

AGENDA REQUEST FORM
The School Board of Broward County, Florida

Meeting Date
 9/19/2006

Open Agenda
 Yes No

Time Certain Request
 Yes No

Agenda Item Number
 J-4

TITLE:
 Subordination, Attornment and Nondisturbance Agreement with Stirling Bank for Lauderhill Middle Community School Lease Premises at Lauderhill Mall

REQUESTED ACTION:
 Approve the Subordination, Attornment and Nondisturbance Agreement with Stirling Bank for Lauderhill Middle Community School lease premises at Lauderhill Mall.


SUMMARY EXPLANATION AND BACKGROUND:
 On June 20, 2006 the School Board approved three lease agreements with the Lauderhill Mall, LLC for the Lauderhill Middle Community School use of Unit 39-40 (1309/11 NW 40th Avenue), Unit 48-5 (1375B NW 40th Avenue), and Unit 56 (1475 NW 40th Avenue) for a two-year term commencing July 1, 2006.
 Stirling Bank (the Lender) is requiring the Lauderhill Mall LLC (Landlord), obtain a Subordination, Attornment and Nondisturbance Agreement with all the Tenants occupying space within the Lauderhill Mall. In general, the agreement provides the Lender a mechanism to collect rental charges from the Tenants should the Landlord defaults throughout the term of the mortgage. So long as the Tenant is not in default in payments, performance of terms and conditions, the Tenant's rights and privileges under the Lease will not be diminished or interfered with by the Lender.
 The Lender, through Lauderhill Mall, LLC requests the School Board execute the agreement first.
 The School Board Attorney has approved these agreements as to form.

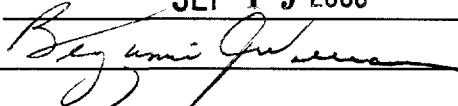
SCHOOL BOARD GOALS:
 Goal One: All students will achieve at their highest potential.
 Goal Two: All schools will have equitable resources.
 Goal Three: All operations of the school system will demonstrate best practices while supporting student achievement.
 Goal Four: All stakeholders will work together to build a better school system.

FINANCIAL IMPACT:
 There is financial impact to the School District.

EXHIBITS: (List)
 1. Subordination, Attornment and Nondisturbance Agreements

<p>BOARD ACTION APPROVED (For Official School Board Records' Office Only)</p>	<p>SOURCE OF ADDITIONAL INFORMATION Name: Thomas J. Coates,  Phone: 754.321-8351</p>
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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
 DIVISION OF FACILITIES AND CONSTRUCTION MANAGEMENT
 MICHAEL GARRETSON, DEPUTY SUPERINTENDENT 

Approved in Open Board Meeting on: SEP 19 2006
 By: , School Board Chair
 Revised July 31, 2003
 FT/MG/Coates/Messina/Walker

SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT

THIS AGREEMENT is entered into as of the date set forth below by and between the Lender and Tenant defined below.

The following capitalized terms are definitions for the purpose of this agreement:

Lender: Sterling Bank, its successors and/or assigns.

Tenant: The School Board of Broward County, Florida

Landlord: Lauderhill Mall, LLC

*Premises: 1375 B NW 40th
AVENUE*

Lease: Lease dated June 20, 2006 demising the premises described therein ("Leased Premises") and located on the Property

Property: the real property described in Exhibit A attached hereto and made a part hereof, together with all buildings and improvements situated thereon

Indenture: the Mortgage and Security Agreement which encumbers or will encumber the Property to secure a mortgage loan made by Lender to Landlord

WITNESSETH:

WHEREAS, Lender is now or will become the owner and holder of the Indenture;
and

WHEREAS, Tenant is the holder of the lessee's interest in the Lease covering the Leased Premises; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Indenture.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease and the rights of Tenant thereunder are now and at all times hereafter shall be subject and subordinate to the Indenture and to all renewals, modifications or extensions

thereof, but such renewals, modifications and extensions shall nevertheless be subject and entitled to the benefits of the terms of this Agreement.

2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any renewals, modifications, or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof.

3. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not join Tenant as a party defendant for the purpose of terminating or otherwise affecting Tenant's interest and estate under the Lease in any action or proceeding brought by Lender for the purpose of enforcing any of its rights in the event of any default under the Indenture; provided however, Lender may join Tenant as a party in any such action or proceeding IF such joinder is necessary under any statute or law for the purpose of effecting the remedies available to the Lender under the Indenture, BUT ONLY for such purpose and NOT for the purpose of terminating the Lease.

4. Notwithstanding anything in the Lease to the contrary, Tenant shall notify Lender in writing of the occurrence of any default by Landlord and shall permit Lender a period of thirty (30) days from the date of such notice (the "Cure Period") in which to cure such default prior to proceeding to exercise any of the rights or remedies of Tenant under the Lease, including: (i) termination of the Lease, (ii) abatement of rental payments due thereunder, or (iii) performance of Landlord's covenants or obligations which Tenant asserts to be in default; provided, however, that the Cure Period granted to Lender herein: (iv) shall be extended by any period of time during which Lender is diligently pursuing the cure of a default which cannot reasonably be expected to be cured within the initial thirty (30) day Cure Period, and (v) shall not be deemed to commence until after any period of time during which Lender is pursuing acquisition of title to the Leased Premises through foreclosure or otherwise, such period to include, without limitation, any period of time (a) during which Lender's acquisition of title to the Leased Premises is stayed by any proceeding in bankruptcy, any injunction or other judicial process, and (b) after acquisition of title by Lender during which Landlord or any other party is contesting the validity of the acquisition or Lender's title to the Leased Premises, provided that in no event shall Tenant be required to forbear from executing its remedies for a period in excess of sixty (60) days.

Notwithstanding the foregoing, Tenant agrees that so long as the Indenture (including any extensions or modifications thereof) encumbers the Leased Premises, Tenant shall have no right to terminate the Lease or withhold or abate any rentals due or to become due thereunder by reason of any of the provisions of the Lease as such provisions apply to property not included within the limits of the real estate encumbered by the Indenture, provided, however, that nothing herein contained shall be construed as a waiver of Tenant's rights in personam nor remedies

by way of injunctive relief against Landlord, and provided further, if Lender should succeed to the ownership of the Leased Premises by virtue of foreclosure or deed in lieu thereof or otherwise, then in such event the provisions of the Lease shall apply to Lender as owner/landlord only with respect to the land which was formerly encumbered by the Indenture.

5. If Lender shall become owner of the Leased Premises by reason of foreclosure or other proceedings brought by it, or by any other manner, or if Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option granted in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, PROVIDED, HOWEVER, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has become such owner or has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

6. If Lender shall become owner of the Leased Premises or if Lender shall succeed to Landlord's interest in the Lease, then during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein; PROVIDED, HOWEVER, that notwithstanding any provision in the Lease to the contrary, Lender shall not be:

- (a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets or defenses which Tenant may have against any prior landlord arising under the Lease (including the Landlord) except acts, omissions, offsets and defenses of which Lender has previously been given notice in accordance with the terms of this Agreement; or
- (b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or
- (c) bound by any amendment or modification of the Lease made without its consent.

7. The terms "holder of a mortgage" and "Lender" or any similar term herein or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone

who shall have succeeded to ownership of the Leased Premises or to Landlord's interests by, through or under foreclosure of the Indenture, or deed in lieu of such foreclosure or otherwise.

The term "Landlord" shall be deemed to include Landlord, the holder of the lessor's interest in the Lease and the fee owner of the Leased Premises and the successors and assigns of any of the foregoing.

8. The Landlord has assigned or will assign to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Indenture, the Lender may at its option under the Rent Assignment require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender, Tenant agrees to pay any payments due under the terms of the Lease to the Lender. The Rent Assignment does not diminish any obligations of the Landlord under the Lease or impose any such obligations on the Lender.

9. This Agreement may NOT be modified except by a written agreement signed by the parties hereto or their respective successors in interest. This agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth in the acknowledgements below.

ATTEST:

"Lender"

BY: _____

BY: _____

ITS: Assistant Secretary

ITS: _____

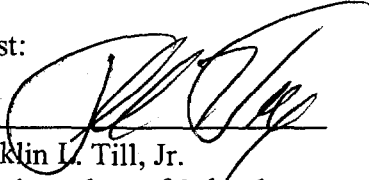
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ACKNOWLEDGMENT
(for Lender)

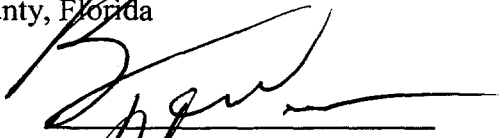
"Tenant"

The School Board of Broward
County, Florida

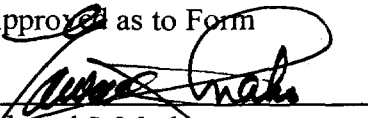
Attest:



Franklin L. Till, Jr.
Superintendent of Schools



BY: Benjamin J. Williams
ITS: Chair

Approved as to Form


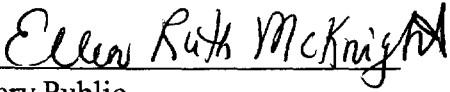
Edward J. Marko,
School Board Attorney

ACKNOWLEDGEMENT

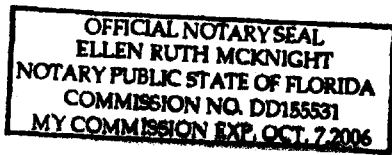
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 19 day of
Sept., 2006 by Benjamin J. Williams, who is personally known to me or
has produced personally known as identification.

(SEAL)



Notary Public



SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT

THIS AGREEMENT is entered into as of the date set forth below by and between the Lender and Tenant defined below.

The following capitalized terms are definitions for the purpose of this agreement:

Lender: Sterling Bank, its successors and/or assigns.

Tenant: The School Board of Broward County, Florida

Landlord: Lauderhill Mall, LLC Premises: 1309/11 NW 40th Ave

Lease: Lease dated June 20, 2006 demising the premises described therein ("Leased Premises") and located on the Property

Property: the real property described in Exhibit A attached hereto and made a part hereof, together with all buildings and improvements situated thereon

Indenture: the Mortgage and Security Agreement which encumbers or will encumber the Property to secure a mortgage loan made by Lender to Landlord

WITNESSETH:

WHEREAS, Lender is now or will become the owner and holder of the Indenture;
and

WHEREAS, Tenant is the holder of the lessee's interest in the Lease covering the Leased Premises; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Indenture.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

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thereof, but such renewals, modifications and extensions shall nevertheless be subject and entitled to the benefits of the terms of this Agreement.

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by way of injunctive relief against Landlord, and provided further, if Lender should succeed to the ownership of the Leased Premises by virtue of foreclosure or deed in lieu thereof or otherwise, then in such event the provisions of the Lease shall apply to Lender as owner/landlord only with respect to the land which was formerly encumbered by the Indenture.

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ATTEST:

"Lender"

BY: _____

BY: _____

ITS: Assistant Secretary

ITS: _____

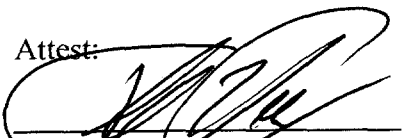
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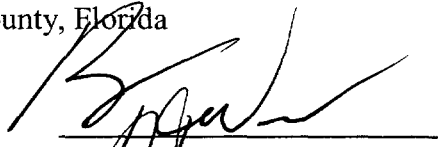
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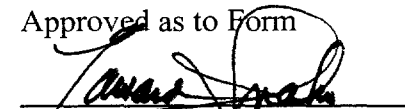


Franklin L. Till, Jr.
Superintendent of Schools



BY: Benjamin J. Williams
ITS: Chair

Approved as to Form

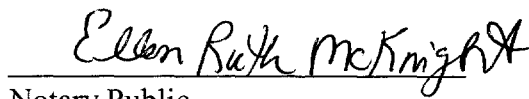
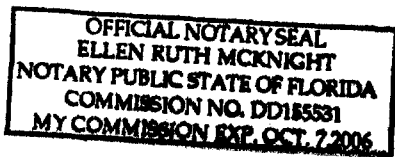

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School Board Attorney

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 19 day of
Sept., 2006 by Benjamin J. Williams, who is personally known to me or
has produced personally as identification.
known

(SEAL)


Notary Public

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Tenant: The School Board of Broward County, Florida
Landlord: Lauderhill Mall, LLC Premises: 1475 NW YORK AVE
Lease: Lease dated June 30, 2006 demising the premises described therein ("Leased Premises") and located on the Property
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by way of injunctive relief against Landlord, and provided further, if Lender should succeed to the ownership of the Leased Premises by virtue of foreclosure or deed in lieu thereof or otherwise, then in such event the provisions of the Lease shall apply to Lender as owner/landlord only with respect to the land which was formerly encumbered by the Indenture.

5. If Lender shall become owner of the Leased Premises by reason of foreclosure or other proceedings brought by it, or by any other manner, or if Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option granted in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, PROVIDED, HOWEVER, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has become such owner or has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

6. If Lender shall become owner of the Leased Premises or if Lender shall succeed to Landlord's interest in the Lease, then during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein; PROVIDED, HOWEVER, that notwithstanding any provision in the Lease to the contrary, Lender shall not be:

- (a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets or defenses which Tenant may have against any prior landlord arising under the Lease (including the Landlord) except acts, omissions, offsets and defenses of which Lender has previously been given notice in accordance with the terms of this Agreement; or
- (b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or
- (c) bound by any amendment or modification of the Lease made without its consent.

7. The terms "holder of a mortgage" and "Lender" or any similar term herein or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone

who shall have succeeded to ownership of the Leased Premises or to Landlord's interests by, through or under foreclosure of the Indenture, or deed in lieu of such foreclosure or otherwise.

The term "Landlord" shall be deemed to include Landlord, the holder of the lessor's interest in the Lease and the fee owner of the Leased Premises and the successors and assigns of any of the foregoing.

8. The Landlord has assigned or will assign to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Indenture, the Lender may at its option under the Rent Assignment require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender, Tenant agrees to pay any payments due under the terms of the Lease to the Lender. The Rent Assignment does not diminish any obligations of the Landlord under the Lease or impose any such obligations on the Lender.

9. This Agreement may NOT be modified except by a written agreement signed by the parties hereto or their respective successors in interest. This agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth in the acknowledgements below.

ATTEST:

"Lender"

BY: _____

BY: _____

ITS: Assistant Secretary

ITS: _____


[CORPORATE SEAL]

ACKNOWLEDGMENT
(for Lender)

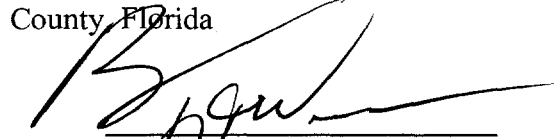
"Tenant"

The School Board of Broward
County Florida

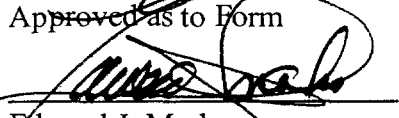
Attest.



Franklin L. Till, Jr.
Superintendent of Schools



BY: Benjamin J. Williams
ITS: Chair

Approved as to Form


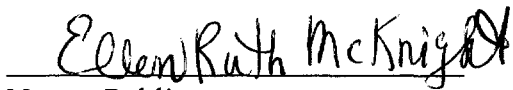
Edward J. Marko,
School Board Attorney

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 19 day of
Sept., 2006 by Benjamin J. Williams, who is personally known to me or
has produced personally as identification.
(Known)

(SEAL)



Notary Public

