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Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 10/04/2006 12:22 PM Pg: 1 of 9

NCS - 232538 IL T  
CG / #B 484 DEC

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

After recording return to:  
First American Title Insurance Company of New York  
633 Third Avenue  
New York, New York 10017-6706

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT dated as of the 27<sup>th</sup> day of September, 2006 by and between MORGAN STANLEY CAPITAL INC., a New York corporation having an office at 1221 Avenue of the Americas, 27<sup>th</sup> Floor, New York, New York 10020 ("Mortgagee") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, having an office at 1111 Polaris Parkway, Suite 1J, Mail Code OH1-0241, Columbus, OH 43240, ("Tenant").

W I T N E S S E T H :

WHEREAS, Mortgagee made a loan to BREOF BNK Chicago LLC, a Delaware limited liability company ("Landlord") and certain affiliates of Landlord in the original principal amount of \$419,500,000 which loan is secured by that certain Mortgage (the "Mortgage"), dated September 27, 2006, which Mortgage encumbers that certain parcel of land located in Chicago, Illinois, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Land") together with all buildings and improvements constructed thereon (collectively with the Land, the "Real Estate"); and

WHEREAS, Landlord entered into a certain lease with Tenant, dated as of September 27, 2006 (the "Space Lease"), wherein Landlord leased to Tenant a portion of the Real Estate more particularly described therein (the "Demised Premises"); and

WHEREAS, the parties hereto desire, subject to the provisions set forth in this agreement, to assure the Tenant of possession of the Demised Premises for the entire term of the Space Lease, irrespective of any default by Landlord under the Mortgage.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties covenant and agree as follows:

1. As long as no default exists after the applicable notice and grace period for the cure thereof under the Space Lease as would entitle Landlord to terminate the Space Lease, Mortgagee agrees that:

(a) Tenant shall not be joined as a party defendant in any action or proceeding which may be instituted or taken by Mortgagee for the purpose of foreclosing on the Mortgage by reason of default thereunder; and

(b) Tenant shall not be evicted from the Demised Premises, nor shall Tenant's leasehold estate under the Space Lease be terminated or disturbed, nor shall any of Tenant's rights under the Space Lease be affected in any way by reason of any default under the Mortgage.

2. If, for any reason, the Mortgagee or any party acquires the Real Property pursuant to a foreclosure of the Mortgage, (either being a "Successor Owner"), Tenant shall attorn to Successor Owner under all the terms, covenants and conditions of the Space Lease for the balance of the term thereof, with the same force and effect as if Successor Owner were Landlord under the Space Lease. This attornment is to be effective and self-operative, without

NCS-232538 IL 2  
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First Amendment to  
Retail Lease

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the execution of any further instruments; and Tenant shall promptly execute and deliver any instrument Mortgagee or Successor Owner shall reasonably request to evidence such attornment.

3. If Successor Owner shall succeed to Landlord's interest in the Lease:

(a) Successor Owner shall not be liable for any act or omission of any prior landlord under the Space Lease, but shall cure any obligation of Landlord under the Lease within a reasonable time after obtaining possession; and

(b) Successor Owner shall not be subject to any offsets or defenses which the Tenant may have against any prior landlord under the Space Lease;

(c) Successor Owner shall not be bound by any rent or additional rent which Tenant may have paid in advance for more than one month to any prior landlord under the Space Lease; and

(d) Successor Owner shall not be bound by any modification or amendment to the Space Lease made without Mortgagee's consent, except with respect to any amendments or modifications to the Space Lease entered into by Landlord and Tenant to evidence the exercise of any expansion, renewal or termination options expressly set forth in the Space Lease.

4. The Space Lease shall at all times be subordinate to the lien of the Mortgage, subject to the terms of this Agreement.

5. If due to any default of Landlord under the Space Lease, Tenant shall have the right to terminate the Lease, Tenant shall deliver notice of such default to Mortgagee, and Tenant shall not terminate this Lease as a consequence of such default if Mortgagee cures such default within a reasonable time after notice thereof has been given (taking into account any time reasonably necessary for Mortgagee to obtain possession of the Real Estate, whether through foreclosure or otherwise).

6. Notices and other communications hereunder shall be in writing and shall be deemed given when delivery is received or denied. Such notices and other communications shall be sent by hand, by a nationally recognized overnight courier, or by U.S. Mail, return receipt requested, if to Mortgagee at:

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If to Mortgagee: Morgan Stanley Mortgage Capital Inc.  
1221 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10020

and if to Tenant: JPMorgan Chase Bank, National  
Association  
1111 Polaris Parkway, Suite 1J  
Mail Code OH1-0241  
Columbus, Ohio 43240  
Attn: Lease Administration Manager

With a copy to

JPMorgan Chase Bank, National  
Association  
270 Park Avenue  
New York, NY 10017  
Attn: Head of Real Estate

And

JPMorgan Chase Bank, National  
Association  
270 Park Avenue – 39<sup>th</sup> floor  
New York, NY 10017  
Attention: Retail Real Estate Counsel

7. This Agreement may not be modified except by an agreement in writing signed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, representatives, successors and assigns.

8. This Agreement shall be governed by the laws of the State of New York. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.





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STATE OF NEW YORK     )  
   )   ss.:  
 COUNTY OF NEW YORK    )

On the 20<sup>th</sup> day of September in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared George C. Ross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



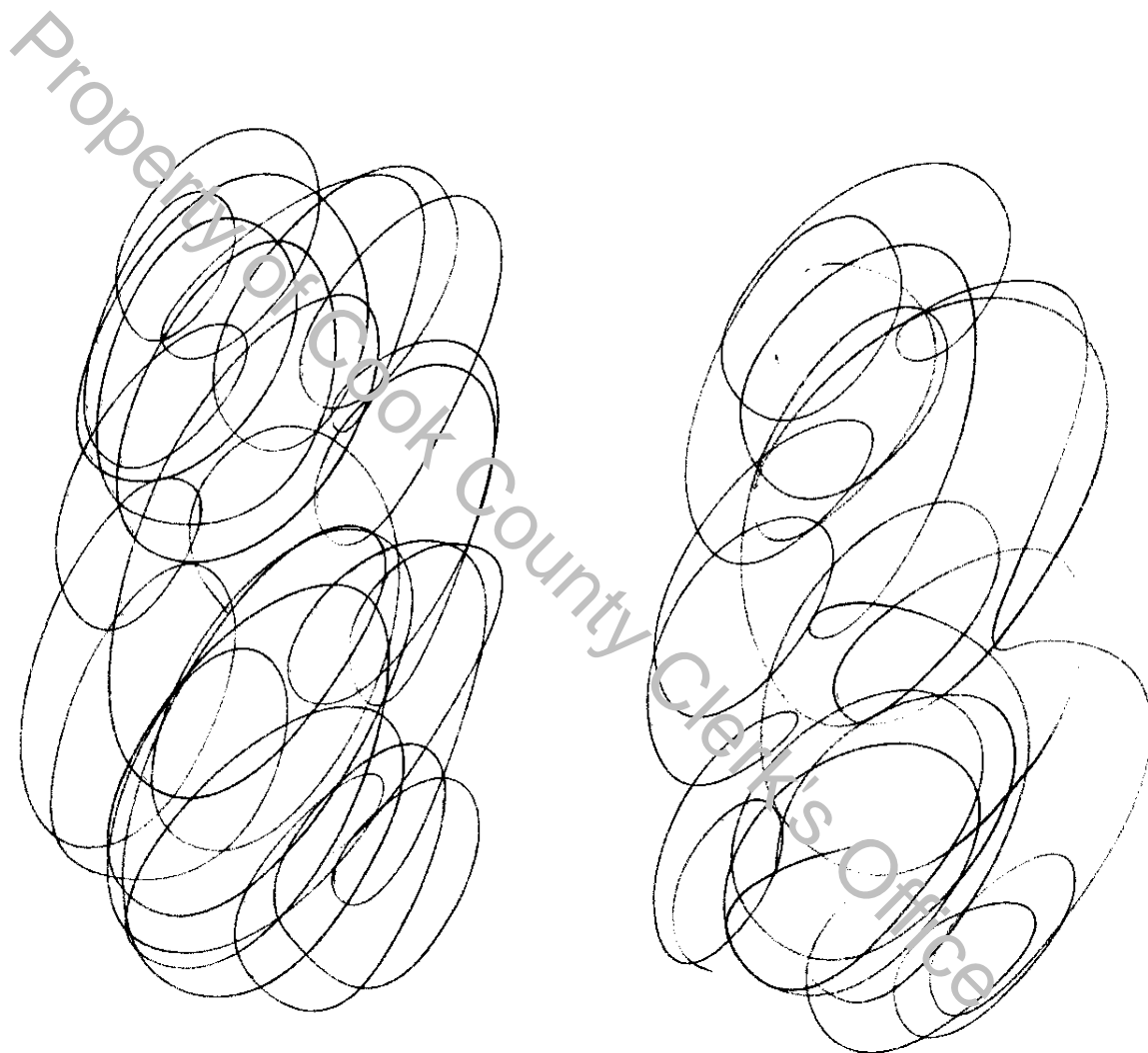
\_\_\_\_\_  
 Notary Public  
 My commission expires:

**JULIAN ENTNER**  
 NOTARY PUBLIC, State of New York  
 No. 01EN6078424  
 Qualified in Kings County  
 Certificate Filed in New York County  
 Commission Expires July 29, 2010

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EXHIBIT "A"



Rose Ann...  
Clerk



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420 West Van Buren  
Chicago, IL

**PARCEL 1:**

LOT 7 (EXCEPT THE WEST 122.53 FEET THEREOF) IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76, BOTH INCLUSIVE, BLOCK 78, PARTS OF BLOCKS 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 IN BOOK 188 ON PAGES 11 TO 28, BOTH INCLUSIVE, AS DOCUMENT NUMBER 8339/51 (EXCEPTING THEREFROM THAT PART THEREOF LYING BELOW OR BENEATH THE AIR RIGHTS LIMITING PLANE OR ELEVATION SET FORTH IN APPENDIX "B" TO LEASE RECORDED OCTOBER 2, 1980 AS DOCUMENT 25607453 AND WHICH IS INDICATED IN SAID APPENDIX "B" TO BE 32 FEET 10 INCHES ABOVE CHICAGO CITY DATUM), IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

ALL LAND AND SPACES BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE AS ARE OCCUPIED BY COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED BY THE LEASE DESCRIBED IN PARCEL 1 ABOVE AND SMOKE EXHAUST PLENUMS, ELEVATOR PITTS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT LOCATED BELOW SAID AIR RIGHTS LIMITING PLANE FOR THE PURPOSE OF SAID CONTEMPLATED BUILDING, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 ABOVE FOR THE CONSTRUCTION, USE, MAINTENANCE, REPAIR, REPLACEMENT OR RENEWAL FROM TIME TO TIME OF ADEQUATE COLUMNS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, INCLUDING THE FINISHED MEZZANINE FLOOR, FOUNDATIONS AND OTHER SUPPORTS FOR THE BUILDING CONTEMPLATED UNDER THE LEASE DESCRIBED IN PARCEL 1 ABOVE AND SMOKE EXHAUST PLENUMS, ELEVATOR PITTS, FUEL TANKS, PUMPING STATIONS AND MECHANICAL EQUIPMENT, IN THE LAND AND SPACE BELOW THE AIR RIGHTS LIMITING PLANE DESCRIBED IN PARCEL 1 ABOVE, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

A NON-EXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF PARCELS 1, 2 AND 3 AS CREATED BY DEED OF EASEMENT RECORDED JANUARY 31, 1990 AS DOCUMENT NO. 90047309 AND AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT RECORDED OCTOBER 19, 1990 AS DOCUMENT NO. 90491486, MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NO. 107292 TO GATEWAY IV JOINT VENTURE AND OTHERS, FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7 AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.