

UNOFFICIAL COPY

This Document Prepared by
and **after Recording Return to:**

Gerald J. Smoller
Kovitz Shifrin Nesbit
750 Lake Cook Road, #350
Buffalo Grove, IL 60089



Doc#: 0429919022
Eugene "Gene" Moore Fee: \$46.50
Cook County Recorder of Deeds
Date: 10/25/2004 08:49 AM Pg: 1 of 12

This space reserved for Recorder's use only

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of Oct, 2004, by and between **THE CHILDREN'S MEMORIAL HOSPITAL**, an Illinois not-for-profit corporation, ("**Tenant**"), **1840 NORTH CLYBOURN L.L.C.**, an Illinois limited liability company ("**Landlord**"), and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("**Mortgagee**").

RECITALS:

A. Mortgagee is the holder of a certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated June 27, 2002, and recorded with the Cook County, Illinois Recorder of Deeds on July 18, 2002, as Document No. 0020785456 (as amended from time to time "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to Twenty Three Million Dollars (\$23,000,000).

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 August 27, 2004 with Landlord (or Landlord's predecessor in-interest), pursuant to which Tenant leased certain premises ("Leased Premises") consisting of approximately 18,397 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.

UNOFFICIAL COPY

2. Promptly following the Commencement Date of the Lease, Tenant shall execute and deliver to Mortgagee a Tenant Estoppel Certificate (the "Estoppel Certificate") substantially in the form attached hereto as Exhibit "B". 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.

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 hereto under the Lease have lapsed without Landlord having effectuated a cure thereon.

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.

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

UNOFFICIAL COPY

(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);

(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;

UNOFFICIAL COPY

(iii) Bound by any base 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);

(vii) Liable for the completion of construction of any improvements on the Real Estate (except with respect to the obligation to fund or apply any then remaining balance of any tenant improvement allowance); or

(viii) 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
135 South LaSalle Street
Suite 1225
Chicago, Illinois 60603
Attn: Group Head, Commercial Real
Estate

UNOFFICIAL COPY

and to: Bell, Boyd & Lloyd LLC
70 West Madison Street
Suite 3100
Chicago, Illinois 60603
Attn: Terrence E. Budny, Esq.

To Tenant: The Children's Memorial Hospital
No. 104
2300 Children's Plaza
Chicago, IL 60614-3394
Attn: Administrator, Real Estate and
Facility Services

With a copy to: The Children's Memorial Hospital
Box 261
2300 Children's Plaza
Chicago, IL 60614-3394
Attn: General Counsel

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.

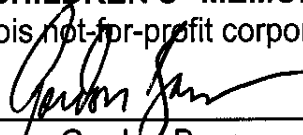
SIGNATURE PAGE FOLLOWS

UNOFFICIAL COPY

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

Tenant:

THE CHILDREN'S MEMORIAL HOSPITAL,
an Illinois not-for-profit corporation

By: 
Name: Gordon Bass
Title: Chief Operating Officer

Landlord:

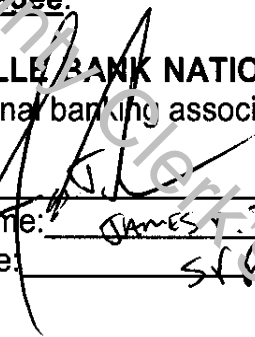
1840 NORTH CLYBOURN L.L.C., an Illinois limited liability company

By: 1840 North Clybourn II L.L.C., an Illinois limited liability company, its sole member and manager

By: 
Wayne Moretti
Manager

Mortgagee:

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

By: 
Name: James F. Tueller
Title: SLO

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

I, GRETCHEN L. DEERING a Notary Public in and for said County, in the State aforesaid, do hereby certify that Wayne Moretti, the Manager of 1840 North Clybourn II L.L.C., an Illinois limited liability company, the sole member and manager of 1840 North Clybourn L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, general partner and Manager for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of October, 2004.

Gretchen L. Deering
Notary Public

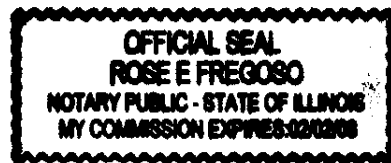


STATE OF Illinois)
) SS.
COUNTY OF Cook)

I, Rose E. Fregoso, a Notary Public in and for said County in the State aforesaid, do hereby certify that Gordon Bass, a Chief Operating Officer of The Children's Memorial Hospital, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Operating Officer, 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, this 20th day of September, 2004.

Rose E. Fregoso
Notary Public



UNOFFICIAL COPY

STATE OF Illinois)
COUNTY OF COOK) SS.

I, MARIA T. ESPARZA, a Notary Public in and for said County in the State aforesaid, do hereby certify that JAMES F. DUINER, a SVP 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 SVP, 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, this 15th day of October, 2004.

Maria T. Esparza
Notary Public



UNOFFICIAL COPY

EXHIBIT A

Legal Description of Real Estate

1840 N. Clybourn, Chicago, Illinois

PARCEL 1:

LOTS 7 TO 20, BOTH INCLUSIVE, IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELDS ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY BY DEED DATED MAY 7, 1909 AND RECORDED JUNE 2, 1909 AS DOCUMENT 4385296) IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE SOUTHWESTERLY 15 FEET OF LOTS 12 AND 13 IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF LOT 13 WHICH POINT IS 15.0 FEET NORTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 13, AND RUNNING THENCE SOUTHEASTWARDLY ALONG A LINE 15.0 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOTS 12 AND 13, A DISTANCE OF 91.12 FEET; THENCE NORTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 694.42 FEET, A DISTANCE OF 66.40 FEET, TO A POINT 8.73 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT 13; THENCE NORTHWESTWARDLY ALONG A STRAIGHT LINE, TANGENT TO THE LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 25.30 FEET TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF LOT 13 AFORESAID, AT A POINT 5.14 FEET NORTHEASTERLY OF SAID NORTHWESTERLY CORNER OF LOT 13; THENCE NORTHEASTWARDLY ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 9.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTHWESTERLY 15 FEET OF LOTS 7, 8, 9, 10, 11, 12 AND 13 IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART OF SAID LOTS 12 AND 13, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF LOT 13 WHICH POINT IS 15.0 FEET NORTHEASTERLY OF THE NORTHWESTERLY CORNER OF SAID LOT 13, AND RUNNING THENCE SOUTHEASTWARDLY ALONG A LINE 15.0 FEET NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOTS 12 AND 13, A DISTANCE OF 91.12 FEET; THENCE NORTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX NORTHEASTERLY, HAVING A RADIUS OF 694.42 FEET, A DISTANCE OF 66.40 FEET, TO A POINT 8.73 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT 13; THENCE NORTHWESTWARDLY ALONG A STRAIGHT LINE, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 25.30 FEET TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF LOT 13 AFORESAID, AT A POINT 5.14 FEET NORTHEASTERLY OF SAID NORTHWESTERLY CORNER OF SAID LOT 13; THENCE NORTHEASTWARDLY ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 9.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: 14-32-418-001-0000, 14-32-418-003-0000, 14-32-418-015-0000

UNOFFICIAL COPY

EXHIBIT B

Tenant Estoppel Certificate

To: 1840 North Clybourn L.L.C.
 c/o First American Properties, LLC
 3436 N. Kennicott Avenue
 Arlington Heights, IL 60004

and

LaSalle Bank National Association
 135 S. LaSalle, Suite 1225
 Chicago, Illinois 60603
 Attn: Manager Real Estate Administration

Re: Lease Dated: _____ (the "Lease")
 Tenant: The Children's Memorial Hospital (the "Tenant")
 Landlord: 1840 North Clybourn L.L.C. ("Landlord")
 Common Address of Building:
 1840 North Clybourn, Chicago, Illinois (the "Building")
 Leased Premises within the Building: _____ (the "Premises")

Tenant acknowledges that (a) LaSalle Bank National Association, a national banking association, its successors and assigns ("Lender") has made a loan ("Loan") to 1840 North Clybourn L.L.C., secured by a mortgage lien on Landlord's interest in the Building and the land on which the Building is located, and (b) Lender is requiring this Certificate as a condition to its approval of the Lease. Accordingly, Tenant hereby certifies and confirms to Lender and acknowledges and agrees as follows:

1. Tenant is in full and complete possession of the Premises demised under the Lease, such possession having been delivered by the Landlord pursuant to the Lease and having been accepted by the Tenant.

2. The improvements to the Premises that Landlord is required to furnish under the Lease have been completed in all respects to the satisfaction of Tenant, and the Premises are open for the use of Tenant, its customers, employees and invitees. All contributions required to be paid by Landlord to Tenant in connection with improvements to the Premises have been paid in full.

3. All duties or obligations of Landlord required under the Lease which were an inducement to Tenant to enter into the Lease have been fully performed.

4. The Lease is in full force and effect. No default exists on the part of Landlord or Tenant under the Lease, nor does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire rental agreement between Landlord and Tenant with respect to the Premises and has not been amended, modified or supplemented, except

UNOFFICIAL COPY

as attached hereto, and has not been superseded. There are no oral agreements between Landlord and Tenant with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is attached to this Certificate and Tenant agrees not to amend or modify the Lease without the prior written consent of Lender.

5. No rents under the Lease have been prepaid, except the current month's rent, and except for the Base Rent for the seventh (7th) month of the Term which Tenant was required to pay upon lease execution. Tenant agrees that it shall not prepay any rents under the Lease more than one month from the date when such rents are due. Tenant does not now have or hold any claim or defense against Landlord which might be set off or credited against future accruing rents or which might otherwise excuse Tenant's performance under the Lease.

6. Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein.

7. Tenant does not have any outstanding options or rights of first refusal to purchase the Premises, or any part thereof, or to purchase or lease any other part of the Building, except (state none, if applicable): _____.

8. No actions, whether voluntary or involuntary, are pending against Tenant or any guarantor of the Lease under any bankruptcy, insolvency or similar laws of the United States or any state thereof.

9. The term of the Lease commenced on the ____ day of _____, 20__ and ends on the ____ day of _____, 20__, subject to options to renew, if any, set forth in the Lease.

10. The current monthly base rental payable by Tenant under the Lease is \$_____. Percentage rent [is/is not] payable, as provided in the Lease. The current estimated monthly payments made by Tenant under the Lease in respect of common area maintenance costs and real estate taxes are \$_____ and \$_____, respectively.

11. The security deposit under the Lease is currently \$_____.

12. So long as the Loan is outstanding, Tenant shall pay any termination fees payable for the early termination of the Lease to Landlord and Lender jointly.

Lender will rely on the representations and agreements made by Tenant herein in connection with Lender's funding of loan advances and Tenant agrees that Lender may so rely on such representations and agreements.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Tenant Estoppel Certificate this ____ day of _____, 2004.

THE CHILDREN'S MEMORIAL HOSPITAL,
an Illinois not-for-profit corporation

By: _____
Its: _____

Property of Cook County Clerk's Office