

UNOFFICIAL COPY

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2001-03-28 09:15:43
Cook County Recorder 45.50

This Document Prepared by
and after Recording Return to:

LASALLE BANK
NATIONAL ASSOCIATION
8303 W HIBBINS - 2ND FL
CHICAGO IL 60631
Attn: KIM MEYERS

COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
ROLLING MEADOWS

This space reserved for Recorder's use only



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

6700946 Howard

THIS AGREEMENT is made and entered into as of the 6th day of December, 2000, by and between Hunter Parking, Inc., an Illinois corporation ("Tenant"), and Lakeside Bank, not personally but as Trustee under Trust Agreement No. 10-2214 dated October 11, 2000 ("Landlord"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Mortgagee").

RECITALS:

A. Mortgagee is the holder of a certain Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 1, 2000, to be recorded concurrently herewith (as amended from time to time "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to \$1,100,000.00.

B. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "Lease") dated December 6, 2000 with Landlord (or Landlord's predecessor-in-interest), pursuant to which Tenant leased certain premises ("Leased Premises") consisting of approximately 14,100 rentable square feet of space in the building ("Building") on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as "Real Estate").

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

1. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

2. Tenant has executed and delivered to Mortgagee a certain Tenant Estoppel Certificate (the "Estoppel Certificate") dated on or about the date hereof. The provisions of the

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Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and Tenant acknowledges that Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the Section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 3, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

4. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

5. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Mortgagee.

6. Mortgagee agrees that so long as Tenant is not in default under the Lease:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

(b) The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

7. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) [that is not then continuing under the Lease; provided, however, that Tenant's sole remedy against Mortgagee with respect to any act or omission of any prior landlord (including Landlord) that is then continuing under the Lease shall be to assert against Mortgagee any offsets of rent or other defenses which Tenant has against any landlord under the Lease (including Landlord) (subject to the limitation set forth in clause (ii) below)];

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee

with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section.4 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: LaSalle Bank National Association
135 South LaSalle Street
Suite 1225
Chicago, Illinois 60603
Attn: Manager of Real Estate Administration

With a copy to: LaSalle Bank National Association
8303 W. Higgins Road, Suite 600
Chicago, Illinois 60631
Attn: Group Head, Commercial Real Estate]

To Tenant: Hunter Parking, Inc.
527 South Wells Street
Chicago, Illinois 60607

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

Tenant:

Hunter Parking, Inc.

By: 

Name: Peter C. Cacciatore

Title: President

Landlord:

Lakeside Bank, as Trustee as aforesaid

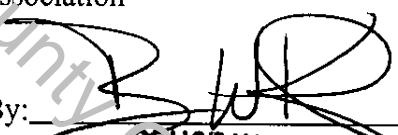
By: _____

Name: _____

Title: _____

Mortgagee:

LASALLE BANK NATIONAL
ASSOCIATION, a national banking
association

By: 

Name: BRUCE W. KAMP

Title: S.V.P.

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Lease Sub LBNA - Wells

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Tenant:

Hunter Parking, Inc.

By: _____

Name: Peter C. Cacciatore

Title: President

Landlord:

AND NOT PERSONALLY
Lakeside Bank, as Trustee as aforesaid

By: David V. Pinkerton

Name: DAVID V. PINKERTON

Title: ASST TRUST OFFICER

SEE RIDER ATTACHED HERETO
AND MADE A PART HEREOF.

Mortgagee:

LASALLE BANK NATIONAL
ASSOCIATION, a national banking
association

By: _____

Name: _____

Title: _____

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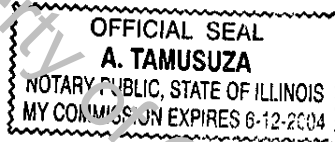
Lease Sub LBNA - Wells

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STATE OF)
) SS.
COUNTY OF)

I, A. Tamusuza, a Notary Public in and for said County in the State aforesaid, do hereby certify that David V. Pinkerton, an Asst. Trust Officer of Lakeside Bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such he, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on December 5, 2000



A. Tamusuza
Notary Public

STATE OF)
) SS.
COUNTY OF)

I, _____, a Notary Public in and for said County in the State aforesaid, do hereby certify that Peter C. Cacciatore, President of Hunter Parking, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on _____, 20__.

Notary Public

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Lease Sub LBNA - Wells

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County in the State aforesaid, do hereby certify that _____, a _____ of _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on _____, 20__.

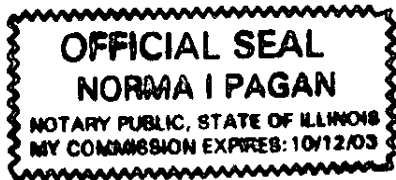
Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, Norma I. Pagan, a Notary Public in and for said County in the State aforesaid, do hereby certify that Peter C. Cacciatore, President of Hunter Parking, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on Dec., 5, 20__.

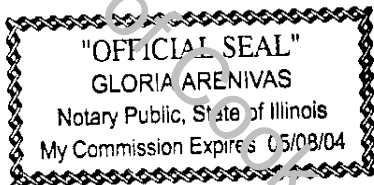
Norma I. Pagan
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Gloria Arenivas, a Notary Public in and for said County in the State aforesaid, do hereby certify that Bruce Kamp, a SR.V.P. of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, who is personally known to be to be the same person whose name is subscribed to the foregoing instrument as such SR.V.P., appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes set forth therein.

Given under my hand and notarial seal on 21st MAR., 2001.



Gloria Arenivas
Notary Public

County Clerk's Office

EXHIBIT A
Legal Description

LOTS 10, 11 AND 14 IN BLOCK 100 IN SCHOOL ADDITION TO CHICAGO
IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Commonly known as 531-41 South Wells Street, Chicago, Illinois 60607

PINS: 10-16-241-016
10-16-241-017
10-16-241-018
10-16-241-019
10-16-241-020
10-16-241-021

Property of Cook County Clerk's Office



Lakeside Bank

55 WEST WACKER DRIVE • CHICAGO, ILLINOIS 60601-1699 • (312) 435-5100

AGREEMENT RIDER

This agreement is executed by **LAKESIDE BANK**, not individually but solely as Trustee, as aforesaid, and said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this Agreement shall be payable only out of the trust property which is the subject of this Agreement, and it is expressly understood and agreed by the parties hereto, notwithstanding anything herein contained to the contrary that each and all of the undertakings and agreements herein made are made and intended not as personal undertakings and agreements of the Trustee or for the purpose of binding the Trustee personally, but this Agreement is executed and delivered by the Trustee solely in the exercise of the powers conferred upon it as such Trustee and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforced against said Trustee on account of any undertaking or agreement herein contained, either expressed or implied, or for the validity or condition of the title to said property, or for any agreement with respect thereto. All representations of the Trustee, including those as to title, are those of the Trustee's beneficiary only. Any and all personal liability of **LAKESIDE BANK** is hereby expressly waived by the parties hereto and their respective personal representatives, estates, heirs, successors and assigns.

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**Lakeside Bank**

55 WEST WACKER DRIVE - CHICAGO, ILLINOIS 60601-1899 • (312) 436-6100

GENERAL RIDER

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of **LAKESIDE BANK**, Trustee, while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the **LAKESIDE BANK**, Trustee, or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said **LAKESIDE BANK**, Trustee, not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the **LAKESIDE BANK**, either individually or in its capacity as Trustee or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said **LAKESIDE BANK**, Trustee, in this instrument contained either expressed or implied, all such personal liability, if any, being expressly waived and released.