

# UNOFFICIAL COPY

Recording Requested By and  
When Recorded Mail To:  
Genworth Financial  
707 East Main Street  
Suite 1300 - A  
Richmond, VA 23219-3310  
Loan No. \_\_\_\_\_



Doc#: 0521703098  
Eugene "Gene" Moore Fee: \$44.50  
Cook County Recorder of Deeds  
Date: 08/05/2005 02:22 PM Pg: 1 of 6

## SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

First Colony Life Insurance Company ("Lender"), made a loan (the "Loan") to Southpoint Plaza II LLC ("Landlord"), secured by Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing Statement dated December 1, 2004 (the "Deed of Trust") on the property commonly known as Southpoint Plaza, 635 Chicago Avenue, Evanston, Illinois, (the "Property"), and more particularly described on attached Exhibit A. The parties acknowledge that the Deed of Trust was recorded December 5, 2004 with the following office and recording information: Cook County Recorder - Document No. 04-34127109.

JPMorgan Chase Bank, N.A. as successor to Bank One, N.A. ("Tenant") has a Lease dated August 12, 2004 (the "Lease") with Landlord on all or a portion of the Property (the "Leased Premises").

Lender needs assurances from Tenant. Tenant is willing to give those assurances if Lender will agree, so long as Tenant is not in default under the Lease, not to disturb Tenant's possession of the Leased Premises in the event of foreclosure of the Deed of Trust. Tenant also understands that Lender will rely on the assurances and statements made in this agreement.

NOW, THEREFORE, Lender and Tenant agree as follows:

1. Subordination. Tenant agrees that the Lease, and all rights of Tenant in, to and under the Lease and the Property, are hereby unconditionally subordinated, and shall remain unconditionally subordinate, to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof.

2. Tenant Not To Be Disturbed. Lender agrees that, so long as Tenant is not in default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default):

(a) Tenant's possession of the Leased Premises under the Lease shall not be disturbed by Lender in any foreclosure or other proceedings brought to enforce the Deed of Trust or by any deed in lieu of foreclosure.

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(b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust, and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant To Attorn To Lender. If Lender becomes the owner of the Property by reason of foreclosure or other proceedings brought to enforce the Deed of Trust or by deed in lieu of foreclosure, the Lease shall continue in full force and effect as if Lender were the original Landlord and Tenant hereby attorns to Lender as Tenant's lessor, except Lender shall not be:

(a) Liable for any act or omission of any prior lessor (including Landlord); provided that, upon becoming owner of the Property, Lender shall perform any maintenance, repair or restoration work to the Leased Premises or the Property required of (but unperformed by) any prior lessor under the Lease; in no event, however, shall Lender have any liability under this subparagraph (a) except for failure to perform such obligations after Lender becomes the owner of the Property; or

(b) Subject to any offset or defense which Tenant might have against any such prior lessor; or

(c) Bound by any prepayment of rent by Tenant, except as required by the terms of the Lease; or

(d) Bound by any amendment, modification or waiver of any material term of the Lease, unless made with the prior written consent of Lender; or

(e) Liable for any obligation of Landlord under the Lease with respect to any property other than the Property given as security for the Loan, and Tenant will look solely to Landlord for performance and observance of any and all such obligations.

If Lender becomes the owner of the Property and thereafter sells or otherwise transfers its interest in the Property, Lender shall have no liability with respect to obligations of the lessor under the Lease which arise following the sale or other transfer of the Property by Lender.

4. Third-Party Owner. If someone acquires the Property through Lender, whether at a trustee or foreclosure sale or otherwise, that person shall have the same rights and obligations to continue the Lease with Tenant as Lender would have under this agreement.

5. Purchase Options. Any option to purchase, right of first refusal, or other right that Tenant has to acquire all or any of the Property is set forth in the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof. Foreclosure of the Deed of Trust or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Deed of Trust or deed given in lieu of foreclosure.

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6. Covenants of Tenant. Tenant covenants as follows:

(a) Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. By its signature below, Landlord consents to Tenant's payment of rent to Lender upon Lender's written demand, agrees that Tenant may rely solely upon Lender's written demand regardless of any dispute between Landlord and Tenant, and releases and discharges Tenant from all liability to Landlord for any payment of rent made as instructed by Lender in writing.

(b) Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust or other security instrument without the prior written consent of Lender.

(c) Tenant shall notify Lender if Landlord is in default under the Lease and will give Lender thirty (30) days after receipt of such notice in which to cure the default before Tenant invokes any of its remedies under the Lease.

7. Assignment of Lease. Tenant understands that Landlord's interest in the Lease has been assigned to Lender in connection with the Loan. Until Lender becomes owner of the Property, however, Lender assumes no duty, liability or obligation to Tenant under the Lease.

8. Costs and Attorneys' Fees. In the event of any claim or dispute arising out of this agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with the claim or dispute, including without limitation those fees, costs and expenses incurred before, during or after suit, in any arbitration, in any appeal, in any proceedings under any present or future bankruptcy act or state receivership, and in any post-judgment proceedings.

9. Notices. Any notices under this agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested. Any notice sent to a party shall be sent to the party at its address below its signature hereon. Each mailed notice shall be deemed given three (3) days after its postmark. Any party may change its address by notice to the other parties.

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10. Miscellaneous. This agreement may not be modified except in a writing executed by the parties or their successors in interest. This agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, administrators, representatives, successors, and assigns. This agreement may be executed in counterparts, in which case all originals together shall constitute a single instrument.

DATED this 8th day of April, 2005

**"Lender"**

First Colony Life Insurance Company

By: Cindy Reichel  
Its: Investment Officer

Address:  
707 East Main Street  
Suite 1300 - A  
Richmond, VA 23219-3310

**"Tenant"**

JPMorgan Chase Bank, N.A. as successor to Bank One, N.A.

Francis J. Hall  
Executive Vice President

Address:  
JPMorgan Chase Lease Administration  
1111 Polaris Parkway, Suite 1J  
Mail Code OH1-0241  
Columbus, Ohio 43240  
Attn: Lease Administration Manager

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CONSENTED AND AGREED TO this 15<sup>th</sup> day of MARCH, 2005

"Landlord"

Southpoint Plaza II LLC

By: Monte C. Strusiner

Monte C. Strusiner, Manager

Address:

Southpoint Plaza II LLC  
c/o Management/Marketing Services Incorporated  
401 Huehl Road, Suite 1A  
Northbrook, IL 60062

**Lender's Acknowledgement**

STATE OF ~~WASHINGTON~~ VERGINIA )  
County of ~~King~~ Henrico ) ss.

I certify that I know or have satisfactory evidence that Cindy J. Heide is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the Investment officer of First Colony Life Insurance Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 8<sup>th</sup> day of April, 2005.

Rhonda R. Miles-Crump Virginia  
Notary Public in And For the State of Washington, residing at Henrico Co.  
Name (printed or typed): Rhonda R. Miles-Crump  
My appointment expires: August 31, 2006

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## EXHIBIT A

### Legal Description:

Lot 1 of the Southpoint Consolidation of Lots 11 to 18, both inclusive, in Block 2 in Kedzie and Keeney's Addition to Evanston in the West ½ of the Southeast ¼ of Section 19, Township 41 North, Range 14 East to the Third Principal Meridian, in Cook County, Illinois per plat recorded March 7, 1984 as Document No. 26,926,718

635 Chicago Avenue  
Evanston, Illinois

PIN 111 940 702 80000