

# UNOFFICIAL COPY



Doc#: 0916218038 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/11/2009 11:53 AM Pg: 1 of 10

8457105 D2 D6 2 of 2

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## DOCUMENT COVER SHEET

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Mail To and Prepared By:

Tara Slomka  
Merrill Lynch Commercial finance Corp.  
222 N. LaSalle Street, 17th floor  
Chicago, IL 60601

Box 400-CTCC

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), made this 13<sup>th</sup> day of May, 2009, by and between Graham Packaging Plastics Products Inc. a Delaware corporation ("Tenant"), having a place of business at 2401 Pleasant Valley Road, York Pennsylvania 17402, and having a facility at 5000 S. Major Avenue, Chicago, Illinois 60638 and, Merrill Lynch Commercial Finance Corp., a Delaware Corporation with an address of 222 North LaSalle Street, Chicago, Illinois 60601 (hereinafter called the "Lender"), Silver Beauty LLC ("Silver Beauty") and 5800 W. 51<sup>st</sup> Street Enterprises L.L.C. ("5800") (collectively "Landlord")

WITNESSETH:

WHEREAS, pursuant to, that certain First Warehouse Lease and Right of First Refusal, that certain Second Warehouse Lease and Right of First Refusal, and that certain Third Warehouse Lease and Right of First Refusal each dated November 1, 2002 (as each has been amended or otherwise modified from time to time hereinafter collectively referred to as the "Lease"), Landlord has leased and rented to Tenant certain premises located at 5750 – 5800 W. 51<sup>st</sup> Street (parcels 1 and 2, 4, 5 and 6), Bedford Park, IL 60638 (the "Property"), a more particular description of which Property appears in Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, the Lender is making a loan secured by a mortgage of the Property (hereinafter referred to as the "Mortgage") and Tenant wishes to induce Lender to consent to the aforesaid Lease; and,

WHEREAS, Tenant and the Lender desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of this Subordination, Non-Disturbance and Attornment Agreement:

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant, Landlord and the Lender agree as follows:

1. The Lease and the rights of Tenant hereunder, (including without limitation, any rights of first refusal to purchase all or any portion of the property provided for under the Lease) are and shall be subject and subordinate to the lien of the Mortgage and to all of the terms, conditions and provisions thereof, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto. In the event that the Lender or any other person (the Lender, any other such person and their successors and assigns being referred to herein as the "Purchaser") acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure, Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and subject to the proviso in Paragraph 3 of this Agreement, the Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser.
2. So long as the Lease is in full force and effect and Tenant is not in default under any material provision of the Lease or this Agreement, and no event has occurred that would entitle Landlord to terminate the Lease without further action by Landlord or would entitle Landlord to dispossess the Tenant hereunder:
  - (a) the right of possession and quiet enjoyment of Tenant to the leased premises shall not be terminated, disturbed by any steps or proceedings taken by the Lender in the exercise of any remedy or rights under the Mortgage; and
  - (b) the Lease shall not be terminated or affected by said exercise of any remedy or rights provided for in the Mortgage and the Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage, or otherwise shall be made subject to the Lease and the rights of Tenant thereunder.

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3. In no event shall the Lender or any other Purchaser be:
- (a) liable for any act or omission of any prior landlord, including the Landlord, prior to the date the Lender assumed the Lease; provided that Lender shall be obligated to cure ongoing defaults of which it receives notice;
  - (b) liable for the return of any security deposit not actually received by Lender;
  - (c) subject to any offsets that the Tenant might have against any prior landlord, including the Landlord;
  - (d) bound by any payment of rent or additional rent that the Tenant might have paid to any prior landlord, including the Landlord, more than 30 days in advance, unless consented to by Lender in writing.
4. Tenant agrees that it will not, without the prior written consent of the Lender, do any of the following, and any such purported action without such consent shall be void as against the Lender:
- (a) make a prepayment in excess of one month of rent thereunder; or
  - (b) subordinate or permit subordination of the Lease to any lien subordinate to the Mortgage.
5. Tenant agrees to give the Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice to Landlord. No such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so sent to the Lender. The Lender shall have the right, but not the obligation, to remedy any Landlord default under the Lease. Tenant shall accept performance by the Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.
6. Tenant agrees to certify in writing to the Lender, upon request, whether or not any material default on the part of Landlord exists under the Lease and the nature of any such default.
7. Nothing contained herein shall prevent the Lender from naming Tenant in any foreclosure or other action or proceeding initiated for the Lender to avail itself of and complete any such foreclosure or other remedy.
8. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto. However, Tenant agrees to execute and deliver to the Lender or to any person to whom Tenant herein agrees to attorn such other instruments in a form acceptable to Lessee as either shall request in order to effectuate said provisions, subject to as set forth in Paragraph 3 (c) herein.
9. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements of the Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or at a sale under power of sale.
10. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.
11. This Agreement may be signed in counterparts.
12. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed in accordance with the laws of Illinois.

IN WITNESS WHEREOF, Tenant and the Lender have caused this instrument to be executed as of the day and year first above written.

LESSEE:

GRAHAM PACKAGING PLASTICS PRODUCTS INC.

BY:

NAME: Peter Lennox

TITLE: Senior Vice President & General Manager,  
Household, Chemical, Auto & Personal Care Specialty

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COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF YORK, SS.

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of May, 2009, by Peter Lennox, Senior Vice President & General Manager, Household, Chemical, Auto & Personal Care Specialty, of Graham Packaging Plastic Products, Inc., a Delaware corporation, on behalf of such corporation.

Sharon E. Wishard NOTARY PUBLIC

MY COMMISSION EXPIRES: May 18<sup>th</sup> 2012

Sharon E. Wishard  
TYPE OR PRINT NAME

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Sharon E. Wishard, Notary Public  
Springettsbury Twp., York County  
My Commission Expires May 18, 2012  
Member, Pennsylvania Association of Notaries

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LANDLORD:

5800 W. 51<sup>ST</sup> STREET ENTERPRISES L.L.C.  
BY: SILVER BEAUTY LLC, ITS MANAGER

BY: Eugene Raymond  
EUGENE RAYMOND, COMPANY MANAGER

STATE OF ILLINOIS  
COUNTY OF Cook, SS.

The foregoing instrument was acknowledged before me this 25 day of April, 2009, by Eugene Raymond, Company Manager of Silver Beauty LLC acting in its capacity as Manager of 5800 W. 21<sup>st</sup> Street Enterprises L.L.C. an Illinois limited liability company, on behalf of such limited liability company.

[Signature] NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
Barry B Shulman  
TYPE OR PRINT NAME

LANDLORD:  
SILVER BEAUTY LLC

BY: Eugene Raymond  
EUGENE RAYMOND, ITS COMPANY MANAGER

STATE OF ILLINOIS  
COUNTY OF Cook, SS.

The foregoing instrument was acknowledged before me this 25 day of April, 2009, by Eugene Raymond, Sole Manager of Silver Beauty LLC, an Delaware limited liability company, on behalf of such limited liability company.

[Signature] NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
Barry B Shulman  
TYPE OR PRINT NAME

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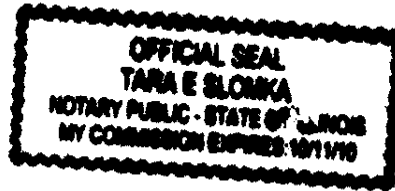
MERRILL LYNCH COMMERCIAL FINANCE CORP.

BY: *Sandy Savich*  
NAME: SANDY SAVICH  
TITLE: VICE PRESIDENT

STATE OF ILLINOIS  
COUNTY OF Cook, SS.

The foregoing instrument was acknowledged before me this 14th day of May, 2009, by Sandy Savich, Vice President of Merrill Lynch Commercial Finance Corp., a Delaware corporation, on behalf of such corporation

*Tara E. Slonka* NOTARY PUBLIC  
MY COMMISSION EXPIRES: 10/11/10  
Tara E. Slonka  
TYPE OR PRINT NAME



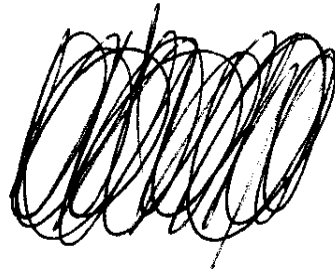
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EXHIBIT A

Property Description

See attached



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## EXHIBIT A

The land and improvements located in Stickney Township, Cook County, Illinois, located at the northeast corner of 51<sup>st</sup> Street and Menard Avenue and outlined in black and referenced as "LEASE 1 FIRST WAREHOUSE LEASE" on the attached Exhibit B.

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## EXHIBIT A

The land and improvements located in Stickney Township, Cook County, Illinois, located on Menard Avenue and outlined in black and referenced as "LEASE 2 SECOND WAREHOUSE LEASE" on the attached Exhibit B.

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## EXHIBIT A

### PARCEL 1:

The North 486.31 feet of the South 526.31 feet of the West 230.29 feet of the East 255.29 feet of the part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, Township 38 North, Range 13, East of the third principal meridian, lying West of a line drawn at right angles to the South line of the Northeast  $\frac{1}{4}$  of said Section at the Southeast corner of the Southwest  $\frac{1}{4}$  of said Northeast  $\frac{1}{4}$  of Section 8; also a triangular parcel of land in the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8 aforesaid described by:

Beginning at a point on above described tract, which is 17.00 feet East of the Northwest corner thereof; thence North, parallel with the West line of above described tract extended, a distance of 170.00 feet; thence Southeasterly in a straight line to a point on the North line of above described tract, 34.00 feet East of the Northwest corner thereof; thence West 17.00 feet to place of beginning, in Cook County, Illinois.

### PARCEL 2:

That part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, Township 38 North, Range 13, East of the third principal meridian, described as follows:

Beginning at a point 526.31 feet North of the South line of said Quarter Quarter Section and which lies on a line drawn at right angles to the South line of said Quarter Quarter Section, and passes through a point on said South line, said point being 25.00 feet West of the Southeast corner of said Quarter Quarter Section; thence continued North on said right angle line, 300.00 feet to the North line of the South 826.31 feet of said Quarter Quarter Section; thence West along said line 209.56 feet; thence Northwesterly 27.29 feet to a point, which is 212.29 feet West a line drawn at right angles to the South line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  above described and which is also 853.60 feet North of the South line of Quarter Quarter Section; thence Southerly 40.01 feet to a point 213.29 feet West of a line heretofore described as drawn at right angles to the South line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, said point being 813.60 feet North of the South line of said Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; thence South along a line, which is 213.29 feet West of and parallel with the aforesaid line described as drawn at right angles to the South line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, a distance of 117.29 feet; thence Southeasterly, 170.85 feet to a point on the North line of the South 526.31 feet of said Quarter Quarter Section, which is 196.29 feet West of the line drawn at right angles to the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, as heretofore described; thence East along the North line of the aforesaid South 526.31 feet, a distance of 196.29 feet to the place of beginning, in Cook County, Illinois.

### PARCEL 3:

That part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 8, Township 38 North, Range 13, East of the third principal meridian, bounded and described as follows:

Beginning at a point on the South line of said Quarter Quarter Section, which is 255.29 feet West of the Southeast corner thereof; thence North at right angles to the South line of said Quarter Quarter Section, 772.31 feet; thence Southwesterly in a straight line to a point on the North line of the South 526.31 feet of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 8, which is 25.00 feet West of the last described line; thence West parallel with the South line of said Quarter Quarter Section, 132.00 feet; thence South at right angles to the North line of the South 526.31 feet aforesaid to the South line of said Quarter Quarter Section; thence East 157.00 to the place of beginning, except the South 40.00 feet of said described tract, reserved as private street, also except the North 306.00 feet of the South 346.00 feet and the West 117.29 feet of said described tract, in Cook County, Illinois.

Address: 5750-5800 WEST 51st Street  
Bedford Park, Il

PIN: 19-08-202-003, 19-08-202-020, 19-08-202-044,  
19-08-202-052, 19-08-203-026, 19-08-203-041  
19-08-203-042 and 19-08-203-043