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#3610

Steven F. Ginsberg, Esq.  
Levenfeld Pearlstein, LLC  
2 North LaSalle Street, Suite 1300  
Chicago, IL 60602



Doc#: 0701033128 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/10/2007 11:25 AM Pg: 1 of 8

L. Hines 3 of 3 # 81-29-948-01

PROPERTY OF COOK COUNTY RECORDER OF DEEDS  
SPACE ABOVE THIS LINE RESERVED FOR RECORDING

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") made as of this 21<sup>st</sup> day of November, 2006 by Creative Hairdressers, Inc. with an address at \* \_\_\_\_\_ ("Tenant") and NATIONAL CITY BANK, with an address at One North Franklin, Suite 2150, Chicago, Illinois 60606 ("Lender").

\*1577 Spring Hill Road  
Suite 500  
Vienna, VA 22182

### Background

A. Lender is the owner and holder of a deed of trust or mortgage or other similar security instrument (either, the "Security Instrument"), covering, among other things, the real property commonly known and described as 1165 N. State Street, Chicago, Illinois, and further described on Exhibit "A" attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "Property").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated March 17, 2006 as amended on April 17, 2006, August 28, 2006 and September 29, 2006 ("Lease"), demising a portion of the Property described more particularly in the Lease ("Leased Space").

C. Landlord, Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

Box 400-CTCC

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THIS AGREEMENT IS EXPRESSLY  
SUBJECT TO THE ATTACHED  
RIDER.

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2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the leased space provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the premises demised pursuant to the Lease, and (c) the Lease is in full force and effect and no uncured default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owners of the Property, Successor Owner shall perform all obligations of the landlord under the Leases arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be:\*(a) liable for any default, act or omission of any prior landlord under the Lease, (except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) ~~bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto;~~ (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or (g) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

\* except to the extent such prior Landlord fails to honor its outstanding obligations.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged

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Landlord default and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is given to Lender. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

## 6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) WAIVER OF JURY TRIAL. TENANT, AS AN INDUCEMENT FOR LENDER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO TENANT OFFERED HEREBY, HEREBY WAIVES ITS RIGHT, TO THE FULL EXTENT

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PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

IN WITNESS WHEREOF, this Agreement is executed this 21<sup>st</sup> day of November, 2006.

TENANT:

Creative Hairdressers Inc.

By: [Signature] AN  
Name: Lester D. Mardiks 11/21/06  
Its: Vice President

COMMONWEALTH OF VIRGINIA  
STATE OF ILLINOIS)  
FAIRFAX ) SS  
COUNTY OF COOK)

On this 21<sup>st</sup> day of November, 2006, before me appeared Lester D. Mardiks, to me personally known, who, being by me duly sworn did say that such person is the Vice President of Creative Hairdressers, Inc., and that the seal affixed to the foregoing instrument is the seal of said                     , and that said instrument was signed and sealed on behalf of said                     , by authority of its Board of Directors, and who acknowledged said instrument to be the free act and deed of said                     .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

[Signature]  
Notary Public

My Commission Expires: July 31, 2008

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**LENDER:**

NATIONAL CITY BANK

By: [Signature]  
Name: Mr. Tracy S. Larrison  
Its: Senior Vice President

STATE OF ILLINOIS)

) SS

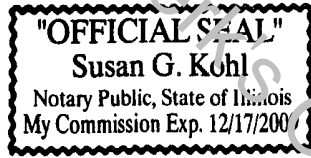
COUNTY OF COOK

On this 5<sup>th</sup> day of December, 2006, before me appeared Mr. Tracy S. Larrison, to me personally known, who, being by me duly sworn did say that such person is a Senior Vice President of National City Bank, and that the seal affixed to the foregoing instrument is the corporate seal of said banking association, and that said instrument was signed and sealed on behalf of said banking association, by authority of its Board of Directors, and who acknowledged said instrument to be the free act and deed of said banking association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

[Signature: Susan G. Kohl]  
Notary Public

My Commission Expires: 12-17-09



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RIDER.

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Exhibit "A"  
(Legal Description of the Property)

PIN: \_\_\_\_\_

Common Address: \_\_\_\_\_

Property of Cook County Clerk's Office

THIS AGREEMENT IS EXPRESSLY  
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RIDER.



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## RIDER

The instrument to which this Rider is attached (the "Attached Instrument") is expressly made subject to the provisions of this Rider. In the event of any conflict or inconsistency between the terms and conditions of this Rider and the terms and conditions of the Attached Instrument, the terms and conditions of this Rider shall govern, and the Lender shall honor all of Tenant's rights thereunder from the date hereof. For the Attached Instrument to be of force and effect, Tenant must receive a fully-executed copy of the Attached Instrument with this Rider attached within thirty (30) days of the date first above written on the Attached Instrument.

Notwithstanding anything to the contrary contained in the Attached Instrument, nothing in the Attached Instrument shall operate, nor be so interpreted, to reduce the obligations or expand the rights of Landlord under the Lease, or reduce the rights or expand the obligations of Tenant under the Lease.

Any notice requested in the Attached Instrument to be given to the Lender shall be notice of Landlord's default only, to be sent to one (1) address only, and any period for Lender response to same shall not be applicable in the event of an emergency or for longer than thirty (30) days.

So long as Tenant is not in default under the Lease beyond any notice and opportunity to cure period, Tenant shall not be disturbed in its possession and enjoyment of the Premises. Provided that this nondisturbance is specifically agreed to, Tenant agrees to subordinate the Lease and attorn to the mortgagee entering into possession of the Shopping Center as the new landlord thereof.

The Attached Instrument shall be null and void unless a fully executed copy is returned to Tenant within thirty (30) days of the date first mentioned therein.

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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 3 IN THE ASSESSOR'S SUBDIVISION OF LOT 6 IN GOTTFRIED KNAUSS' SUBDIVISION OF THE NORTH ½ OF BLOCK 1 AND THE WEST 100 FEET OF THE SOUTH HALF OF SAID BLOCK 1 IN THE SUBDIVISION BY THE COMMISSIONERS OF THE ILLINOIS AND MICHIGAN CANAL OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PINS: 17-03-200-074  
17-03-200-075  
17-03-200-076

COMMONLY KNOWN AS 1163-1167 N. STATE STREET, CHICAGO, ILLINOIS

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