

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Oak Grove Estoppel Certificate and Subordination, Non-Disturbance and
Attornment Agreement

DEPARTMENT: Administrative Services **DIVISION:** Support Services

AUTHORIZED BY: Jamie Croteau **CONTACT:** Angi Thompson **EXT.** 5250

Agenda Date <u>11/15/05</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute Oak Grove Estoppel Certificate and Subordination, Non-Disturbance and Attornment Agreement (for leased office space for Clerk of Court and Tax Collector).

BACKGROUND:

The Oak Grove Shoppes is under contract for sale. The Tenant Estoppel Agreement confirms pertinent information contained in the Lease Agreement. The lease term, rental payment amount, security deposit amount and other major clauses of the lease are summarized. The Subordination, Non-Disturbance, and Attornment Agreement confirms that the County's lease will belong to the new owner when the property sells.

Staff has reviewed both agreements and verified that the information being confirmed matches the Lease Agreement executed by the Board of County Commissioners on December 21, 2000 and subsequently amended on July 23, 2003, and the new lease agreement executed on June 21, 2005.

District 3, Commissioner Van Der Weide

Reviewed by: <u>[Signature]</u> Co Atty: <u>[Signature]</u> DFS: _____ Other: _____ DCM: <u>[Signature]</u> CM: <u>[Signature]</u> File No. <u>CASSS01</u>

ESTOPPEL CERTIFICATE

Seminole County (the "Tenant"), intending to be legally bound, hereby certifies to Woolbright Development Inc. ("Buyer") and PNC Bank, National Association, as Agent for the Lenders, as follows:

1. Exhibit A attached hereto is a full, true and complete copy of that certain lease (the "Lease") dated as of 12/21/00 between TSO Oak Grove, LLC ("Landlord") and Tenant;

2. The Lease is in full force and effect, will expire on 11/30/2005 and has not been modified or amended, except as set forth below;

Amendments/Modifications to Lease: First Renewal to Oak Groves Shoppes Lease dated July 23, 2003. Tenant executed a new lease with landlord dated June 21, 2005 which will commence on December 1, 2005 and expire on November 30, 2008.

3. Tenant has accepted possession of the premises demised by the Lease and acknowledges that all alterations and improvements to be made on the part of the Landlord have been completed to Tenant's satisfaction, and all other inducements provided by Landlord to Tenant with respect to the Lease have been fulfilled, including the expiration of any no-rent or reduced-rent periods;

4. The Tenant has not assigned its interest in the Lease or sublet any portion of the premises demised thereby;

5. To the best of Tenant's knowledge and belief, Landlord is not in default under any of Landlord's obligations under the Lease;

6. Tenant has no right of offset or defense against any rent or other obligation due or to become due under the Lease;

7. The Lease was duly authorized by Tenant and constitutes the valid and binding obligation of Tenant, enforceable in accordance with its provisions;

8. Tenant is currently paying base rent under the Lease in the amount of \$7,608.62 per month and, with the exception of the current month's rent, Tenant has not prepaid any sums payable by Tenant under the Lease.

Tenant understands and acknowledges that this Certificate is being delivered for the benefit of, and may be relied upon, by PNC Bank, National Association, as proposed mortgagee of Buyer's interest in the premises demised by the Lease.

IN WITNESS WHEREOF, Tenant has executed this Certificate as of the ____ day of _____, 2005.

ATTEST:

SEMINOLE COUNTY

Title: _____

By: _____
Title: _____

[Corporate Seal]

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Among

TSO OAK GROVE, LLC,

Landlord

SEMINOLE COUNTY

Tenant

AND

PNC BANK, NATIONAL ASSOCIATION,

Mortgagee

Return to:

PNC Bank, National Association
One PNC Plaza
249 Fifth Avenue
P1-POPP-19-2
Pittsburgh, Pennsylvania 15222

Attention: Wayne Robertson

Subordination, Non-Disturbance and Attornment Agreement



THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") dated as of this _____ day of _____, _____, by and among **PNC BANK, NATIONAL ASSOCIATION**, as Agent for the Lenders (the "**Mortgagee**"), with an address at One PNC Plaza, 249 Fifth Avenue, P1-POPP-19-2, Pittsburgh, Pennsylvania 15222, TSO Oak Grove, LLC (the "**Landlord**"), with an address at 1401 Peachtree Street, Suite 400, Atlanta, Georgia 30309, and Woolbright Development, Inc. (the "**Buyer**") with an address of 3200 North Military Trail, Fourth Floor, Boca Raton, Florida 33431 and Seminole County (the "**Tenant**"), with an address at Seminole County Services, Building 1101 E. 1st Street, Sanford, Florida 32771;

WITNESSETH THAT:

WHEREAS, the Landlord is the fee owner of that certain real property located in Altamonte Springs, Seminole County, Florida, and more particularly described in Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, Buyer and Landlord have entered into an Agreement for the sale and purchase of the property; and

WHEREAS, in the event the sale and purchase transaction closes, Buyer will become the successor-in-interest to Landlord, as Landlord; and

WHEREAS, pursuant to a Loan Agreement or Letter Agreement dated _____, 2005 (the "**Agreement**") and promissory notes dated as of the date of the Agreement (collectively, the "**Note**"), PNC Bank, National Association as the Administrative Agent (the "**Agent**") and the lenders party to the Agreement (the "**Lenders**") made a loan to the Landlord. The obligations under the Agreement and Note are secured by a mortgage instrument covering the Property (the "**Mortgage**") dated as of the date of the Agreement from the Buyer to the Mortgagee, and recorded or to be recorded in the real estate records of the aforesaid County and State, and are also secured by an assignment of the Landlord's interest in all leases of the Property (the "**Assignment**") dated as of the date of the Agreement, and recorded or to be recorded in the real estate records of the aforesaid County and State (the Agreement, Note, Mortgage, Assignment and any and all other documents executed in connection with the Loan, as the same may be amended, renewed, replaced or supplemented from time to time, collectively the "**Loan Documents**"); and

WHEREAS, under the terms of a certain Lease Agreement dated December 21, 2000 (the "**Lease**"), First Renewal dated July 23, 2003, and new Lease dated June 21, 2005 (which commences on December 1, 2005) the Landlord leased to the Tenant all or certain portions of the Property described in the Lease (the "**Demised Premises**") under the terms and conditions more particularly described therein; and

WHEREAS, the Mortgage provides that the Lease shall be subordinate to the Mortgage and the parties hereto desire to confirm such subordination and to establish rights of quiet and peaceful possession for the benefit of the Tenant under the Lease and to define the terms, covenants and conditions precedent for such rights.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the parties hereto agree as follows:

1. **Subordination of Lease.** The Lease and the entire right, title and interest of the Tenant thereunder are and shall be subject and subordinate in all respects to the lien, right, title and terms of the Loan Documents and, in particular, the Mortgage and all advances made or to be made thereunder.

2. **Consent of Tenant.** The Tenant acknowledges notice of and consents to the Mortgage, the Assignment and the terms and conditions thereof. The Tenant agrees to continue making payments of rent and other amounts owed under the Lease to the Landlord, and to otherwise recognize the rights of the Landlord under the Lease, until notified otherwise in writing by the Mortgagee, as herein provided. The Landlord and Tenant agree that, if the Mortgagee delivers to the Tenant a notice stating that a default has occurred under the Loan Documents and requesting that all payments due under the Lease be thereafter paid directly to the Mortgagee, the Tenant shall thereafter make, and is hereby authorized and directed by the Landlord to make, all such payments directly to the Mortgagee, as provided in the Mortgage and the Assignment, without any duty of further inquiry on the part of the Tenant.

3. **Tenant's Duty to Notify Mortgagee of any Default Under the Lease.** The Tenant shall provide the Mortgagee with prompt notice of any asserted default against the Landlord under the Lease. In the event of any act or omission of the Landlord which would give the Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, the Tenant shall not exercise such right or remedy until Mortgagee has received notice and a reasonable period of time to cure said default, said cure period commencing after the end of Landlord's cure period and after Mortgagee is entitled under the Mortgage and the Assignment to remedy same; provided that the Mortgagee shall give the Tenant written notice of its intention to, and shall commence and continue with due diligence to, remedy such act or omission. Notwithstanding the foregoing, the Mortgagee shall have no obligation to remedy or to continue to remedy any such act or omission.

4. **Nondisturbance of Tenant.** Provided (i) the Lease shall at all times be in full force and effect, (ii) the term of the Lease has commenced, (iii) the Tenant is in actual possession of the Demised Premises, and (iv) the Tenant shall not be in default thereunder or under this Agreement, then:

(a) The right of possession by the Tenant to the Demised Premises and any or all of the Tenant's rights under the Lease shall not be terminated by the Mortgagee (or by anyone claiming by, through or under the Mortgagee) in the exercise of any of the Mortgagee's rights under the Loan Documents.

(b) The Tenant shall not be named as a party defendant to any foreclosure of the lien of the Mortgage for the purpose of terminating the Lease, unless Mortgagee is required by any applicable law, order, regulation, rule of court or judicial decision to name the Tenant as a party defendant.

(c) If the Mortgagee or its successors or assigns comes into possession of the Property (through receivership, as a mortgagee in possession, or otherwise) or acquires the leasehold interest of the Landlord by foreclosure of the Mortgage, or by proceedings under the Loan Documents, deed in lieu or otherwise, the Lease shall not be terminated by any such foreclosure or proceedings; and the Lease shall continue in full force and effect upon the Tenant's attornment, as hereinafter provided, as a direct lease between the Tenant and the Mortgagee upon all the terms, covenants, conditions and agreements set forth in the Lease and this Agreement.

(d) If the Property or the Landlord's leasehold interest therein is sold or otherwise disposed of pursuant to any right or power contained in the Loan Documents or as a result of proceedings thereon, the Lease shall not be terminated thereby, and the Foreclosure Purchaser of the Property or of the Landlord's leasehold interest therein or any person acquiring title thereto shall so acquire the Property or such interest, subject to the Lease; and the Lease shall continue in full force and effect upon the Tenant's attornment, as hereinafter provided, as a direct lease between the Tenant and any party acquiring title to the Landlord's leasehold interest therein, as aforesaid, upon all the terms, covenants, conditions and agreements set forth in the Lease.

5. Attornment of Tenant to Mortgagee or Foreclosure Purchaser. If the Mortgagee or any Foreclosure Purchaser shall succeed to the rights of the Landlord under the Lease, then the Tenant shall attorn to and recognize the Mortgagee or such Foreclosure Purchaser as the Tenant's landlord under the Lease and the Mortgagee or such Foreclosure Purchaser shall be conclusively deemed to have accepted such attornment. Such attornment shall be self-operative and effective without execution and delivery of any further instrument, immediately upon the Mortgagee's or any Foreclosure Purchaser's succession to the interest of the Landlord under the Lease. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between the Mortgagee or such Foreclosure Purchaser and the Tenant except that the Mortgagee or such Foreclosure Purchaser shall not be bound by any amendment or modification of the Lease made without the Mortgagee's written consent and except that the Mortgagee or such Foreclosure Purchaser shall not be liable to the Tenant:

(a) For any past act, default or omission on the part of the Landlord or for any accrued obligation of the Landlord under the Lease and the Tenant shall have no right to assert the same or any damages arising therefrom as an offset or defense against the Mortgagee or such Foreclosure Purchaser;

(b) For the commencement or completion of any construction or any contribution toward construction or installation of any improvements upon the Demised Premises, or any expansion or rehabilitation of existing improvements thereon, or for restoration of improvements following any casualty not required to be insured under the Lease or for the costs of any restoration in excess of the proceeds recovered under any insurance required to be carried under the Lease; or

(c) For any prepayment of rent, rental security or any other sums deposited with the Landlord under the Lease and not actually delivered to the Mortgagee or such Foreclosure Purchaser.

The Mortgagee or such Foreclosure Purchaser shall be liable to the Tenant under the Lease only during the Mortgagee's or such Foreclosure Purchaser's period of ownership, and such liability shall not continue or survive as to the transferor after a transfer by the Mortgagee or such Foreclosure Purchaser of its interest in the Lease and the Demised Premises. Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of the Mortgagee shall have no personal liability to Tenant and the liability of the Mortgagee shall be limited to the Mortgagee's interest in the Property.

6. Modification of Lease. Without the Mortgagee's prior written consent, the Tenant shall not (a) amend or terminate the Lease, (b) prepay any rent or other sums due under the Lease for more than one month in advance of the due dates thereof, (c) voluntarily surrender the Demised Premises, or (d) assign the Lease or sublet the Demised Premises or any part thereof other than pursuant to the provisions of the Lease.

7. **Representations of Tenant.** The Tenant represents and warrants to the Mortgagee that (a) the Tenant occupies and is the leasehold owner of the Demised Premises pursuant to the terms of the Lease, (b) the Lease is in full force and effect, and the Tenant has no offsets or defenses to the payment of rent or other sums due thereunder, (c) no default exists under the Lease, and (d) all rent and other sums due under the Lease have been paid in full, but have not been paid for more than one month in advance of the due dates thereof.

8. **Application of Casualty Insurance Proceeds and Condemnation Awards.** The Tenant hereby agrees that, notwithstanding anything to the contrary contained in the Lease, the terms and provisions of the Mortgage with respect to the application of casualty insurance proceeds and condemnation awards shall control.

9. **Confirmation of Lease Status.** The Landlord and the Tenant hereby agree that, upon the Mortgagee's request, they shall from time to time execute and deliver to the Mortgagee, and without charge to the Mortgagee, an estoppel certificate setting forth whatever information the Mortgagee may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

10. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

11. **Changes in Writing.** No modification, amendment or waiver of, or consent to any departure from, any provision of this Agreement nor consent to any departure by the Landlord or Tenant therefrom will be effective unless made in a writing signed by the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Landlord or Tenant in any case will entitle the Landlord or Tenant to any other or further notice or demand in the same, similar or other circumstance.

12. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

13. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

14. **Definitions.** As used in this Agreement, the word "Tenant" shall mean the Tenant and/or the subsequent holder of an interest under the Lease, provided the interest of such holder is acquired in accordance with the terms and provisions of the Lease, the word "Mortgagee" shall mean the Mortgagee or any subsequent holder or holders of the Mortgage and the Assignment, and the word "Foreclosure Purchaser" shall mean any party other than the Mortgagee acquiring title to the Property by purchase at a foreclosure sale, by deed or otherwise. Subject to the foregoing, this Agreement shall bind and inure to

the benefit of the Landlord, the Tenant and the Mortgagee, their heirs, legal representatives, successors and assigns.

15. Governing Law and Jurisdiction. This Agreement has been delivered to and accepted by the Mortgagee and will be deemed to be made in the State where the Mortgagee's office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE MORTGAGEE'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Landlord and the Tenant hereby irrevocably consent to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Mortgagee's office indicated above is located; provided that nothing contained in this Agreement will prevent the Mortgagee from bringing any action, enforcing any award or judgment or exercising any rights against the Landlord or Tenant individually, against any security or against any property of the Landlord or Tenant within any other county, state or other foreign or domestic jurisdiction. The Mortgagee, the Landlord and the Tenant agree that the venue provided above is the most convenient forum for the Mortgagee, the Landlord and the Tenant. The Landlord and the Tenant waive any objection to venue and any objection based on a more convenient forum that either may have in any action instituted under this Agreement.

16. WAIVER OF JURY TRIAL. EACH OF THE LANDLORD, THE TENANT AND THE MORTGAGEE IRREVOCABLY WAIVE ANY AND ALL RIGHT THAT ANY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE LANDLORD, THE TENANT AND THE MORTGAGEE ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

The Landlord and the Tenant acknowledge that each has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

WITNESS / ATTEST:

MORTGAGEE:

PNC BANK, NATIONAL ASSOCIATION
as the Administrative Agent

By: _____

(SEAL)

Print Name: _____

Print Name: _____

Title: _____

BUYER, as successor-in-interest to Landlord:

WOOLBRIGHT DEVELOPMENT, INC.

Print Name: _____

Title: _____
(Include title only if an officer of entity signing to the right)

Print Name: _____

Print Name: _____

Print Name: _____

Title: _____
(Include title only if an officer of entity signing to the right)

Print Name: _____

Print Name: _____

By: _____
(SEAL)

Print Name: _____

Title: _____

(Individual) (SEAL)
Print Name: _____

(Individual) (SEAL)
Print Name: _____

TENANT:

SEMINOLE COUNTY

By: _____
(SEAL)

Print Name: _____

Title: _____

(Individual) (SEAL)
Print Name: _____

(Individual) (SEAL)
Print Name: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me a Notary Public, this ____ day of _____, 2005, by _____, a _____ of Seminole County, a political subdivision of the State of Florida. He/she is personally known to me or has produced _____ as identification.

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

Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF _____) ss:
_____)

On this, the _____ day of _____, 2005, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of PNC BANK, NATIONAL ASSOCIATION and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said bank as such officer.

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

Notary Public

My commission expires:

EXHIBIT "A"
PROPERTY DESCRIPTION