



Doc#: 0703744052 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/06/2007 01:01 PM Pg: 1 of 11

AFTER RECORDING RETURN TO:  
Michael S. Kurtzon, Esq.  
Schwartz Cooper Chartered  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 30<sup>th</sup> day of ~~December, 2006~~ by and between: January, 2007

LaSalle Bank National Association,  
a national banking association  
35 South LaSalle Street, Suite 1225  
Chicago, Illinois 60603  
("Lender"),

and

J. Jill, LLC,  
a New Hampshire limited liability company  
having an address at  
~~4 Batterymarch Park~~  
~~Quincy, Massachusetts 02169-7408~~  
("Tenant").

c/o The Talbots, Inc.  
One Talbots Drive  
Hingham, MA 02043  
Attn: Real Estate Department



**RECITALS:**

A. **PROPERTY.** Tenant is the holder of a leasehold estate in a portion of those certain premises located in the County of Cook, State of Illinois, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") under and pursuant to the provisions of a certain lease dated August 2, 2006 between 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, as landlord, and Tenant, as tenant (the "Lease"); and

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**B. BORROWER/LANDLORD.** Opus Real Estate IL VII Burr Ridge, L.L.C., a Delaware limited liability company, having its principal place of business at 9700 West Higgins Road, Suite 900, Rosemont, Illinois 60018 ("**Borrower**") is the owner in fee simple of the Property and the landlord under the Lease (Borrower, as landlord under the Lease, sometimes is referred to as "**Landlord**"); and

**C. SECURITY INSTRUMENT/NOTE.** Lender has made a loan or is about to make a loan to Borrower, evidenced or to be evidenced by a promissory note made by Borrower to the order of Lender (the "**Note**") and secured or to be secured by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "**Security Instrument**") granted by Borrower to or for the benefit of Lender and encumbering the Property; and

**D. TENANT AGREES.** Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

## AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, spreads, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond any applicable notice or grace period.

3. **ATTORNMEN**T. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease

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between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, whereupon, subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease on the part of Tenant to be observed and performed, Purchaser shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease subject to the terms of Section 4 of this Agreement; provided, however, that Purchaser shall not be:

3.1 **PRIOR LANDLORD.** liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser becomes the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and shall have had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease,

3.2 **OFFSETS, DEFENSES, ABATEMENTS OR COUNTERCLAIMS** subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property;

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3.3 **SECURITY DEPOSITS.** liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser;

3.4 **RENT.** bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser;

except as may be already permitted pursuant to the Lease.

3.5 **TERMINATING OR AMENDING OR MODIFYING.** bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest; or

3.6 **REPAIRS.** responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation unless Purchaser is obligated under the Lease to make such repairs; ~~and Purchaser receives insurance proceeds or condemnation awards sufficient to finance the completion of such repairs.~~

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Except for Landlord's Work pursuant to Article 15 and Exhibit "B" of the Lease and the Construction Allowance in the amount of Five Hundred Thousand (\$500,000.00) Dollars pursuant to Item 8 and Paragraph 49 of the Lease,

Property of Cook County Clerk's Office

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~~3.7 **CONSTRUCTION.** liable under any covenant or warranty in the Lease with regard to the construction of the Premises and/or the Shopping Center, nor for any delays in completion of construction, nor for any implied warranty relating to the construction of the Premises and/or the Shopping Center.~~

In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. **NOTICE TO TENANT.** After notice is given to Tenant by Lender that Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. **NOTICE TO LENDER AND RIGHT TO CURE.** Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default on the part of Landlord under the Lease which would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder, and Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective unless Lender has received notice of the same and has failed within thirty (30) days after both Lender's receipt of said notice and the time when Lender shall have become entitled under the Security Instrument (as hereinafter defined) to remedy the same, to commence to cure the default which gave rise to the cancellation or termination of the Lease or abatement or reduction of the rent payable thereunder and thereafter diligently prosecutes such cure to completion, provided that in the event Lender cannot commence such cure without possession of the Property, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective if Lender commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion. ~~In addition, if such default is not susceptible of cure by Lender and Lender obtains possession of the Property, such default shall be waived.~~ Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Landlord except as provided in Section 3 in the event Lender shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument.

6. **NOTICES.** All notices or other written communications hereunder shall be deemed to have been properly given (i) ~~upon delivery, if delivered in person with receipt acknowledged by the recipient thereof,~~ (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or ~~(iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:~~

(ii)

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If to Lender: LaSalle Bank National Association  
35 South LaSalle Street, Suite 1225  
Chicago, Illinois 60603  
Attn: Donald Broderick, First Vice President

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

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

If to Tenant: J. Jill, LLC  
~~4 Batterymarch Park  
Princeton, MA 02169-7468  
Attention: Dennis Adomaitis, President Retail  
AND Steve Barcello, Controller~~

← c/o The Talbots, Inc.  
One Talbots Drive  
Hingham, MA 02043  
Attn: Real Estate Department

If to Landlord: Opus North Corporation  
9700 West Higgins Road, Suite 900  
Rosemont, Illinois 60018  
Attn: Vice President

with a copy to: Opus Corporation  
10350 Bren Road West  
Minnetonka, Minnesota 55345  
Attn: Legal Department

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

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. **GOVERNING LAW.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of Illinois and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State Illinois.



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9. **MISCELLANEOUS.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association

By: DDK  
Name: Don Broderick  
Title: FVP

TENANT:

J. JILL, LLC,  
a New Hampshire limited liability company

By: John L Florio  
Name: JOHN L. FLORIO  
Title: ASSISTANT SECRETARY

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to, the provisions of Section 4 hereof:

BORROWER:

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

By: Robert A Galante  
Name: Robert A. Galante  
Title: Vice President



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STATE OF MA )  
 )SS  
COUNTY OF Plymouth )

The foregoing instrument was acknowledged before me this 23rd day of January 23, 2007 by John L Flono, the Assistant Secretary of J. JILL, LLC, a limited liability company organized under the laws of the State of New Hampshire, on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Hingham, MA, this 23rd day of January, 2007

Catherine A. Estey  
Notary Public

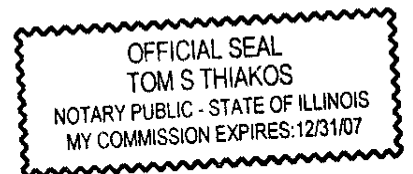
Catherine A. Estey  
Notary Public, State of Massachusetts  
My Commission Expires July 31, 2009

STATE OF ILLINOIS )  
 )SS  
COUNTY OF Will )

The foregoing instrument was acknowledged before me this 30 day of JANUARY, 2007 by Dor Broderick, the FVP of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, on behalf of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS, this 30 day of JANUARY, 2007

[Signature]  
Notary Public



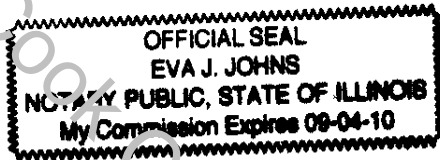
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STATE OF Illinois )  
 )  
COUNTY OF Cook )SS  
 )

The foregoing instrument was acknowledged before me this 25 day of January, 2007 by Robert A. Salank, V.P., Authorized Signatory of OPUS REAL ESTATE IL VII BURR RIDGE, L.L.C., a limited liability company organized under the laws of Delaware on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Rosemont, IL, this 25 day of January, 2007.

Eva J. Johns  
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.

Address of Property: Southeast corner of I-55  
and County Line Road  
Burr Ridge, Illinois

PINs:

18-30-300-028-0000  
18-30-300-029-0000