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Doc#: 0632110020 Fee: \$40.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/17/2006 10:24 AM Pg: 1 of 9

Prepared by:
Robert W. Moore
Locke Liddell & Cap LLP
601 Poydras Street, Suite 2660
New Orleans, LA 70130
File: 90924/01169

Record and Return To:
Kathryn Thompson
Land America/Lawyers Title Insurance Company
LTIC/Commercial Lender Services
101 Gateway Centre Parkway
Richmond, VA 23235-5153
Phone: 1.866.552.0129, Ext. 2285
Fax: 1.804.267.2330
File: #10888431
Unison Site No. 227203

PIN: 13-32-400-023 13-32-400-025
13-32-400-030 13-32-400-036

NON-DISTURBANCE AND ATTORNEY AGREEMENT AND PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT (the "Agreement") is made as of the 22nd day of September 2006 ("Effective Date"), by and among MB Financial Bank, N.A., whose address is 6111 N. River Road, Rosemont, Illinois 60018 (hereinafter referred to as "Lender"), Unison Site Management, L.L.C., a Delaware limited liability company (hereinafter referred to as "Unison"), whose address is 92 Thomas Johnson Drive, Suite 130, Frederick, Maryland 21702, and Bloomingdale Kaiser Building, L.L.C., an Illinois limited liability company, whose address is 70 East Lake Street #1600, Chicago, Illinois 60601 (hereinafter referred to as "Site Owner")

WITNESSETH:

WHEREAS, Lender has made a loan to Site Owner (such loan and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan") in the amount principal amount of the loan, which is secured by, *inter alia*, that certain Mortgage by Bloomingdale Kaiser Building, L.L.C., an Illinois limited liability company in favor of MB Financial Bank, N.A., to secure indebtedness of an unspecified loan amount, dated June 22, 2006 and recorded July 11, 2006, Official Records of Cook County, Illinois, at Document #0619240132, together with the Landlord's Assignment of Rents and Leases, dated June 22, 2006 and recorded July 11, 2006, at Document # 0619240133 (such Mortgage, Landlord's Assignment of Rents and Leases and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Mortgage"), upon the tract of land described in Exhibit "A" hereto (the "Site Owner's Property"); and

WHEREAS, a portion of the Site Owner's Property (the "Communication Site") is subject to an Easement and Assignment Agreement by and between Site Owner and Unison dated as of September 22, 2006 (the "Communication Easement") in which said Communication Easement, the Site Owner has assigned to Unison all right, title and interest in and to the Leases set forth on Exhibit "B" hereto (the "Assigned Leases"); and

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WHEREAS, the parties hereto desire to enter into this Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the parties hereto, Lender, Unison and Site Owner hereby agree as follows:

1. Non-Disturbance. So long as the Communication Easement is not terminated, Unison's use, possession or enjoyment of the Communication Site, including the collection of rents by Unison, pursuant to the Assigned Leases shall not be interfered with nor shall the easement granted by the Communication Easement be affected in any other manner, in any exercise of any power of sale in the Mortgage, or by foreclosure or any action or proceeding instituted under or in connection with the Mortgage, except that the person or entity acquiring the interest of the Site Owner under the Communication Easement as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter referred to as the "Purchaser") shall not be (a) liable for any act or omission of any prior site owner under the Communication Easement; or (b) subject to any offsets or defenses which Unison under the Communication Easement might have against the prior site owner under the Communication Easement; or (c) bound by any amendment or modification to the Communication Easement made without Lender's prior written consent. Lender and Site Owner specifically acknowledge that Unison shall have the exclusive right to collect any and all rents due by Tenant(s) under the Assigned Leases, said Assigned Leases being more fully described on Exhibit "B" hereof and, by execution of this instrument, any Assigned Leases are specifically released from that certain Mortgage by Bloomington Kaiser Building, L.L.C., an Illinois limited liability company in favor of MB Financial Bank, N.A., to secure indebtedness of an unspecified loan amount, dated June 22, 2006 and recorded July 11, 2006, Official Records of Cook County, Illinois, at Document #0619240132, together with the Landlord's Assignment of Rents and Leases, dated June 22, 2006 and recorded July 11, 2006, at Document # 0619240133, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.

2. Unison Not To Be Joined In Foreclosure. So long as the Communication Easement is not terminated, Lender will not join Unison as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Communication Easement and in such event Lender shall reimburse Unison for all reasonable expenses incurred by Unison in connection therewith.

3. Attornment. In the event the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, Unison agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee under the conveyance in lieu of foreclosure as the site owner for the balance then remaining of the term of the Communication Easement, subject to all terms and conditions of said Communication Easement and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Site Owner under the Communication Easement. The respective rights and obligations of Unison and Lender upon such attornment, shall be and are the same as now set forth in the Communication Easement.

4. Unison's Tower, Building and Equipment. Lender hereby acknowledges and agrees that the Mortgage and Assignment does not apply to Unison's Tower(s), Building(s) and Equipment and that removal of said Tower(s), Building(s) and Equipment is governed by the terms of the Communication Easement.

5. As to Site Owner and Unison. As between Site Owner and Unison, Site Owner and Unison covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Communication Easement.

6. As to Site Owner and Lender. As between Site Owner and Lender, Site Owner and Lender covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Deed of Trust.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Communication Easement or any other person

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having an interest therein and any purchaser of the Site Owner's Property, including without limitation at or after a foreclosure sale or conveyance in lieu of foreclosure

8 Title of Paragraphs The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement

9 Provisions Binding The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Unison and Site Owner

10 Governing Law This Agreement shall be interpreted and governed by the laws of the State in which the Site Owner's Property is located

11 Notices All notices to be given pursuant to this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the addressee addressed as set forth below. Notice so mailed shall be deemed effective upon its deposit. Notice given in any other manner shall be deemed effective only if and when delivered to the addressee

For Lender:

MB Financial Bank, N.A.
6111 N River Road
Rosemont, Illinois 60018

For Site Owner:

Bloomington Kaiser Building, L.L.C.
70 East Lake Street #1600
Chicago, Illinois 60601

For Unison:

Unison Site Management, L.L.C.
92 Thomas Johnson Drive, Suite 130
Frederick, Maryland 21702

12 Counterparts This Agreement may be signed in multiple counterparts, each of which is an original, but all of which comprise one Agreement.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written

"LENDER":

MB FINANCIAL BANK, N.A.

WITNESSES:

Matthew C. Sander
Print Name: MATTHEW C. SANDER - V.P.

Chad Rock
Print Name Chad Rock, AUP

By: *James C. Houston*
Name: JAMES C. HOUSTON
Title: SENIOR VICE PRESIDENT

Address: 6111 N. River Road
City: Rosemont
State: Illinois
Zip: 60018
Tel:
Fax:

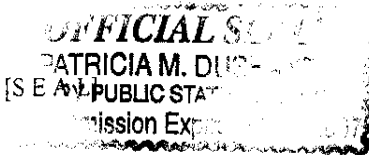
STATE OF ILLINOIS

COUNTY OF Cook) ss

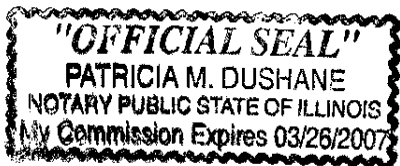
Before me, a notary public in and for said State, appeared Matthew Sander
Chad Rock, known to me or proven to me, who duly authorized to act on behalf
of the Lender described in the foregoing Agreement, executed and acknowledged said instrument as his/her free act
and deed on behalf of said Lender

Given under my hand and seal this 11th day of Sept, 2006

My commission expires: 3-26-07



Patricia M. Dushane
Notary Public



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

WITNESSES:

Scott Brdar
Print Name: Scott Brdar

Walter Kaiser
Print Name: Walter Kaiser

"SITE OWNER":

BLOOMINGDALE KAJSER BUILDING, L.L.C.,
an Illinois limited liability company

Walter Kaiser
Name: Walter Kaiser
Title: Manager

Address: 70 East Lake Street #1600
City: Chicago
State: Illinois
Zip: 60601
Tel:
Fax:

STATE OF ILLINOIS

COUNTY OF Cook

Before me, a notary public in and for said State, appeared WALTER KAJSER, known to me and proven to me, who duly authorized to act on behalf of the Site Owner described in the foregoing Agreement, executed and acknowledged said instrument as his/her free act and deed on behalf of said Site Owner.

Given under my hand and seal this 11th day of Sept., 2006

My commission expires: 10/2/08

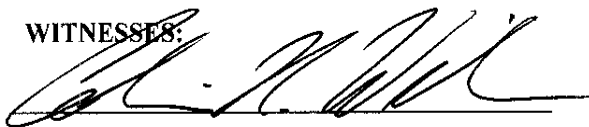
Linda N. White
Notary Public



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

WITNESSES:



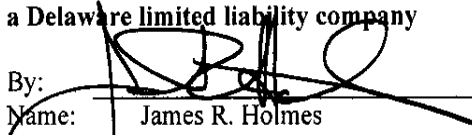
Printed Name: Colin N. Wilson



Printed Name: Michelle McLeod

“UNISON”

UNISON SITE MANAGEMENT, L.L.C.,
a Delaware limited liability company

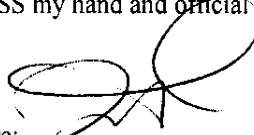
By: 
Name: James R. Holmes
Title: Vice President-Secretary
Address: 92 Thomas Johnson Drive, Suite 130
City: Frederick
State: Maryland
Zip: 21702
Tel: (646) 452-5455
Fax: (301) 360-0635

STATE OF NEW YORK

COUNTY OF NEW YORK

On the 27 day of August, in the year of 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared James R. Holmes, Vice President/Secretary of Unison Site Management, L.L.C., 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 authorized capacity, and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

Signature: 
My Commission Expires: _____
Commission Number: _____
PASCALE ANDRE
Notary Public, State of New York
No. 01AN6018911
Qualified in Nassau County
Commission Expires Jan. 25, 2007

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Exhibit "A"

Site Owner's Property

Parcel One

Tract One

The South 165.78 feet of Lot 4 (Except the West 350 feet) in Keeney Industrial District, being an owners division in the South East 1/4 of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian, according to the plat thereof dated December 26, 1924 and recorded in the recorder's office of Cook County, Illinois January 8, 1925 as Document 8732302 and filed in the Office of the Registrar of Titles of Cook County, Illinois January 9, 1925 as Document LR241222;

ALSO

Tract Two

That part of the South 165.78 feet of Lot 2 lying East of the East line of Lot 4 and West of the center line of a 50 foot private street being drawn parallel with and 932.24 feet East of the West line of said Lot 4 in Keeney's Industrial District aforesaid;

Parcel Two

The South 165.78 feet of the West 337 feet of Lot 4 in Keeney Industrial District, being an owners division in the South East 1/4 of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian, according to the plat thereof made under date of December 26, 1924, by Chicago Guarantee Survey Company and filed for record in the Office of the Registrar of Title of Cook County, Illinois on January 3, 1925 as Document LR241222; Parcel C:

The East 13 feet of the West 350 feet of the South 165.78 feet of Lot 4 in Keeney Industrial District, being an owner's division in the South East 1/4 of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian;

Parcel Three

A strip of land in that part of Lot 4 and Lot 2 in Keeney Industrial District an owner's division in the South East 1/4 of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian, described as follows:

Commencing at a point on the West line of said Lot 4, said Keeney Industrial District, 165.78 feet North of the Southwest corner of said Lot 4 in said Keeney Industrial District, running thence East parallel with the South line of said Lot 4 (said South line being also the North line of Bloomingdale Avenue), a distance of 826.08 feet to its intersection with the South line of the right of way (at point of tangency) conveyed to Chicago, Milwaukee, St. Paul and Pacific Railroad Company on October 4, 1932 by Deed recorded November 9, 1932 as Document 11162537 and filed December 27, 1932 as Document LR599299; thence Northwesterly along the Southerly line of said right of way, being a curved line convexed Southwesterly, the last described course being tangent thereto and having a radius of 487.6 feet a distance of 132.9 feet; thence West on a line parallel with and 183.78 feet North of the South line of Lot 4 aforesaid, a distance of 694.98 feet to its intersection with the West line of said Lot 4; thence South on said West line 18 feet to the point of beginning;

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Parcel Four

That part of Lots 2, 3 and 4 in Keeney Industrial District, being an owner's division in the South East 1/4 of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian, described as follows:

Commencing at a point in the West line of Lot 4, in said Keeney Industrial District, being the East line of North Monitor Avenue, 183.78 feet North of the South line of said Lot 4; thence North along the East line of North Monitor Avenue, a distance of 160 feet; thence East along a line drawn parallel with and 343.78 feet North of the South line of said Lot 4, a distance of 450.99 feet to its intersection with the Southerly right of way line of the land conveyed to Chicago, Milwaukee, St. Paul and Pacific Railroad Company by Deed dated October 4, 1932 and recorded November 9, 1932 as Document 11162537 and filed December 27, 1932 as Document LR599299; thence South Easterly along said right of way being a curved line convexed South Westerly and having a radius of 487.60 feet, a distance of 297.58 feet (arc), to its intersection with a line drawn parallel with and 183.78 feet North of the South line of said Lot 4, being the North line of right of way conveyed to the Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by Deed dated August 2, 1940 and filed June 5, 1941 as Document LR899490; thence West along said right of way line, a distance of 694.98 feet to the point of beginning, all in Cook County, Illinois.

AND BEING the same property conveyed to Bloomingdale Kaiser Building L L C from American National Bank and Trust Company of Chicago, a National Banking Association by Trustee's Deed dated February 10, 2000 and recorded February 29, 2000 in Instrument No. 00147973

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Exhibit "B"

Description of Assigned Leases

That certain Lease dated as of July 14, 1988 by and between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated May 18, 1988 and known as Trust Number 105462-08, as Lessor, and BSN Corp, a Delaware corporation, as Lessee, as lease was assigned by the Assignment of Lease by Lessor to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 30, 1988 and know as Trust Number 105969-06, dated July 14, 1988

Property of Cook County Clerk's Office