



Doc#: 0708526107 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/29/2007 12:41 PM Pg: 1 of 7

This Instrument Was Prepared By
And After Recording Return To:

John E. O'Connor
Drost Kivlahan McMahon & O'Connor LLC
11 S. Dunton Ave.
Arlington Heights, Illinois 60005

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (the "Agreement") is made as of March 28, 2007, between THE NORTHERN TRUST BANK having an address of 250 South Northwest Highway, Park Ridge, Illinois 60068, its successors and/or assigns ("Mortgagee"), 225 W. Ontario Inc., an Illinois corporation ("Tenant") and Chicago Title & Trust Company n/k/a Chicago Title Land Trust Company, not personally but solely as Trustee under that certain Trust Agreement dated December 19, 1986 and known as Trust Number 1089390 ("Landlord").

JY-1-k

RECITALS:

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A. Tenant has entered into that certain lease agreement dated September 13, 1994 with the Landlord as Lessor, which lease agreement covers certain premises (the "Premises") in that certain real property (the "Property") commonly known as 233 West Ontario Street, Chicago, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (herein, said lease agreement, together with any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, are collectively the "Lease");

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B. Mortgagee has agreed to make a loan to Landlord and Mary F. Faucher, as Trustee of the Declaration of Trust of Mary F. Faucher dated November 12, 1997, both of which are to be secured by the lien of a mortgage from Landlord to the Mortgagee (herein, together with all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, collectively, the "Mortgage") on the Property; and

CT#

C. Tenant has agreed to subordinate the Lease to the lien of the Mortgage and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

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NOW, THEREFORE, in consideration of the Premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. **Landlord Warranty.** The Landlord hereby represents and warrants to the Bank and the Tenant that the Premises is not subject to any lien or encumbrance except the Mortgage (or any other encumbrance in favor of the Bank) and the lien of general real estate taxes not yet due and payable and any lien expressly agreed to in writing by the Bank.

2. **Tenant Warranty.** The Tenant acknowledges to the Landlord and warrants to the Bank that: (i) the Lease is in full force and effect and there is no existing uncured or unwaived default thereunder and no

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event has occurred which with the giving of notice or the passage of time, or both, could constitute or become a default; (ii) no rents have been prepaid except as provided for in the Lease and the Tenant does not now have or hold any claim against the Landlord which might be set off or credited against future accruing rents; and, (iii) the Tenant has no present right under the Lease to terminate said Lease or abate any rent payments.

3. **Subordination.** The Tenant hereby subordinates all its interest and rights as lessee under the Lease (including all of the terms, covenants and provisions thereof) to the lien of the Mortgage held by the Bank, including all extensions, renewals, modifications and future advances under such Mortgage, or the Note or notes secured by such Mortgage, and the Lease shall be subject and subordinate in all respects to the Mortgage, to the full extent of any and all amounts from time to time secured thereby and interest thereon, all with the same force and effect, subject, however, to the provisions of this Agreement, which Lease shall be effective with respect to the Mortgage as if the Lease was executed subsequent to the execution and recordation of the Mortgage and any extension, renewal, modification or amendment thereof

4. **Attornment.** Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize any purchaser of the Property at a foreclosure sale under the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease.

5. **Non-Disturbance.** Mortgagee, for itself and its successors and assigns, for any purchaser at a foreclosure sale under the Mortgage, for any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and for the successors and assigns of such purchaser and transferee (herein, Mortgagee and each such other party is called a "New Landlord"), hereby covenants and agrees with Tenant that if Mortgagee or other New Landlord shall commence any proceedings to foreclose the Mortgage for any reason whatsoever or shall succeed to the interest of Landlord by foreclosure, deed in lieu thereof or otherwise, provided Tenant is not then in default (after expiration of any applicable grace period) under the Lease, and so long as Tenant is not in default (after expiration of any applicable grace period) under the Lease, that: (a) Tenant shall not be named as a party defendant in any foreclosure action unless Tenant is deemed to be a necessary party; (b) subject to the next succeeding grammatical paragraph, the Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between Mortgagee, or such other New Landlord (as the case may be), and Tenant, with the same force and effect as if originally entered into with Mortgagee, or such other New Landlord (as the case may be); and (c) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be diminished, interfered with or disturbed by such Mortgagee or such other New Landlord by such foreclosure under the Mortgage or by any such attempt to foreclose or to succeed to the interests of Landlord by foreclosure, deed in lieu thereof or otherwise.

If Mortgagee or any other New Landlord shall succeed to the interest of Landlord under the Lease, Tenant agrees as follows:

(a) Mortgagee or such other New Landlord shall not be: (i) subject to any credits, offsets, defenses, claims or counterclaims which Tenant might have against any prior landlord (including Landlord), (ii) liable for any act or omission of any prior landlord (including the Landlord); (iii) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord), (iv) bound by any covenant to undertake or complete any improvement to the Premises or the Property, or (v) bound by any amendment or modification to the Lease, or waiver of any provision of the Lease, which has not been consented to in writing by Mortgagee;

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(b) No New Landlord (including, without limitation, Mortgagee) shall be liable for: (i) any act or omission of any prior landlord (including Landlord), (ii) return of any security deposit made by Tenant to Landlord unless such New Landlord shall have actually received such security deposit from Landlord, or (iii) any payment to Tenant of any sums, or the granting to Tenant of any credit, in the nature of a contribution towards the cost of preparing, furnishing or moving into the Premises or any portion thereof; and

(c) Tenant shall look solely to the Property for recovery of any judgment or damages from Mortgagee or such other New Landlord, and neither Mortgagee, such other New Landlord, any partner, officer, director, shareholder or agent of them nor any successor or assign of any of the foregoing shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation of liability applicable to Mortgagee or such other New Landlord provided by law or by any other contract, agreement or instrument.

6. **Mortgagee's Consent.** The Landlord's consent, approval or waiver under or with respect to the Lease or the Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by the written consent of Mortgagee. Without limiting the generality of the foregoing, without the prior written consent of Mortgagee, Tenant will not (a) enter into any agreement amending or terminating the Lease, (b) cancel the term of, or surrender, the Lease, (c) ~~assign or sublet all or any part of the Premises,~~ or (d) prepay any rent under the Lease more than one (1) month in advance.

7. **Landlord's Default.** Tenant hereby agrees to provide Mortgagee with written notice of any casualty damage to the Premises and any default under the Lease by the Landlord and to provide Mortgagee the greater of (a) thirty (30) days or (b) such reasonable period of time as is necessary thereafter to cause such damage to be repaired (if the Landlord is obligated under the Lease to repair or cause such damage to be repaired) or to remedy such default, as the case may be, prior to exercising any right or remedy of Tenant under the Lease. Notwithstanding the foregoing, Tenant agrees that Mortgagee shall have no obligation to remedy any such default.

8. **Estoppel Certificate.** Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee within ten (10) days following Landlord's or Mortgagee's written request therefore, (a) a statement in writing certifying that the Lease is in full force and effect, that Landlord is not in default thereunder (or specifying any defaults by Landlord which Tenant alleges), that rent has not been prepaid more than one (1) month in advance, and specifying any further information about the Lease or the Premises which Landlord or Mortgagee or said third party may reasonably request; (b) a statement in writing that Tenant will recognize the Mortgagee as assignee of the Landlord's rights under the Lease; and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. Tenant understands that Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within ten (10) days as described above is a material obligation of Tenant hereunder and under the Lease.

9. **Further Subordination.** Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Tenant will not (a) enter into any subordination agreement with any person other than Mortgagee; or (b) agree to attorn to or recognize any purchaser of the Property at any foreclosure sale under any lien other than that of the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise under any lien other than that of the Mortgage (provided, however, that

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this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Property).

10. **Insurance Proceeds and Condemnation Awards.** Tenant hereby agrees that any interest of Tenant in any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises shall be subordinate to the interests of Mortgagee in such proceeds or awards. Tenant will neither seek nor accept insurance, any condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises until all amounts secured by the Mortgage have been paid in full. However, Tenant reserves the right to make a separate claim for trade fixtures and moving expenses if separately allocated.

11. **Notice.** Each notice, demand or other communication in connection with this Agreement shall be in writing and shall be deemed to be given to and served upon the addressee thereof on the earlier of (a) actual delivery to such addressee at its address set out above, or (b) the third business day after the deposit thereof in the United States mails, registered or certified mail, return receipt requested, first-class postage prepaid, addressed to such addressee at its address set out above. By notice complying with this section, any party may from time to time designate a different address in the 48 contiguous continental United States as its address for the purpose of the receipt of notice hereunder.

12. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

13. **Illinois Law To Apply.** This Agreement has been entered into and shall be performed in the State of Illinois and the laws of the State of Illinois shall govern the interpretation, construction and enforcement of this Agreement and the rights, duties and obligations of the parties hereto.

14. **Attorney Fees.** In the event any party to this Agreement shall become or be made a party to any litigation to interpret, construe or enforce this Agreement or on account of a breach or default hereunder or otherwise on account of being a party hereto, then the prevailing party, in addition to any other right, remedy, relief, or damages awarded in such litigation, shall also have the right to recover all of said prevailing party's costs and expenses of such litigation, including but not limited to reasonable attorney's fees.

15. **Trustee's Exculpation.** This Agreement is executed by the undersigned trust company, not personally but solely as trustee under a trust agreement identified below in the exercise of the power and authority conferred upon and vested in it as such trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by said trust company and/or trustee are undertaken by it solely as trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly and no personal liability shall be asserted or be enforceable against said trust company, as such trustee by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this Agreement.

16. **Recording.** The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.

17. **Counterparts.** This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the day and year first above written.

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TENANT:

225 W. ONTARIO, INC.

By: David Lynn

_____, President

NOTICE ADDRESS FOR TENANT:

This instrument is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

LANDLORD:

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CHICAGO TITLE AND TRUST COMPANY k/n/a
CHICAGO TITLE LAND TRUST COMPANY, not
personally but solely as Trustee under that certain Trust
Agreement dated December 19, 1986 and known as Trust
Number 1089390

By: Nancy A Carlin

Print Name: Nancy A Carlin

Title: Asst Vice President

NOTICE ADDRESS FOR LANDLORD:

305 Wacker Dr Ste 2300
Chicago IL 60606

BANK:

THE NORTHERN TRUST BANK

By: Douglas W. Myers
An Authorized Officer

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES **HEREBY CERTIFY** that David Lynn, personally known to me to be the President of 225 W. Ontario, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared

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before me this day in person and acknowledged that in such capacity, he signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on 3/20, 2007.

Patricia L. Quigley
NOTARY PUBLIC

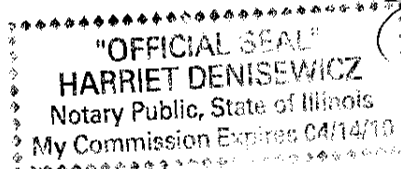
My Commission Expires: 3/12/2011



STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Nancy A. Carlin personally known to me to be a Trust officer of Chicago Title Land Trust Company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in such capacity, he/she signed and delivered the said instrument and caused the seal to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as his/her free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on March 22, 2007.



Harriet Denisewicz
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that _____, personally known to me to be the _____ of The Northern Trust Bank, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in such capacity, he signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said Bank, as his free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on _____, 200__.

NOTARY PUBLIC

My Commission Expires: _____

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EXHIBIT A

LEGAL DESCRIPTION

Lots 11 to 17, both inclusive, in Block 14 in Newberry's Addition, a subdivision in the East ½ of the West ½ of the Northeast ¼ of Section 9, Township 39 North, Rand 14 East of the Third Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

Plat: 17-09-230-001
17-09-230-002
17-09-230-003
17-09-230-004
17-09-230-005