (record, 700.00 feet) to a found 3/8 inch iron rod; thence North 88 degrees 56 minutes 10 seconds West (record, North 89 degrees 02 minutes 24 seconds West) for a distance of 350.58 feet (record) to a point; thence North 88 degrees 45 minutes 32 seconds West (record North 88 degrees 51 minutes 46 seconds West) for a distance of 349.37 feet (record, 350.00 feet) to a found 1/2 inch iron rod on the East right of way of Hamilton Road; thence, North 00 degrees 35 minutes 24 seconds East (record) along said East right of way line of Hamilton Road for a distance of 457.95 feet (record, 457.92 feet) to a found 3/4 inch iron rod; thence North 01 degrees 53 minutes 25 seconds East (record) for a distance of 221.13 feet to a point; thence South 89 degrees 10 minutes 37 seconds East for a distance of 288.61 feet (record) to a point; thence North 02 degrees 15 minutes 46 seconds East for a distance of 19.83 feet (record) to a point; thence, along South right of way line of said State Line Road, run South 88 degrees 57 minutes 04 seconds East (record) for a distance of 213.48 feet to a point, from whence bears a found 3/8 inch iron rod bearing South 00 degrees 18 minutes 28 seconds East at a distance of 5.05 feet; thence leaving said right of way, run South 00 degrees 13 minutes 39 seconds East (record, South 00 degrees 13 minutes 55 seconds East) for a distance of 175.33 feet (record, 175.18 feet) to a found railroad spike; thence South 88 degrees 59 minutes 00 seconds East (record, South 88 degrees 57 minutes 09 seconds East) for a distance of 152.98 feet (record, 152.97 feet) to a found railroad spike; thence North 00 degrees 13 minutes 39 seconds West (record, North 00 degrees 13 minutes 05 seconds West) for a distance of 174.79 feet (record, 175.17 feet) to a found X marked in concrete; thence South 86 degrees 43 minutes 01 seconds East (record, South 88 degrees 57 minutes 04 seconds East) for a distance of 39.90 feet (record, 39.88 feet) to the POINT OF BEGINNING, Containing an area of 457,394 square feet or 10,500 acres, more or less.

PARCEL NO. 2

Easements under instrument recorded in Plat Book 23, Page 19, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi.

PARCEL NO. 3

Easement under Declaration of Easements for Kroger Plaza Shopping Center, Inc., recorded in Power of Attorney Contract and Lease Book 52, Page 745, in the Office of the Chancery Court Clerk of DeSoto County, Mississippi.

RETURN TO
LAWYERS TITLE INSURANCE COMPANY
6363 Poplar Ave. - Suite 108
Memphis, TN 38119
File # MIDINNS Attn. Phyllis

STATE MS.-DESOTO CO.
Nov 1 1 52 PM '04

105 PG 580
CLK.