

# UNOFFICIAL COPY

**AFTER RECORDING RETURN TO:**

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Doc#: 0701245055 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/12/2007 01:59 PM Pg: 1 of 8

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 29<sup>th</sup> day of December, 2006, by and between COLDWATER CREEK, INC., a Delaware corporation ("**Tenant**"), OPUS REAL ESTATE IL VII BURR RIDGE, L.L.C., a Delaware limited liability company, as successor in interest to OPUS NORTH CORPORATION, an Illinois corporation ("**Landlord**"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("**Mortgagee**").

### RECITALS:

A. As security for a loan from Mortgagee to Landlord in the original principal amount of One Hundred Thirty Five Million One Hundred Fifty Thousand and 00/100 Dollars (\$135,150,000.00), Landlord is mortgaging the Real Estate (hereinafter defined), among other property, to Lender under a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing to be recorded in the office of the County Recorder of Cook County, Illinois (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the "Mortgage").

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 September 12, 2006 with Landlord (or Landlord's predecessor-in-interest), pursuant to which Tenant leased certain premises ("Leased Premises") consisting on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and any improvements thereon are 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:

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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. Intentionally omitted.

3. 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 3, 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.

4. 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 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.

5. 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. Tenant is hereby irrevocably authorized by Landlord to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any rental or other amounts which may be or become due under the Lease, or the performance of any obligations under the Lease.

6. Mortgagee agrees that so long as Tenant is not in default under the Lease:

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(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;

7. 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); provided, however, Mortgagee shall be responsible for repairs and maintenance required of any prior landlord under the Lease from and after the date Mortgagee or new owner takes possession of the Leased Premises, whether the need for such repairs or maintenance accrued before or after such date [and shall be responsible for the payment of any amounts of the Construction Allowance, as set forth in the Lease, then owing Tenant];

(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;

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(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 notice to Mortgagee;

(vi) bound by, or liable for any breach of, indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); provided, however, this provision (vi) shall only apply if Mortgagee is the new owner

(vii) liable under any covenant or warranty in the Lease with regard to the construction of the Leased Premises, nor for any delays in completion of construction, nor for any implied warranty relating to the construction of the Leased Premises; or

(viii) 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.

8. 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: LaSalle Bank National Association  
35 South LaSalle Street, Suite 1225  
Chicago, Illinois 60603  
Attention: Donald Broderick, First Vice President

with a copy to: LaSalle Bank National Association  
135 South LaSalle Street, Suite 1425  
Chicago, Illinois 60603  
Attention: Commercial Real Estate Syndications

and: Schwartz Cooper Chartered  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attention: Michael S. Kurtzon, Esq.

To Landlord: Opus North Corporation  
9700 West Higgins Road, Suite 900  
Rosemont, Illinois  
Attention: Vice President

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with a copy to: Opus Corporation  
10350 Bren Road West  
Minnetonka, Minnesota 55343  
Attention: Legal Department

and a copy to: Daspin & Aument, LLP  
227 West Monroe Street, Suite 3500  
Chicago, Illinois 60606  
Attention: D. Albert Daspin

To Tenant: Coldwater Creek, Inc.  
One Coldwater Creek Drive  
Standpoint, Idaho 83864  
Attn: Director of Real Estate

Douglas B. Marks  
Elsaesser Jarzabek Anderson Marks Elliott & McHugh  
123 South Third Avenue  
Sandpoint, Idaho 83864

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.

9. 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 and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

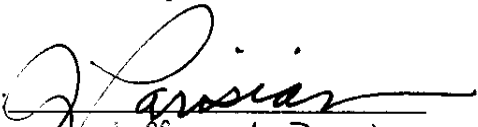
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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

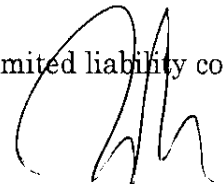
**Tenant:**

**COLDWATER CREEK, INC.,**  
a Delaware corporation

By:   
Name: Jeffrey A. Parisian  
Title: Vice President, Real Estate


**Landlord:**

**OPUS REAL ESTATE IL VII BURR RIDGE,**  
**L.L.C.,**  
a Delaware limited liability company

By:   
Name: Wade C. Lau  
Title: Vice President

**Mortgagee:**

**LASALLE BANK NATIONAL ASSOCIATION,**  
a national banking association

By:   
Name: Dan Bruders  
Title: EVP

Property of Cook County Clerk's Office

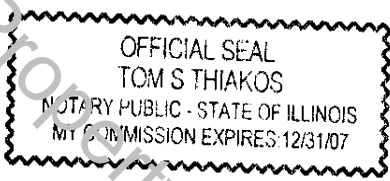


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Will )

The foregoing was acknowledged before me this 4 day of JANUARY 2007  
by DON BRODEUR the FVP of LaSalle Bank National Association, a  
national banking association, on behalf of the bank.

Tom S. Thiakos  
\_\_\_\_\_  
Notary Public



STATE OF Minnesota )  
 ) SS.  
COUNTY OF Hennepin )

The foregoing was acknowledged before me this 21<sup>st</sup> day of December 2006  
by Wade Lau the Vice President of Opus Real Estate IL VII Burr Ridge,  
L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

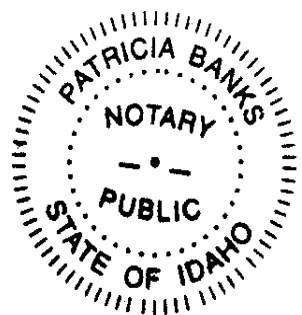
Elizabeth Grekso  
\_\_\_\_\_  
Notary Public



STATE OF IDAHO )  
 ) SS.  
COUNTY OF BONNER )

The foregoing was acknowledged before me this 11 day of DEC. 2006  
by JEFFREY PARISIAN the VP-REAR of Coldwater Creek, Inc., a Delaware  
corporation, on behalf of the corporation. ESTATE

Patricia Banks  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### Legal Description

Lots 1 thru 6 of the Burr Ridge Village Center Planned Unit Development Subdivision, recorded October 2, 2006 as document number 0627510200 in Cook County, Illinois.

V-30-300-029  
Burr Ridge, Illinois