



02-00178 748

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** is made and entered into this 3 day of JUNE, 2002, by and between **BANKFINANCIAL, F.S.B.**, a federal savings bank ("Lender"), **CIRCUIT CITY STORES, INC.**, a Virginia corporation ("Tenant") and **CIRCUIT ASSOCIATES, LLC**, an Illinois limited liability company.

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WITNESSETH:

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(a) Tenant has entered into that certain lease (the "Lease") dated February 10, 1994 and Amendment to Lease dated February 19, 2002 between Circuit Associates, LLC, successor in interest to Nissan Motor Acceptance Corporation, a California corporation, as successors in interest to American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 7, 1987, and known as Trust No. 102992-04 ("Landlord"), covering certain premises located within that certain property known as 5701 Touhy Avenue, located in the City of Niles, Cook County, Illinois and more particularly described in Schedule A hereto; and

(b) Lender has made a loan to Landlord as evidenced and secured by that certain Mortgage and Security Agreement recorded as document number _____ (the "Mortgage") in the real property records of Cook County, Illinois encumbering the Property described in Schedule A; and the parties hereto desire to set forth their agreement with regard to the priority of the Mortgage and the effect thereof on Tenant and its leasehold interest in the aforesaid Property, as set forth below.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Lease is and shall be subject and subordinate to the lien of the Mortgage insofar as it affects the Property of which the premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon.
2. Tenant agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the premises by deed in lieu of foreclosure, the successors and assigns of such purchasers, as its Landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease.
3. In the event that it should become necessary to foreclose the Mortgage, Lender thereunder will not terminate the Lease nor join Tenant in summary or foreclosure proceedings so long as Tenant is not in default under any of the material terms, covenants, or conditions of the Lease, beyond any applicable cure period provided

Lawyers Title Insurance Corporation

in the Lease. Tenant shall not be named as a party in any action for Foreclosure (unless so naming Tenant is necessary in order for such Mortgagee to foreclose against Landlord's rights in the Premises without affecting Tenant's rights hereunder, in which event Tenant may be named only in such pleadings or other papers in which Mortgagee makes clear that it does not seek to affect Tenant's rights hereunder or Tenant's possession of the Premises).

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4. Lender consents to the application of casualty and condemnation proceeds in accordance with paragraphs 15 and 16 of the Lease between Landlord and Tenant, whether or not the Mortgage is then foreclosed.
5. In the event that Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be:
 - (a) liable for any act or omission of any prior lessor (including Landlord); or
 - (b) liable for the return of any security deposits unless delivered to Lender; or
 - (c) bound by any rent or other periodic payments which Tenant might have paid for more than the current month to any prior lessor (including Landlord); or
 - (d) bound by any amendment, cancellation or modification of the Lease (except as expressly permitted under the Lease) made without its consent, which consent shall not be unreasonably withheld or delayed; or
 - (e) subject to or liable for any charges, liens, defenses or offsets that Tenant might be entitled to assert against any prior landlord under the Lease (including Landlord); provided, however, if Tenant has provided Lender with notice as set forth in paragraph 6 below, Lender shall be liable for such charges, liens defenses or offsets.

Notwithstanding the foregoing, subject to the notice requirement set forth under paragraph 6 below, Lender acknowledges and agrees that if Lender shall succeed to the interest of Landlord under this Lease, Lender shall be subject to Tenant's remedies properly exercised under the Lease, including but not limited to Tenant's rights of self-help and/or setoff for any default, obligation, act or omission of any prior lessor (including Landlord) as provided in the Lease and that such rights of Tenant are not limited or impaired in any way by the terms and provisions of this Agreement.

6. Tenant agrees that Tenant will not exercise any remedy providing for termination of the Lease prior to notifying Lender of same, in the manner provided in paragraph 7 below, and allowing Lender 30 days in which to cure same. After Tenant's receipt

of any such notice from Lender, Tenant shall pay all rent directly to Lender. Tenant shall deliver simultaneously to Lender at the address below copies of all notices of default that Tenant delivers to Landlord and Lender shall have the same ten (10) days to cure a monetary default or the same thirty (30) days to cure a non-monetary default, whichever is applicable, that Landlord has to cure such defaults during which time Lender may also cure such defaults by Landlord. If Lender acquires title to the Property by foreclosure or otherwise, Lender shall have the same time limits in which to cure defaults under the Lease as are provided to Landlord therein.

7. All notices required herein and under the Lease shall be delivered to Tenant and/or Lender at the following addresses:

If to Tenant: Circuit City Stores, Inc.
Deep Run I
9950 Mayland Drive
Richmond, Virginia 23233
Attention: Corporate Secretary

with a copy to:

Circuit City Stores, Inc.
Deep Run I
9950 Mayland Drive
Richmond, Virginia 23233
Attention: Vice President of Real Estate

If to Lender: BankFinancial, F.S.B.
100 Tri-State Parkway, Suite 100
Lincolnshire, Illinois 60069
Attention: Dawn Cooper

Notice shall be deemed to have been given three (3) business days after mailing a written notice by certified mail, postage prepaid, return receipt requested, or one (1) business day after sending a written notice by Federal Express or other comparable overnight express courier service (with proof of receipt available), provided such notice is addressed to the applicable party at its respective address as set forth above.

8. Lender, Landlord and Tenant, represent and warrant to one other that each has the requisite power and authority to enter into this Agreement; that all necessary and appropriate approvals, authorizations and other steps have been taken to effect the legality of this Agreement; that the signatories executing this Agreement on behalf of Lender, Landlord and Tenant have been duly authorized and empowered to

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execute this Agreement on behalf of Lender, Landlord and Tenant, respectively; and that this Agreement is valid and shall be binding upon and enforceable Lender, Landlord and Tenant shall inure to the benefit of the parties hereto, and their successors and assigns.

9. All defined and capitalized terms when used herein have the same meanings as provided by the Lease.


Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

CIRCUIT CITY STORES, INC.,
a Virginia corporation

By: 
Stanley L. Heller
Assistant Vice President

STATE OF VIRGINIA)
COUNTY OF HENRICO)

On this 3rd day of June, 2002, before me, a Notary Public in and for said County and State, personally appeared Stanley L. Heller, the Assistant Vice President of **CIRCUIT CITY STORES, INC.**, a Virginia corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and on oath acknowledged to me that he voluntarily executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal.



Notary Public in and for said County and State

Printed Name: Joyce C. Woodson

(Seal)

My Commission Expires: 5/31/03

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BANKFINANCIAL, F.S.B.,
a federal savings bank

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By: *Dawn Cooper*
Name: DAWN COOPER
Title: VICE PRESIDENT

STATE OF Illinois)
COUNTY OF Cook)

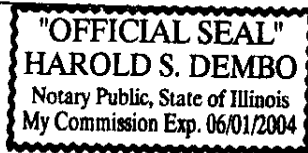
On this 11th day of June, 2002, before me, a Notary Public in and for said County and State, personally appeared Dawn Cooper, the vice-President of BANKFINANCIAL, F.S.B., a federal savings bank, a ~~national banking association~~, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and on oath acknowledged to me that he voluntarily executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal.

Harold S Dembo
Notary Public in and for said County and State
Printed Name: Harold S Dembo

(Seal)

My Commission Expires: 6/1/04



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EXHIBIT "A"

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PARCEL 1:

LOT 1 IN RAYMOND HARA SUBDIVISION, RECORDED SEPTEMBER 30, 1994 AND RECORDED AS DOCUMENT NUMBER 94847852, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL QUARTER OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY THE AGREEMENT RECORDED APRIL 19, 1977 AS DOCUMENT 23893061, FOR UNDERGROUND UTILITIES UNDER AND THROUGH THE FOLLOWING TRACT.

THAT PART OF THE EAST 17 ACRES OF THE WEST 19.5 ACRES OF THE EAST FRACTIONAL 1/2 OF THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH/RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT THE NORTHEAST CORNER OF SAID 17 ACRES AND RUNNING THENCE NORTH 89 DEGREES 09 MINUTES 30 SECONDS EAST, ON THE NORTH LINE OF SAID NORTHEAST FRACTIONAL 1/4 102.55 FEET TO A POINT 612.16 FEET, MORE OR LESS, WEST OF THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION; THENCE SOUTH 00 DEGREES, 48 MINUTES 37 SECONDS EAST, 1,124.13 FEET; THENCE SOUTH 89 DEGREES 38 MINUTES 50 SECONDS WEST, 324.80 FEET; THENCE NORTH 00 DEGREES, 41 MINUTES 00 SECONDS EAST, 59.81 FEET THENCE SOUTH 44 DEGREES 41 MINUTES 24 SECONDS WEST, 84.63 FEET TO THE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED HEREIN, SAID POINT ALSO BEING A LINE 50.0 FEET NORTHEASTERLY OF (RIGHT ANGLES MEASUREMENT) AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE CONTINUING SOUTH 44 DEGREES 41 MINUTES 24 SECONDS WEST 54.37 FEET TO THE SAID EASTERLY RIGHT OF WAY LINE; THENCE NORTH 22 DEGREES 11 MINUTES 00 SECONDS WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE 16.31 FEET; THENCE NORTH 44 DEGREES 41 MINUTES 24 SECONDS EAST, 54.37 FEET TO A LINE 50 FEET NORTHEASTERLY OF (RIGHT ANGLES MEASUREMENT) AND PARALLEL WITH THE SAID EASTERLY RIGHT OF WAY LINE; THENCE SOUTH 22 DEGREES 11 MINUTES 00 SECONDS EAST, ALONG SAID PARALLEL LINE 16.31 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL OF 1, AS DISCLOSED BY AGREEMENT RECORDED APRIL 19, 1977 AS DOCUMENT 23893061, FOR UNDERGROUND UTILITIES UNDER AND THROUGH THE FOLLOWING DESCRIBED TRACT OF LAND:

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THAT PART OF THE EAST 17 ACRES OF THE WEST 19.5 ACRES OF THE EAST FRACTIONAL 1/2 OF THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT THE NORTHEAST CORNER OF SAID 17 ACRES AND RUNNING THENCE NORTH 89 DEGREES 09 MINUTES 30 SECONDS EAST, ON THE NORTH LINE OF SAID NORTHEAST FRACTIONAL 1/4 102.55 FEET TO A POINT 612.16 FEET, MORE OR LESS, WEST OF THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION; THENCE SOUTH 00 DEGREES 48 MINUTES 37 SECONDS EAST, 1,124.13 FEET; THENCE SOUTH 89 DEGREES 38 MINUTES 50 SECONDS WEST, 324.80 FEET; THENCE NORTH 00 DEGREES 41 MINUTES 00 SECONDS EAST, 59.81 FEET TO THE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED HEREIN; THENCE SOUTH 44 DEGREES 41 MINUTES 24 SECONDS WEST, 84.63 FEET TO A POINT ON A LINE 50 FEET NORTHEASTERLY OF (RIGHT ANGLES MEASUREMENT) AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE NORTH 22 DEGREES 11 MINUTES 00 SECONDS WEST, ALONG SAID PARALLEL LINE 16.31 FEET; THENCE NORTH 44 DEGREES 41 MINUTES 24 SECONDS EAST 93.76 FEET; THENCE SOUTH 00 DEGREES 41 MINUTES 00 SECONDS WEST, 21.59 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL OF 1, AS DISCLOSED BY AGREEMENT RECORDED APRIL 19, 1977 AS DOCUMENT 22893061, FOR WATER STORAGE, TANKS AND PUMP HOUSE OVER AND UPON THE FOLLOWING DESCRIBED TRACT OF LAND:

THAT PART OF THE EAST 17 ACRES OF THE WEST 19.5 ACRES OF THE EAST FRACTIONAL 1/2 OF THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT THE NORTHEAST CORNER OF SAID 17 ACRES AND RUNNING THENCE NORTH 89 DEGREES 09 MINUTES 30 SECONDS EAST ON THE NORTH LINE OF SAID NORTHEAST FRACTIONAL 1/4 102.55 FEET TO A POINT 612.16 FEET, MORE OR LESS, WEST OF THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION; THENCE SOUTH 00 DEGREES 48 MINUTES 37 SECONDS EAST, 1,124.13 FEET; THENCE SOUTH 89 DEGREES 38 MINUTES 50 SECONDS WEST, 324.80 FEET; THENCE NORTH 00 DEGREES 41 MINUTES 00 SECONDS EAST, 125.0 FEET TO THE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED HEREIN; THENCE CONTINUING NORTH 00 DEGREES 41 MINUTES 00 SECONDS EAST 97.0 FEET; THENCE NORTH 89 DEGREES 19 MINUTES 00 SECONDS WEST 41.0 FEET; THENCE SOUTH 89 DEGREES 19 MINUTES 00 SECONDS WEST 97.0 FEET; THENCE SOUTH 89 DEGREES 19 MINUTES 00 SECONDS EAST, 41.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ACCESS BY VEHICULAR TRAFFIC AS GRANTED BY DECLARATION AND GRANT OF EASEMENTS, DATED NOVEMBER 17, 1995 AND RECORDED NOVEMBER 22, 1995 AS DOCUMENT NUMBER 95812459, AND DESCRIBED AS FOLLOWS:

THAT PART OF LOT 2 IN RAYMOND HARA SUBDIVISION, BEING A SUBDIVISION IN THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 32, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

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COMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 A DISTANCE OF 7.0 FEET TO THE POINT OF BEGINNING; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 2 A DISTANCE OF 60.0 FEET; THENCE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 40.0 FEET; THENCE NORTH ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID LOT 2 A DISTANCE OF 37.0 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX TO THE NORTHWEST, HAVING A RADIUS OF 30.0 FEET, A DISTANCE OF 28.49 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2, 52.56 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 2 A DISTANCE OF 52.56 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as 5701 West Touhy Avenue, Niles, Illinois

P.I.N.: 10-32-203-036

PREPARE BY AND RETURN TO:

Harold S. Dembo
Katz Randall Weinberg & Richmond
333 West Wacker Drive, Suite 1800
Chicago, IL 60606

