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Drawn by and mail to after recording:  
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King & Spalding LLP  
227 West Trade Street, Suite 600  
Charlotte, North Carolina 28202

ENVELOPE

STATE OF NORTH CAROLINA  
  
COUNTY OF FORSYTH

SUBORDINATION, ATTORNMENT AND  
NONDISTURBANCE AGREEMENT

THIS AGREEMENT is made this 20 day of November, 2008, among HARRIS TEETER, INC. ("Tenant"), RIVERSOURCE LIFE INSURANCE COMPANY (the "Lender"), and KERNERSVILLE MARKETPLACE, LLC (the "Landlord");

A. By lease agreement dated August 10, 1995 as recorded in Book 1868 at Page 3696 of the Forsyth County Public Registry (the "Registry"), as amended on March 28, 1997 and reflected in that certain instrument recorded in Book 1941 at Page 193 in the Registry, and assigned on November 29, 1997 and further assigned on May 14, 1999 (as previously amended the "Lease"), Landlord leased to Tenant premises (the "Premises") located at Kernersville Marketplace Shopping Center, Kernersville, Forsyth County, North Carolina, which Shopping Center is more particularly described in Exhibit "A" attached hereto.

B. Lender is the owner and holder of indebtedness secured by a deed of trust recorded in Book 2862 at Page 4504 in the Registry (the "Deed of Trust") which constitutes a lien against the Premises.

C. Tenant has agreed to subordinate the Lease to the Deed of Trust upon the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of their mutual promises, Lender, Landlord and Tenant agree as follows:

1. Subordination. The Lease and all renewals, modifications, and extensions of the Lease are subject and subordinate to the Deed of Trust and all renewals, modifications, and extensions of the Deed of Trust.

2. Attornment. Tenant agrees to attorn to Lender if Lender acquires title to the Premises by foreclosure or otherwise, or to any third party who acquires title to the Premises at a foreclosure sale under the Deed of Trust (such lender or purchaser being referred to in this agreement as the "New Landlord" and the date on which New Landlord acquires title to the Premises being referred to herein as the "Attornment Date") in each case under all of the terms, conditions, and covenants of the Lease; provided, however, that:

a. Tenant shall be under no obligation to pay any rent or render any performance to the New Landlord until it has received notice (in the manner provided in the Lease) of its obligation to do so from New Landlord, together with a copy of New Landlord's title insurance policy or other satisfactory evidence of title. If and to the extent the Tenant receives such notice from New Landlord, together with a copy of New Landlord's title insurance policy or other reasonably satisfactory evidence of title:

(1) Landlord agrees that Tenant may rely upon such notice and documentation, and need not obtain other confirmation of New Landlord's right and authority to receive such payments or performance, as the case may be;

(2) Landlord, to the extent that such payment is made, or performance rendered, to the New Landlord, releases and discharges Tenant from liability under the Lease for such payments, or such performance, to the same extent as if they had been made or rendered to Landlord; and

(3) Landlord agrees to look solely to New Landlord for recovery of any such payments, or performance, made by Tenant in favor of New Landlord in the event that Landlord disputes New Landlord's right to receive such payments, or performance, as the case may be.

b. New Landlord shall assume and be bound by all obligations of Landlord under the Lease arising after the Attornment Date and shall recognize and not disturb the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the Lease term and any renewals or extensions thereof, with the same force and effect as if such New Landlord were the original "Landlord" under the Lease.

c. From and after the Attornment Date, the respective rights and obligations of Tenant and New Landlord will be as provided in the Lease, which is incorporated in this Agreement by reference, except that:

(1) New Landlord will not be liable for nonpayment or nonperformance by any prior landlord of Lease obligations arising prior to the Attornment Date, or for damages resulting from any prior landlord's act or omission which occurred prior to the Attornment Date, except that:

(a) Tenant will be entitled to utilize any rent reduction, offset, credit or holdback rights available to Tenant under the Lease to recover the cost of curing any such default of a prior landlord, but only so long as, and to the extent that, New Landlord has been given notice of such default and an opportunity to cure, as provided in this Agreement and in the Lease;

(b) If applicable, New Landlord will be obligated to pay to Tenant, to the extent any amount remains unpaid by any prior landlord as of the Attornment Date, Tenant's

Unamortized Improvement Cost (if required by and defined in the Lease) in accordance with the terms and provisions of the Lease; and

(c) New Landlord will be obligated to remedy any non-monetary default by any prior landlord (such as, for example, a failure to repair or construct) that continues unremedied after the Attornment Date.

(2) New Landlord will not be bound by any rent paid in advance by Tenant to any prior landlord for more than the current month.

(3) New Landlord will not be liable for any security deposit paid by Tenant to any prior landlord, except to the extent such security deposit has been actually received by or credited to the account of New Landlord.

3. Payment of Rent to Lender. If Lender becomes a mortgagee in possession of the Premises or exercises its rights under the loan documents securing its loan to Landlord to have rental payments made directly to Lender without taking possession of the Premises, then Tenant agrees to make all payments of rent directly to Lender upon Lender's written instructions to Tenant. If and to the extent Lender demands and receives any such payments from Tenant:

a. Landlord agrees that Tenant may rely upon such written instructions of Lender and need not obtain other confirmation of Lender's right and authority to receive such payments;

b. Landlord, to the extent of such rental payments, releases and discharges Tenant from liability under the Lease for such payments, to the same extent as if they had been made to Landlord; and

c. Landlord agrees to look solely to Lender for recovery of any such payments made by Tenant in the event Landlord disputes Lender's right to receive such payments.

4. Non-Disturbance. Lender agrees that so long as Tenant is not in default under the Lease beyond any applicable cure period:

a. Tenant's possession of the Premises and its rights and privileges under the Lease (including, without limitation, Tenant's right to have casualty insurance and condemnation proceeds applied as provided in the Lease) will not be diminished or interfered with and its occupancy of the Premises will not be disturbed; and

b. Tenant will not be named as a party to any foreclosure proceedings unless Tenant's joinder is required by law.

5. Modification of Lease. Except as expressly contemplated by the Lease, Tenant agrees that so long as the Premises are subject to the lien of the Deed of Trust, Tenant will not, without the prior written consent of the Lender, enter into any agreement modifying the Lease in any material respect (including without limitation, any decrease in the rent, decrease of the Lease Term or delay in the Commencement Date), and that Lender will not be bound by any such agreement made without its consent.

6. Lender's Right to Cure Landlord Defaults. So long as the Premises are subject to the lien of the Deed of Trust, Tenant will give Lender duplicate notice of any claimed default on the part of Landlord, in the manner provided by the Lease, at the address set forth in this Agreement, and will permit Lender to cure any default by Landlord under the Lease during any period when the Landlord would be entitled to do so, and (i) for ten (10) days after such period with respect to any default which can be cured by the

payment of money, and (ii) with respect to any other default, for thirty (30) days after such period, and for such reasonable additional time, not to exceed sixty (60) days, as may be required to effect a cure, if Lender, acting diligently, cannot effect the cure within the first thirty (30) day period, but promptly commences to cure the default and notifies Tenant in writing that it has commenced such cure within such period, and proceeds diligently to effect such cure; provided, however, Tenant shall not be required to give notice to Lender or Landlord or permit any cure period with respect to any emergency repairs completed by Tenant in accordance with the terms of the Lease.

7. Notices. All notices required or permitted by the terms of this Agreement shall be deemed given only when deposited in the United States Registered or Certified Mail, Postage Prepaid, or, with verification of delivery, when received by telegram, cable, telex, commercial courier or any other generally accepted means of business communication, to a party at the address set forth below for each party. A party may change the address to which notices must be sent by giving notice to the other parties in accordance with this Paragraph. The initial notice address for each party is as follows:

If to Lender: RiverSource Life Insurance Company  
c/o RiverSource Investments, LLC  
Real Estate Loan Management  
25540 Ameriprise Financial Center  
Minneapolis, Minnesota 55474

If to Tenant: Harris Teeter, Inc.  
Attention: Real Estate Department  
Post Office Box 10100  
Matthews, North Carolina 28106-0100

Tenant Street Address: 701 Crestdale Drive  
Matthews, North Carolina 28105  
Telefacsimile No.: (704) 844-3476

If to Landlord: Kernersville Marketplace, LLC  
c/o Fincher Limited Partnership  
2209 Blue Bell Lane  
Charlotte, North Carolina 28270  
Attn: Mr. Timothy E. Fincher

8. Interpretation and Effect. This Agreement:

a. shall remain in effect at all times during the Lease or any extension or renewal of the Lease, notwithstanding any default or foreclosure under the Deed of Trust;

b. is to be governed, enforced, and construed in accordance with the internal laws of the State of North Carolina;

c. binds the parties and their successors and assigns, notwithstanding any inconsistent provisions of the Deed of Trust, and the covenants contained in this Agreement shall be covenants running with the land and bind all successors in title to the Premises; and

d. may not be modified except by a writing executed by the parties.

9. Recitals. The recitals set forth at the beginning of this Agreement are incorporated herein by this reference as though fully set forth, and this Agreement shall be construed in light thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument by their duly authorized officers, all as of the date first stated above.

TENANT:

HARRIS TEETER, INC.

By: *Keith Fiedemiller*  
Vice President

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of said county and state, hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that s/he is Secretary of HARRIS TEETER, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal, and attested by \_\_\_\_\_ self as its Secretary.

WITNESS my hand and notarial seal this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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

\_\_\_\_\_  
Notary Public

[Notarial Seal]

*\* See attached page*

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Susan Isenhour Laney, a Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that Keith Rudemiller (the "Signatory"), Vice President of **HARRIS TEETER, INC.**, a North Carolina corporation, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

☒ (I have personal knowledge of the identity of the Signatory); or  
☐ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the

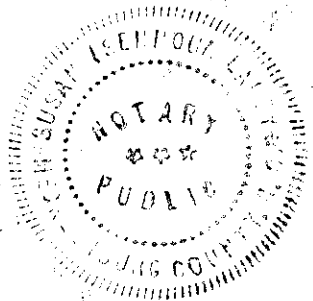
form of:

(check one of the following)

☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19<sup>th</sup> day of November, 2008.



Susan Isenhour Laney  
 Notary Public  
 My Commission Expires: February 24, 2009

LENDER:

RIVERSOURCE LIFE INSURANCE  
COMPANY, a Minnesota corporation

By: Nancy Hughes  
Printed Name: Nancy Hughes  
Assistant Vice President

Attest: Elizabeth J. St. Julien  
Printed Name: Elizabeth J. St. Julien  
Assistant Secretary

STATE OF MINNESOTA

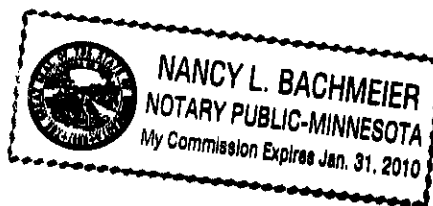
COUNTY OF HENNEPIN

I certify that the following persons personally appeared before me this day,  
acknowledging to me that they voluntarily signed the foregoing document for the  
purpose stated therein and in the capacity indicated: Nancy Hughes <sup>Asst. V. Pres</sup> and  
Elizabeth J. St. Julien <sup>Asst. Sec for Riversource Life Insurance Company</sup>

Date: Nov 19, 2008

Nancy L. Bachmeier  
Notary Public  
Print Name: Nancy L. Bachmeier Notary Public  
My Commission Expires: 1-31-10

[NOTARY SEAL]



LANDLORD:

KERNERSVILLE MARKETPLACE, LLC

By: Fincher Limited Partnership, its Sole Manager

By: Timothy E. Fincher  
Timothy E. Fincher, General Partner

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Timothy E. Fincher (insert name of individual signing document).

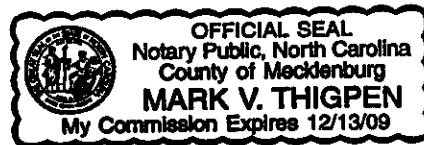
Date: November 19, 2008

Mark V. Thigpen  
Official Signature of notary

Mark V. Thigpen  
Notary's printed or typed name, Notary Public

XX  
XX

**NOTE TO NOTARY PUBLIC: ENSURE THAT YOUR SEAL IS PLACED IN THE SPACE  
BELOW AND IS NOT WITHIN 1 INCH OF ANY MARGIN AND IS NOT OVER ANY TEXT**





**EXHIBIT A**  
**TO**  
**SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT**

Lying and being situate in Forsyth County, North Carolina, and being more particularly described as follows:

BEING ALL of Lots 1 and 2 as shown on that certain map consisting of three pages, entitled "Final Plat Kernersville Shopping Center Century Place Boulevard", dated August 7, 1995 and recorded in Plat Book 38 at Pages 119, 120 and 121, Forsyth County Registry, and plat recorded in Plat Book 39 at Pages 55 and 56 and Plat Book 39 at Page 46, Forsyth County Registry.