

UNOFFICIAL COPY



Doc#: 0617911057 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/28/2006 03:11 PM Pg: 1 of 10

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

1086-1298

ORLE

9/8/10

This instrument prepared by and return to:

Howard R. Chen
Attorney-at-Law
Locke Reynolds LLP
201 North Illinois Street
Suite 1000
P.O. Box 44961
Indianapolis, Indiana 46244-0961

LANDAMERICA / LAWYERS TITLE
COMMERCIAL SERVICES 11344
10 S. LA SALLE STREET
SUITE 2500
CHICAGO, IL 60603

UNOFFICIAL COPY

SUBORDINATION, NON-DISTURBANCE AND ATTORNEYS' AGREEMENT

THIS AGREEMENT is made and entered into as of the 12TH day of MAY, 2006, by and between **LASHONDA SIMMONS (or an entity to be formed)** ("Tenant"), **CCH SHOPS, LLC**, an Illinois limited liability company ("Landlord"), and **UNION FEDERAL BANK OF INDIANAPOLIS**, a federal savings bank, its successors and assigns ("Mortgagee").

RECITALS:

A. Mortgagee is the holder of a certain Mortgage dated MAY 12, 2006, 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 Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00).

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 August 8, 2005, pursuant to which Tenant leased certain premises ("Leased Premises") consisting of approximately 1,260 rentable square feet of space in a building ("Building") to be constructed 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. 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 2, 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.
3. 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

UNOFFICIAL COPY

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.

4. 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.

5. 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.

6. 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

UNOFFICIAL COPY

(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 3 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.

7. 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: Union Federal Bank of Indianapolis
45 North Pennsylvania Street, Suite 700
Indianapolis, Indiana 46204
Attn: Michael E. Lewis

With a copy to: Locke Reynolds LLP
201 North Illinois Street, Suite 1000
P.O. Box 44961
Indianapolis, Indiana 46244-0961
Attn: Howard R. Cohen

To Tenant: LaShonda Simmons
5508 Feather Creek
Matteson, Illinois 60443

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.

8. 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

UNOFFICIAL COPY

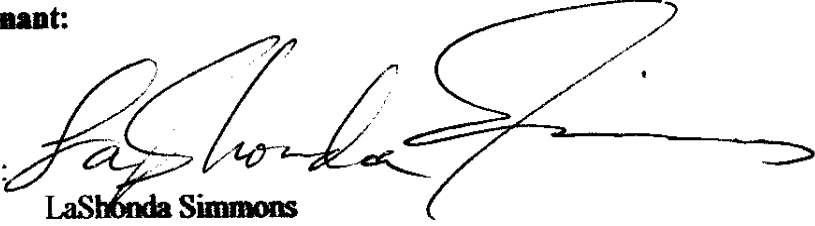
[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

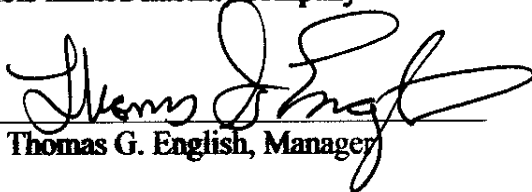
IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

Tenant:

By: 
LaShonda Simmons

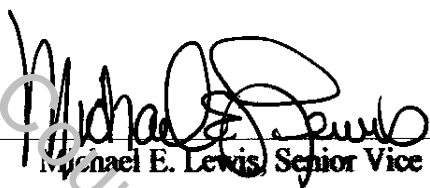
Landlord:

CCH SHOPS, L.L.C.,
an Illinois limited liability company

By: 
Thomas G. English, Manager

Mortgagee:

UNION FEDERAL BANK OF INDIANAPOLIS, a
federal savings bank

By: 
Michael E. Lewis, Senior Vice President

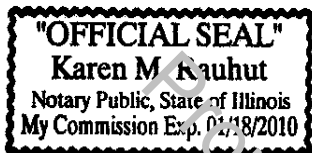
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared LaShonda Simmons, an individual, and acknowledged the execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement as her voluntary act and deed.

Witness my hand and Notarial Seal this 13TH day of MAY, 2006.



Karen M. Rauhut
Notary Public

KAREN M. RAUHUT
Printed

My Commission Expires:

02-18-10

My County of Residence:

WILL

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF INDIANA)

) SS.

COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Thomas G. English, the Manager of CCH Shops, LLC, an Illinois limited liability company, and acknowledged the execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement as the voluntary act and deed of such limited liability company, and further acknowledged that he was authorized to execute the same.

Witness my hand and Notarial Seal this 15th day of May, 2006.

Karen J. [Signature]
Notary Public

Printed

My Commission Expires:

April 14, 2013

My County of Residence:

Marion

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF INDIANA)

SS:

COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Michael F. Lewis, a Senior Vice President of Union Federal Bank of Indianapolis, a federal savings bank, and acknowledged the execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement as the voluntary act and deed of such federal savings bank and further acknowledged that he was authorized to execute the same.

Witness my hand and Notarial Seal this 19th day of May, 2006.

Kimberly R Kersey

Notary Public

Kimberly R Kersey

Printed

My Commission Expires:

October 4, 2006

My County of Residence:

Hendricks

This instrument prepared by and after recording return to: Howard R. Cohen, Attorney-at-Law, Locke Reynolds LLP, 201 North Illinois Street, Suite 1000, P.O. Box 44961, Indianapolis, Indiana 46244-0961, 317-237-3800.

EXHIBIT "A"
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Legal Description of Real Estate

UNOFFICIAL COPY

EXHIBIT "A"
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Legal Description of Real Estate

Property Address: Vacant Land at 167th Street and Crawford Avenue, Country Club Hills, IL 60478.

Tax Identification No. 28-27-201-~~005~~ 011 (lot 14)
28-27-201-012 (lot 15)

(Parcel 1)

Lots 14 and 15 in Gatling Country Club Hills Resubdivision, being a Resubdivision of Gatling Country Club Hills Subdivision in the Northeast Quarter of Section 27, Township 39 North, Range 13 East of the Third Principal Meridian, South of the Indian Boundary line, according to the Plat thereof recorded June 9, 2004 as Document No. 0416145163, in Cook County, Illinois.

(Parcel 2)

Easement for ingress and egress, utilities, drainage, vehicular and pedestrian traffic for the benefit of Parcel 1 as granted and set forth in the Amended and Restated Development Declaration recorded June 23, 2004 as Document Number 0417518061 and as shown on the Plat of ReSubdivision recorded June 9, 2004 as Document Number 0416145163.