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Doc#: 0417642364
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 08/24/2004 01:30 PM Pg: 1 of 9

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Kenneth A. Latimer
Duane Morris LLP
227 W. Monroe Street
Chicago, IL 60606

FOR RECORDER'S USE ONLY

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT** ("Agreement") is made as of this 28th day of May, 2004 by and between CAMBRIDGE DENTAL CARE ("Tenant"), and **NEW CENTURY BANK**, an Illinois banking corporation ("Lender").

RECITALS

A. Lender is the owner and holder of that certain Mortgage dated June 8, 2004 ~~of even date~~ herewith, recorded with the Cook County Recorder's Office on _____, _____, as Document No. 0417642364 (the "Mortgage") covering the land and building commonly known as **17821-61 80TH AVENUE, TINLEY PARK, ILLINOIS** and legally described in Exhibit A attached hereto and incorporated herein (the "Property"). The Mortgage secures a loan made by Lender to **TINLEY CORNERS, L.L.C.**, an Illinois limited liability company (the "Landlord"). The Mortgage and any and all other documents or instruments related thereto, and all renewals, amendments, supplements, restatements, extensions and modifications thereof and thereto, are hereinafter collectively referred to as the "Loan Documents".

B. Tenant is the lessee of certain premises (the "Demised Premises") constituting a portion of the Property, such Demised Premises having a common address of 17853 S. 80TH AVE., Tinley Park, Illinois under and pursuant to provisions of a certain Lease dated 3/4/98, between the Landlord and Tenant (said Lease as the same may be hereafter modified, amended or extended from time to time is hereinafter collectively referred to as the "Lease").

C. Lender has required the execution of this Agreement as a condition of making such mortgage loan to Landlord.

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AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Subordination.** The parties hereby agree that the Lease is and shall at all times be subject and subordinate in all respect to the lien of the Mortgage, to all indebtedness and obligations secured thereby, and to all renewals, modifications, extensions, substitutions, rearrangements and replacements thereof.

2. **Non-Disturbance.** Lender agrees that, subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Lender or at Lender's behest for the foreclosure of the Mortgage or the sale of the Property or other realization under the Loan Documents, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Lender, or by any successor to Lender, Tenant shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgage), and the sale of the Property in any such action or proceeding and the exercise by Lender of any such action or proceeding and at the time of its other rights under the Mortgage shall be made subject to all rights of Tenant under the Lease, provided that at the time of any such action or proceeding and at the time of any such sale or exercise of any such other rights, Tenant shall not be declared in default, and no event shall have occurred which with the giving of notice or passage of time or both could result in a default, under any of the terms, covenants or conditions of the Lease on Tenant's part to be observed or performed.

3. **Attornment.** If the interests of the Landlord in the Property and under the Lease or any portion thereof are acquired by Lender, whether by purchase and sale, foreclosure, deed in lieu of foreclosure or in any other proceeding made or brought to enforce the rights of Lender, or by any successor to Lender, including without limitation any purchaser at a foreclosure sale, Tenant shall be bound to Lender, its successors and assigns under all of the terms, covenants and conditions of the Lease for the balance of the term thereof, with the same force and effect as if they were named as landlord under the Lease, and Tenant does hereby attorn to Lender, its successors and assigns as its landlord, said attornment to be effective and self-operative immediately upon Lender's or its successor's or assign's succeeding to the interests of the Landlord in the Property and under the Lease, without the execution of any other or further instruments on the part of any party hereto. Tenant covenants and agrees from time to time to do all acts and to execute all instruments as may reasonably be requested by Lender for the purposes of fully carrying out and effectuating the purpose and intent of this Agreement, whether by filing with any public office or agency or otherwise.

4. **Limitation on Lender's Liability.** If Lender succeeds to the interests of Landlord in the Property and under the Lease, Lender shall thereupon be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Landlord, have the same rights and remedies against Lender for breach of the Lease that Tenant would have had under the Lease against Landlord if Lender had not succeeded to the interests of Landlord; provided, however, that Lender shall not be: (a) liable

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for any act or omission of any prior landlord (including without limitation Landlord); (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including without limitation Landlord); (c) bound by any surrender, cancellation, agreement or modification of the Lease made without the prior written consent of Lender; or (d) bound to return Tenant's security deposit, if any, until such deposit has come into Lender's (or such successor's) actual possession and Tenant would be entitled to such security deposit under the Lease. Lender shall be bound by Tenant's payment of no more than one (1) month's rent in advance under the Lease unless otherwise approved by Lender.

5. **No Modification.** Tenant agrees that during the term of the Lease or any extension thereof, Tenant will not enter into any amendment or modification of the Lease and will not cancel or surrender the Lease without in any such instance Lender's prior written consent.

6. **No Merger.** Unless Lender shall otherwise expressly agree in writing, fee title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates either in Landlord, in Tenant or in any third party, by purchase, assignment or in any other matter.

7. **Representations and Warranties.** Tenant hereby represents and warrants to Lender that: (a) it knows of no default on the part of either party under the Lease; (b) the Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the Property; (c) the Lease is in full force and effect; (d) Tenant has paid a security deposit in the amount of \$ 2727.00 on which Landlord has no obligation to segregate or pay any interest; (e) Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein, and (f) there has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws with respect to Tenant.

8. **Notice to Lender.** Tenant shall give Lender copies of all notices and other communications given by the Tenant to the Landlord relating to (a) defaults on the part of the Landlord under the Lease, (b) any violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency have jurisdiction over the Property, and (c) any proposed or actual assignment or subletting of all or any portion of the Demised Premises. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity which Tenant may have 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 hereunder referred to as a "**Landlord's Default**"), Tenant shall provide Lender with a notice of Landlord's Default (the "**Tenant's Notice**"), which notice may be sent concurrently with any similar notice to Landlord, specifying the nature thereof and the remedy which Tenant will elect under the terms of the Lease or otherwise. Lender shall have thirty (30) days from the date of Tenant's Notice (or such lesser time if an emergency exists), or such greater time period as available to Landlord under the Lease, within which to commence to cure Landlord's Default and diligently proceed to complete such cure at all times thereafter. Tenant

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shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to commence within the time period set forth above or thereafter fails to diligently pursue a cure of any Landlord's Default.

9. **Access.** Notwithstanding the provisions of the Lease, if Tenant shall not have provided Lender with access to the Demised Premises, and if access is required to remedy such default, the period of time set forth in the Lease in which to remedy same shall not commence until such access is provided to Lender.

10. **Notices.** Notices shall be in writing and shall be given by personal delivery, telecopier, followed by U.S. mail, overnight courier, or by mail addressed as set forth below. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the recipient's address. Notice by telecopier shall be deemed given when confirmation has been received. Notice by overnight courier shall be deemed effective twenty-four (24) hours after deposit with a commercial courier or delivery service for overnight delivery within the United States, or on the second (2nd) business day after deposit with an international second day delivery service (as applicable). Notice by mail shall be made by certified or registered mail, return receipt requested, postage prepaid, properly stamped, scaled and addressed, and shall be deemed effective on the second (2nd) business day after deposit in the United States mail. Either party may give notice of any change of address in accordance with the notice procedures described herein.

If to Tenant: CAMBRIDGE DENTAL CARE, LTD.
17853 S. 80TH AVE.
TINLEA PARK, IL 60477

If to Lender: New Century Bank
 363 W. Ontario Street
 Chicago, IL 60610
 Attn: Janel Jamison

11. **Interpretation.** Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of said document.

12. **Governing Law; Litigation.** THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF TENANT AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND DETERMINED

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ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

13. Jury Waiver. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT AND LENDER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF TENANT AND LENDER WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT TENANT OR LENDER MAY FILE A COPY OF THIS EXECUTED AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF TENANT AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

14. Miscellaneous. This Agreement may not be amended or modified except by an agreement in writing signed by the party to be charged. If any action or proceeding is brought by any party against any other party arising from or related to this Agreement or the Lease, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, representatives, successors and assigns. Time is of the essence. This document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, representations and covenants.

(Signature page follows.)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TENANT:

CAMBRIDGE DENTAL CARE, LTD.

By: [Signature]
Its: SGZ

LENDER:

NEW CENTURY BANK, an Illinois
banking corporation

By: [Signature]
Its: First Vice President

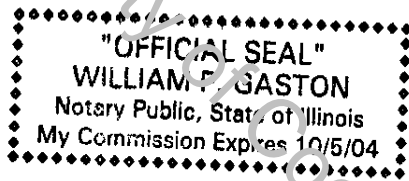
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, WILLIAM P. GASTON, a Notary Public in and for said County in the State aforesaid, do hereby certify that SHANE G. SUDMAN, of CAMBRIDGE DENTAL, personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 set forth.

Given under my hand and notarial seal this 3rd day of JUNE, 2004.



William P. Gaston
Notary Public

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Tracy A. Patterson, a Notary Public in and for said County in the State aforesaid, do hereby certify that Janel Jamison, the First Vice President of **NEW CENTURY BANK**, (the "Bank"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such First Vice 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 Bank, for the uses and purposes set forth therein set forth.

Given under my hand and notarial seal this 8th day of June, 2004.



Tracy A. Patterson
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN TINLEY CORNERS SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1997 AS DOCUMENT NO. 97-764876..

P.I.N. No. 27-36-121-031

COMMON ADDRESS:

17821-61 80th Avenue
Tinley Park, Illinois

Tinley Corners