



Doc#: 0621548060 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/03/2006 10:11 AM Pg: 1 of 15

LOAN NO. 20068513003

MASTER LESSEE: GLENCOE CMX MASTER, LLC

**SUBORDINATION AND ATTORNMEN T AGREEMENT**

THIS SUBORDINATION AND ATTORNMEN T AGREEMENT (this "Attornment") is entered into by and among GLENCOE CMX OWNER, LLC, a Delaware limited liability company ("Borrower"), whose address is 744 North Wells Street, Chicago, Illinois 60610, GLENCOE CMX MASTER, LLC, a Delaware limited liability company ("Master Lessee"), whose address is 744 North Wells Street, Chicago, Illinois 60610, and MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation ("Lender"), whose address is 4 World Financial Center, 16<sup>th</sup> Floor, New York, New York 10080.

**WITNESSETH:**

WHEREAS, Borrower is the owner in fee simple of the real property described in "Exhibit A" attached hereto, together with the improvements thereon (the "Property");

WHEREAS, Borrower and Master Lessee have entered into a certain master lease dated July 1, 2006 (as the same may hereafter be amended, modified, renewed, extended or replaced, the "Master Lease"), leasing to Master Lessee a portion of the Property (the "Premises");

WHEREAS, pursuant to that certain Loan Agreement dated as of the date hereof between Lender and Borrower (the "Loan Agreement") capitalized terms used but not otherwise defined herein shall have the meanings described thereto in the Loan Agreement; Lender has agreed to make a certain mortgage loan to Borrower in the amount of \$9,500,000.00 (the "Loan"), which will be evidenced by a Promissory Note in such amount (the "Note") and secured by, among other things, a certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (as the same may hereafter be amended, modified, extended or recast, the "Mortgage") encumbering the Property, which Mortgage is to be recorded simultaneously herewith (the Loan Agreement, the Note, the the Mortgage and all documents and instruments executed by Borrower in connection with the Loan are collectively referred to herein as the "Loan Documents");

WHEREAS, Lender, Borrower and Master Lessee desire to confirm their understanding with respect to the Master Lease and the Loan and the rights of Master Lessee and Lender hereunder.

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NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which we hereby acknowledged, the parties hereto agree a follows:

1. Subordination. The Master Lease, and all of Master Lessee's right, title and interest in and to the Premises and all rights, remedies and options of Master Lessee under the Master Lease, are and shall be subject and subordinate to the lien and all of the terms of the Mortgage to the full extent of all amounts secured by the Mortgage and interest thereon.

2. Attornment. Master Lessee agrees that it will attorn to and recognize any purchaser of the Property at a Mortgage foreclosure sale or any transferee who acquires the Property by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage (in any such case, the "New Owner") and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if exercised) of the term of said Master Lease upon the same terms and conditions set forth in said Master Lease.

3. Cure by Lender of Borrower Defaults. Master Lessee agrees to give Lender or its agent, servicer or designee (in accordance with Paragraph 11 hereof) a copy of any notice of default served upon Borrower which with the passage of time or otherwise would entitle Master Lessee to cancel the Master Lease or abate the rent under the Master Lease, provided that prior to such notice Master Lessee has been notified in writing of the address of the Lender, or its agent, servicer or designee. Master Lessee further agrees that if Borrower shall have failed to cure such default within the time provided for in the Master Lease, then Lender shall have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Master Lease shall not be terminated while such remedies are being so diligently pursued.

4. Payments to Lender and Exculpation of Master Lessee. Master Lessee is hereby notified that the Master Lease and the rent and all other sums due there under have been assigned to Lender as security for the Loan. In the event that Lender notifies Master Lessee of a default under the Mortgage and directs that Master Lessee pay its rent and all other sums due under the Master Lease to Lender, Master Lessee shall honor such direction without inquiry and pay its rent and all other sums due under the Master Lease in accordance with such notice. Borrower agrees that Master Lessee shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Borrower as if such notice were given at the direction of Borrower. Master Lessee is hereby instructed to disregard any notice to the contrary received from or at the behest of Borrower.

5. Subleases Subject to Lender's Security Interest. Master Lessee acknowledges that all subleases for space at the Property, and the rent and all other sums due thereunder, shall be subject to the security interests of Lender created by the Loan Documents. In the event

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that Lender notifies Master Lessee of a default under the Mortgage and directs that Master Lessee pay any such rent and all other sums due under the subleases to Lender, Master Lessee shall honor such direction without inquiry and pay such rent and all other sums due under the subleases in accordance with such notice, it being deemed that Master Lessee shall hold such rent and other sums in trust for Lender. Without limiting the foregoing, Master Lessee expressly acknowledges the security interest of Lender created by Article 6 of the Mortgage and by the Assignment of Leases and Rents in any subleases for space at the Property and further acknowledges and agrees that any sublease entered into on or after the date hereof shall be subject to and comply with the leasing requirements, consents and other provisions of Section 6.2 of the Mortgage.

6. Assignment of Management Agreement. Master Lessee acknowledges that, pursuant to and in accordance with the terms of that certain Conditional Assignment and Subordination of Management Agreement dated as of the date hereof by and among TSA Properties, LLC, a Delaware limited liability company, Borrower and Master Lessee in favor of Lender (the "Assignment of Asset Management Agreement"), Borrower and Master Lessee have assigned to Lender, its successors and assigns all right, title and interest of Borrower and/or Manager in and to that certain Asset Management Agreement, dated as of July 1, 2006 between Master Lessee and TSA Properties, LLC, a Delaware limited liability company (the "Management Agreement"), governing the management of the Premises. Master Lessee further acknowledges that each of the Assignment of Asset Management Agreement was made by Borrower and Master Lessee to Lender as collateral security for the full payment and performance by Borrower of all of its obligations under all of the Loan Documents, provided, however, that until the occurrence of an Event of Default (as defined in the Mortgage), Borrower and/or Master Lessee may exercise all rights as owner or master lessee, as applicable, of the Premises under the Management Agreement.

7. Compliance with Provisions of the Master Lease; No Encumbrance. Master Lessee covenants to Lender and agrees that it will comply with the terms and provisions of Article 15 of the Master Lease. Master Lessee acknowledges that the rights granted to Master Lessee pursuant to Article 18 of the Master Lease are subject to the restrictions and conditions set forth in the Loan Documents. Notwithstanding any provision to the contrary contained in the Master Lease, Master Lessee agrees that until the Loan is repaid in full, Master Lessee shall not encumber its interest in the Master Lease without the prior written consent of Lender.

8. Termination of the Master Lease. On the effective date of termination of the Master Lease, Master Lessee shall turn over to Lender all books and records relating to the Premises (copies of which may be retained by Master Lessee at Master Lessee's expense), together with such authorizations and letters of direction addressed to tenants, subtenants suppliers, employees, banks and other parties as Lender may reasonably require. Master Lessee shall cooperate with Lender in transferring the management responsibilities for the Premises to Lender or its designee.

9. Master Lessee's Waiver of Surety Rights: To the extent permitted by law, Master Lessee hereby waives and agrees not to assert or take advantage of:

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(a) Any right to require Lender (i) to proceed against Borrower or any other Person, (ii) to proceed against or exhaust any security held by Lender at any time, or (iii) to pursue any other remedy in Lender's power or under any other agreement, in any case, before proceeding against Master Lessee hereunder;

(b) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person;

(c) Demand, presentment for payment, protest and notice of protest, demand, dishonor and nonpayment and all other notices except as expressly required in the Loan Documents including, without limitation, notice of new or additional indebtedness or obligations; or of any action or non-action on the part of Borrower, Lender, any endorser or creditor of Borrower or of Master Lessee or on the part of any other Person whomsoever under this Agreement or any other Loan Document;

(d) Any defense based upon an election of remedies, splitting a cause of action or merger of judgments by Lender;

(e) Any right or claim of right to cause a marshaling of the assets of Master Lessee;

(f) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Agreement;

(g) Any duty on the part of Lender to disclose to Master Lessee any facts Lender may now or hereafter know about Borrower or the Property, regardless of whether Lender (i) has reason to believe that any such facts materially increase the risk beyond that which Master Lessee intends to assume, (ii) has reason to believe that such facts are unknown to Master Lessee, or (iii) has a reasonable opportunity to communicate such facts to Master Lessee, it being understood and agreed that Master Lessee is fully responsible for being and keeping informed of the financial condition of Borrower, the financial and physical condition of the Property and all other circumstances bearing on the risk that liability may be incurred by Master Lessee hereunder;

(h) Any invalidity, irregularity or unenforceability in whole or in part, of any one or more of the Loan Documents;

(i) Any lack of commercial reasonableness in dealing with the collateral for the Loan;

(j) Any deficiencies, in the collateral for the Loan or any deficiency in the ability of Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(k) Any claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon the voluntary or involuntary bankruptcy proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable,

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shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now existing or hereafter acquired, which Lender may have against Master Lessee, the Borrower or the collateral for the Loan;

(l) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(m) Any action, occurrence, event or matter consented to by Master Lessee under any other provision hereof, or otherwise;

(n) Any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and

(o) The defense of the statute of limitations in any action hereunder or in any action for the collection or performance of any obligations hereby guaranteed.

Master Lessee covenants and agrees that, upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Master Lessee shall not seek or cause Borrower or any other Person to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Master Lessee or the collateral for the Loan by virtue of this Agreement or otherwise.

10. Limitation of Liability. If the New Owner acquires the interest of Borrower under the Master Lease, pursuant to a Mortgage foreclosure sale or by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage, the New Owner shall not be:

- (a) liable for any act or omission of any prior landlord (including current Landlord);
- (b) subject to any claims, offsets, defenses or counterclaims which Master Lessee might have against any prior landlord (including current Landlord);
- (c) bound by any rent or additional rent which Master Lessee shall have paid more than one (1) month in advance to any prior landlord (including current Landlord);
- (d) liable for the return of any security deposit not actually received by New Owner;
- (e) bound by any amendment or modification of the Master Lease made without the written consent of Lender;

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(f) bound by any covenant to undertake or complete any improvement to or restoration of the Promises or the Property, except to the extent insurance proceeds or condemnation awards are made available to New Owner to cover the cost of the Improvement, Lender shall not, either by virtue of the Mortgage or this Agreement be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Master Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Master Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

11. Notice. Any notice, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and if to Lender, with a copy to Merrill Lynch Mortgage Lending, Inc. at 4 World Financial Center, 16<sup>th</sup> Floor, New York, New York 10080, Attention: Commercial Mortgage Services, and a copy to Cassin Cassin & Joseph LLP, 711 Third Avenue, 20<sup>th</sup> Floor, New York, New York 10017 Attn: Joseph L. Tambaro, Esq., and if to Borrower or Master Lessee, with a copy to Sonnenschein Nath & Rosenthal, 7800 Sears Tower, Chicago, IL 60606, Attention: Steven R. Davidson, Esq. Notice shall be deemed given when delivered personally, or few (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party can change its address or party to receive notice by giving at least fifteen (15) days prior notice to the other parties hereto in accordance with this provision. Master Lessee agrees to send a copy of any notice or statement under the Master Lease to Lender at the same time such notice or statement is sent to Borrower.

## 12. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(c) Amendment. This Agreement shall be deemed to amend any provisions of the Master Lease which are inconsistent with the terms hereof.

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(d) Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

(e) Conveyance of Rights to Trustees. Master Lessee acknowledges and agrees that certain rights granted to Master Lessee under the Master Lease have been conveyed to J.P. Morgan Trust Company, National Association pursuant to that certain Recorded Trust Agreement dated July 1, 2006.

(f) No Obligation of Lender. Lender shall have no obligation to Master Lessee to exercise any rights or remedies under the Mortgage or any of the other Loan Documents.

(g) No Interest of Master Lessee. Master Lessee acknowledges that it has no interest whatsoever in proceeds of the Loan nor any right of action under the Mortgage or any of the other Loan Documents enforceable against Lender to garnish, require or compel payment of proceeds of the Loan to be applied toward payment of Borrower's liabilities or obligations under the Master Lease.

(h) Performance by Master Lessee. Borrower and Lender acknowledge and agree that the Master Lease obligates Master Lessee to perform certain obligations with respect to the operation, management and maintenance of the Property, which obligations are obligations of Borrower pursuant to the terms of the Mortgage and the other Loan Documents. Notwithstanding the foregoing, no such performance by Master Lessee or acceptance thereof by Lender shall be deemed to relieve Borrower of its obligations hereunder as primary obligor, shall require Lender to accept anything other than full performance required hereunder or shall be deemed to be a waiver of any obligations of Borrower hereunder or under the other Loan Documents.

[SIGNATURES ON FOLLOWING PAGE]

prepared by:

Joseph Tambaro, Esq.  
Cassim Cassin & Joseph LLP  
711 Third Avenue  
New York, NY 10017

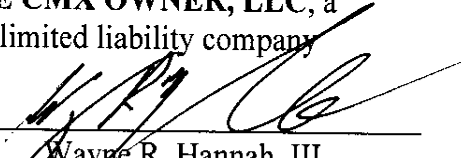
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

Date: ~~June~~<sup>July</sup> 1, 2006

**BORROWER:**

**GLENCOE CMX OWNER, LLC**, a  
Delaware limited liability company

By:   
Name: Wayne R. Hannah, III  
Title: President

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Date: ~~June~~ <sup>July</sup> 1, 2006

**MASTER LESSEE:**

**GLENCOE CMX MASTER, LLC, a**  
Delaware limited liability company

By:   
Name: Wayne R. Hannah, III  
Title: President

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**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

Date: ~~June~~<sup>July</sup> 1, 2006

**LENDER:**

**MERRILL LYNCH MORTGAGE LENDING,  
INC.**, a Delaware corporation

By:  \_\_\_\_\_

Name:

Eli Hattem

Title:

Vice President

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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, Margaret Brzozowski, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT **WAYNE R. HANNAH, III**, personally known to me to be the **PRESIDENT**, of **GLENCOE CMX OWNER, LLC**, a Delaware limited liability company, and also known to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such **PRESIDENT**, he signed and delivered the said instrument as the free and voluntary act of **GLENCOE CMX OWNER, LLC**, a Delaware limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 27<sup>th</sup> day of June, 2006.

Margaret Brzozowski  
Notary Public



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STATE OF ILLINOIS        )  
  )SS  
COUNTY OF COOK        )

I, Margaret Brzozowski, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT **WAYNE R. HANNAH, III**, personally known to me to be the **PRESIDENT**, of **GLENCOE CMX MASTER, LLC**, a Delaware limited liability company, and also known to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such **PRESIDENT**, he signed and delivered the said instrument as the free and voluntary act of **GLENCOE CMX MASTER, LLC**, a Delaware limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 27<sup>th</sup> day of June, 2006.

Margaret Brzozowski  
Notary Public



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STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

On the 27 day of June, in the year 2006, before me, the undersigned personally appeared Eli Hattem, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Valencia Love*

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

VALENCIA LOVE  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01612277  
CLERK COUNTY OF COOK  
150 WEST WASHINGTON STREET, CHICAGO, ILLINOIS 60604

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## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1: LOT 1 AS SHOWN ON THAT CERTAIN PLAT ENTITLED "RESUBDIVISION OF LOT 2 OF VILLAGE FRONTAGE SUBDIVISION", A RESUBDIVISION IN THE SOUTH HALF OF THE NORTH HALF OF SECTION 13, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED AS DOCUMENT NUMBER 0011209603.

04-13-112-044-000

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## RIDER

<p>Carmax of Plano 4448 West Plano Parkway Plano, GLENCOE 75093</p> <p>County: Collin</p>	<p>Carmax of Houston 19500 Northwest Freeway Houston, GLENCOE 77065</p> <p>County: Harris</p>
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