

# UNOFFICIAL COPY



Doc#: 0708526132 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/26/2007 02:30 PM Pg: 1 of 9

8351275024  
051528

AFTER RECORDING RETURN TO:

BEST & FLANAGAN LLP  
225 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402  
Attn: John Seiner

LOAN NO. 010-00001924

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

STATE OF ILLINOIS

COUNTY OF COOK

THIS AGREEMENT, dated the 19th day of March, 2007, executed by and among ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, and its successors and/or assigns, with its principal office at 1180 NW Maple Street, Suite 202, Issaquah, Washington 98027 (hereinafter called "Lender"); CAREER EDUCATION CORPORATION, a Delaware corporation (hereinafter called "Tenant"); and DBSI HOUSING INC, an Idaho corporation, its successors and assigns (hereinafter called "Landlord");

### WITNESSETH:

WHEREAS an affiliate of Landlord (hereinafter called "Borrower") and Arlington Downtown Two, L.L.C., an Illinois limited liability company, and Arlington Block 349, L.L.C., an Illinois limited liability company ("Seller") entered into that certain Purchase and Sale Agreement dated January 6, 2007 ("Purchase Agreement") for the purchase of that certain property located in Arlington Heights, Cook County, Illinois, more fully described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Tenant has entered into a certain Lease dated June 8, 2005, as amended by that Amendment Number One To Office Lease dated August 10, 2005 ("Lease") with Seller covering certain premises more fully described in said Lease ("Premises") and Borrower is successor-in-interest to Seller to the Lease pursuant to the Purchase Agreement; and

WHEREAS, Borrower has entered into a loan with Lender for the purchase of the Property; and

WHEREAS, pursuant to an agreement between Borrower and Landlord, Landlord has the authority, inter alia, to act on behalf of Borrower with respect to the leasing of the Property; and

9/28

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WHEREAS, by the Security Instrument (as defined in that certain Fixed Rate Note, of even date with the Security Instrument), and all modifications, extensions, renewals and replacements thereof or judgments thereon [collectively, the "Note"] dated MARCH 19, 2007, and recorded on 3-26-07, \_\_\_\_\_, at Reception/Document No. 0708526129 of the Cook County, Illinois real estate records (hereinafter called the "Security Instrument"), Borrower granted a first lien interest in the Property and the Premises to Lender; and

WHEREAS, by Assignment of Leases, Rents, Income and Profits dated MARCH 19, 2007, and recorded on 3-26-07, \_\_\_\_\_, at Reception/Document No. 0708526130 of the Cook County, Illinois real estate records (hereinafter called the "Assignment"), Borrower assigned all leases, rents, security deposits or other security affecting the mortgaged premises, as security for the payment of the indebtedness of Borrower to Lender; and

WHEREAS, Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of the Security Instrument.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt of which is hereby acknowledged, and in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. Subject to Paragraphs 2 and 3, the Lease and all estates, options (including purchase options, if any), liens and charges therein contained or created thereunder is and shall be subject and subordinate to the lien and effect of the Security Instrument insofar as it affects the real and personal property not owned by Tenant of which the Premises forms a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Security Instrument had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Lender takes possession of the Premises as mortgagee-in-possession or through a receiver, or forecloses the Security Instrument or takes a deed in lieu of foreclosure, Lender agrees not to affect or disturb Tenant's right to possession and use of the Premises in accordance with the terms and conditions of the Lease in the exercise of Lender's rights so long as Tenant is not in default under any of the term, covenants or conditions of the Lease past any applicable notice and cure periods.

3. In the event that Lender succeeds to the interest of Borrower under the Lease and/or to title to the Premises, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease. Accordingly, from and after such event, Lender and Tenant shall have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Borrower had before Lender succeeded to the interest of Borrower; provided however, that Lender shall not be:

- i. liable for any act or omission of any prior landlord (including the Borrower and Landlord) except for such acts or omissions that continue after the date Lender succeeds to the interest of Borrower under the Lease and provided that Tenant has delivered to Lender notice of such acts or omissions pursuant to paragraph 6(i) hereof; or
- ii. subject to any offsets or defenses which Tenant might have against any prior landlord (including the Borrower and Landlord) except to the extent any such offset or defense arose as a result of a default under the Lease by any prior Landlord (including Borrower) and Lender was provided notice (pursuant to paragraph 6 (i) hereof) of such default and an opportunity to cure; or
- iii. bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Borrower

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and Landlord) except for reconciliation of estimated payments of Taxes and operating expenses; or

- iv. bound by any amendment or modification of the Lease made without Lender's written consent; or
- v. liable for the repayment of any security deposit not actually paid to the Lender.

4. In the event that anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Security Instrument, or upon the sale of the Premises by Lender or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant shall remain bound unto the new owner so long as the new owner agrees to be bound to Tenant under all terms, covenants and conditions of the Lease.

5. In the event Lender becomes a mortgagee-in-possession of the Premises or exercises its rights under the Assignment or the Security Instrument, Borrower and Landlord authorize and agree that Tenant shall make all payments payable by Tenant under the Lease directly to Lender upon Lender's written instructions to Tenant.

6. Tenant agrees with Lender:

- (i. to deliver to Lender at the address first set forth above or such other address that Lender has provided to Tenant a duplicate of each notice of default delivered to Landlord at the same time as such notice is given to Landlord.

7. This Agreement shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns.

8. This Agreement may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[SIGNATURE PAGES ATTACHED]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the day and year first above written.

LENDER:

ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation

By: Laura Dodd

Print Name: Laura Dodd

Its: Manager

STATE OF Washington

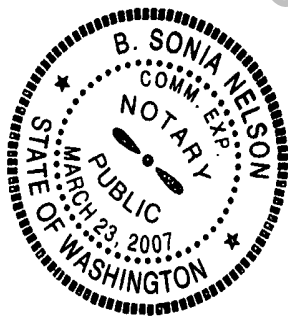
COUNTY OF King

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of March, 2007, by LAURA DODD, the MANAGER of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, on behalf of the corporation.

B. Sonia Nelson  
Notary Public

Printed Name: B. SONIA NELSON

My Commission Expires: 3-23-2007



(SEAL)

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LANDLORD:

DBSI HOUSING INC.,  
an Idaho corporation, its successors and assigns

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of DBSI HOUSING INC., an Idaho corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(SEAL)

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LANDLORD:

DBSI HOUSING INC.,  
an Idaho corporation, its successors and assigns.

By: [Signature]  
Jeremy Swenson

Print Name: \_\_\_\_\_

Its: Assistant Secretary

STATE OF Idaho

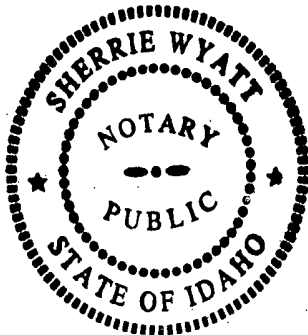
COUNTY OF Ada

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2007, by Jeremy Swenson, the Asst. Sec. of DBSI HOUSING INC., an Idaho corporation, on behalf of the corporation.

[Signature]  
Notary Public

Printed Name: Sherrie Wyatt

My Commission Expires: 5-15-07



(SEAL)

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TENANT:

CAREER EDUCATION CORPORATION  
A Delaware corporation

By: [Signature]

Print Name: Kenneth Zilch

Its: Asst Secy.

STATE OF ILLINOIS

COUNTY OF COOK

The foregoing instrument was acknowledged before me this 26, day of February, 2007, by KENNETH ZILCH, the Assistant Secretary of CAREER EDUCATION CORPORATION, a Delaware corporation, on behalf of the corporation.



Nancy D Burns  
Notary Public

Printed Name: Nancy D Burns

My Commission Expires: \_\_\_\_\_

(SEAL)

APPROVED  
RE: [Signature]  
LEGAL [Signature]

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## EXHIBIT A

### LEGAL DESCRIPTION

The Property is located in Cook County, Illinois, and is legally described as follows:

*[TO BE INSERTED PRIOR TO RECORDING]*

Property of Cook County Clerk's Office



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## EXHIBIT A LEGAL DESCRIPTION OF PROPERTY

The Property is located in Cook County, Illinois, and is legally described as follows:

**STREET ADDRESS:**

**CITY:**

**COUNTY: COOK**

**TAX NUMBER: 03-29-349-025-0000**

**LEGAL DESCRIPTION:**

**PARCEL 1:**

LOTS 3, 4, AND 6 IN THE ARLINGTON TOWN SQUARE SUBDIVISION, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 5 IN BLOCK 27, LOT 6 IN BLOCK 30 AND THAT PART OF VACATED ROBINSON STREET LYING SOUTH OF AND ADJOINING SAID LOT 5 AND NORTH OF AND ADJOINING SAID LOT 8, IN THE TOWN OF DUNTON, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AND OPERATING AGREEMENT RECORDED AS DOCUMENT 99608031, FOR INGRESS AND EGRESS, STRUCTURAL SUPPORT, USE OF FACILITIES, COMMON WALLS, CEILINGS AND FLOORS, UTILITIES, FUTURE FACILITIES, MECHANICAL ROOM, ELEVATOR, USE OF PART OF THE CONDOMINIUM IMPROVEMENTS ROOF, MAINTENANCE OF COMMERCIAL OWNED FACILITIES, SIGNS AND CANOPIES, ENCROACHMENTS, MECHANICAL AND EQUIPMENT ROOMS, STORAGE ROOM, DELIVERIES, DUCTS AND VENTS, ELEVATORS AND STAIRWAYS, REFUSE AND EMERGENCY ACCESS, CECO VAULT AND ACCESS TO SAID VAULT AND CONTROL PANELS OVER AND UPON THE PUBLIC PARKING GARAGE PARCEL AND THE CONDOMINIUM PARCELS LOCATED ON LOTS 1, 2, 5, 7 AND 8 IN AFORESAID SUBDIVISION.

**Addresses:**

40, 42, 50, 56, 58, 60, 66, 70, 76 and 88 S. Arlington Heights Road

3, 11, 15, 19, 21, 23, 27, 31, 33, 37, 41, 45, 47, 53, 61, 69, 81, 83 and 89 S. Evergreen Avenue.

15, 17, 19, 21, 25 and 29 S. Dunton Avenue.

**Tax ID Numbers:**

03-29-348-004-0000

03-29-348-005-0000

03-29-348-006-0000

03-29-348-007-0000

03-29-349-025-0000

03-29-349-026-0000

03-29-349-028-0000