

UNOFFICIAL COPY

Loan No.: 26-5330791

[The Shops at Copley Center]

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") is dated as of the 9th day of March, 2000, between First Union National Bank, a national banking association ("Lender"), and Frank + Emily Iaccino, as Individuals ("Tenant").

RECITALS

A. Tenant is the tenant under a certain lease (the "Lease") dated March 22, 1999 with Chicago Title + Trust Company ("Landlord") or its predecessor in interest, of premises described in the Lease (the "Premises") located in a certain shopping center known as The Shops at Copley Center located in Shawmbug, Illinois and more particularly described in Exhibit A attached hereto and made a part hereof (such shopping center), including the Premises, is hereinafter referred to as the "Property").

B. This Agreement is being entered into in connection with a mortgage loan (the "Loan") being made by Lender to Landlord, to be secured by, among other things: (a) a first mortgage, deed of trust or deed to secure debt on and of the Property (the "Mortgage") to be recorded with the registry or clerk of the county in which the Property is located; and (b) a first assignment of leases and rents on the Property (the "Assignment of Leases and Rents") to be recorded. The Mortgage and the Assignment of Leases and Rents are hereinafter collectively referred to as the "Security Documents".

C. Tenant acknowledges that Lender will rely on this Agreement in making the Loan to Landlord.

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Security Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by the Security Documents from time to time. Said subordination is to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.



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[Handwritten signature]

2. Lender agrees that, if the Lender exercises any of its rights under the Security Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), or

(b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or

(c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest, or

(e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) bound by any surrender, termination, amendment or modification of the Lease made without the consent of Lender.

5. Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of the Mortgage shall continue to govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligations of Landlord to restore the real estate of which the Premises are a part shall, insofar as they apply to Lender, be limited to insurance proceeds or eminent domain awards received by Lender after the deduction of all costs and expenses incurred in obtaining such proceeds or awards.

6. Tenant hereby agrees to give to 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 of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and

until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by 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. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Security Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Security Documents.

7. Tenant hereby consents to the Assignment of Leases and Rents from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

8. The Lease shall not be assigned by Tenant, modified, amended or terminated (except a termination that is permitted in the Lease without Landlord's consent) without Lender's prior written consent in each instance.

9. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

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If to Tenant: *Franco's II, Inc.*
204 E. Golf Rd.
Schaumburg, Illinois 60173
 with a copy to: *Attn: Real Estate / Legal Dept.*

If to Lender: First Union National Bank
 One First Union Center DC6
 Charlotte, North Carolina 28288-0166
 Attention: William J. Cohane

with a copy to: Kennedy Covington Lobdell & Hickman, L.L.P.
 100 North Tryon Street, Suite 4200
 Charlotte, NC 28202
 Attention: John Nicholas Suhr, Jr., Esq.

10. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

11. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

12. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

This Agreement shall be construed in accordance with the laws of the state of in which the Property is located.

The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

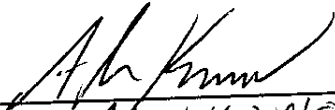
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Witness the execution hereof [under seal] as of the date first above written.


LENDER:

FIRST UNION NATIONAL BANK

By: 
Name: ALAN KRONOVET
Title: VICE PRESIDENT

TENANT:

FRANCO'S II

By: 
Name: JOHN FACCIANO
Title: PRESIDENT

Property of Cook County Clerk's Office

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The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

LANDLORD:

By: _____

Name:

Title:

Property of Cook County Clerk's Office

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[ADD APPROPRIATE ACKNOWLEDGMENT]

STATE OF NORTH CAROLINA)
) SS.
COUNTY OF MECKLENBURG)

On July 17, 2000, personally appeared the above-named Alan Kronoret, the Vice President of First Union National Bank, a national banking association, and acknowledged the foregoing to be the free act and deed of said association, before me.



Kristy Ann Dagenhart
Notary Public
My commission expires: 3/8/03

_____, SS.

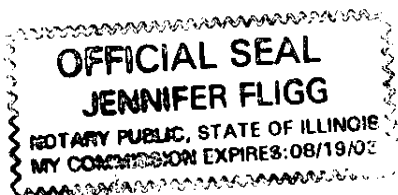
On April 26, 2000, personally appeared the above-named JOHN IACCINO, the PRESIDENT, of FRANCO II and acknowledged the foregoing to be the free act and deed of said corporation, before me.



Charlene M Mast
Notary Public
My commission expires: 12/16/01

_____, SS.

On May 30, 2000, personally appeared the above-named GARO KHOLAMIAN, the LANDLORD of COBLEY CENTER and acknowledged the foregoing to be the free act and deed of said corporation, before me.



Jennifer Fligg
Notary Public
My commission expires: 8/19/02

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Workbench
Available
PNC Mortgage Corp.
Life Time Fitness

Zierks Home Furnishings

00542837

American General Finance

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Instant Interiors

Leather Center

Dan & Don Ent.

Addeco

United Airlines

PostNet

Fox Studios

Household Finance

Yu's Restaurant

Franco's Deli

Outback Steakhouse (Excluded)

GOLF ROAD

WILKENING ROAD

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Legal description 00542837

STREET ADDRESS:

CITY:

TAX NUMBER: 07-10-400-031-0000

COUNTY: COOK

LEGAL DESCRIPTION:

LOT 10 IN GOLF-ROSELLE DEVELOPMENT UNIT 4, BEING A SUBDIVISION OF LOT 1 IN GOLF-ROSELLE DEVELOPMENT UNIT 1, BEING A RESUBDIVISION OF LOTS 11 AND 12 IN GOLF-ROSELLE DEVELOPMENT IN THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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After Recording, Mail to
Kennedy COVINGTON ~~L~~obdell & Hickman LLP
100 NORTH TRYON Street
SUITE 4200
Charlotte, NC 28202
Attn: John Nicholas SUHR, JR. 9sa.