

UNOFFICIAL COPY

This document was prepared by,
and after recording, return to:

Michael D. Rothstein, Esq.
Schwartz, Cooper, Greenberger &
Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601



Doc#: 0729144015 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/18/2007 11:36 AM Pg: 1 of 9

Property Address:

430 Village Center Drive
Burr Ridge, Illinois

This space reserv

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of July 3, 2007 (the "Agreement"), is executed by and among Opus Real Estate IL VII Burr Ridge, L.L.C., a Delaware limited liability company (the "Landlord"), LensCrafters, Inc., an Ohio corporation (the "Tenant"), and LaSalle Bank National Association, a national banking association (the "Lender").

RECITALS:

A. The Lender is the beneficiary under that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 29, 2006, recorded prior to the date hereof (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount One Hundred Four Million One Hundred Fifty Thousand and 00/100 Dollars (\$104,150,000.00).

B. The Tenant has entered into that certain lease agreement dated July 3, 2007 with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 2,862 rentable square feet of space in the building ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

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:

AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.

2. Intentionally Omitted.

3. The Tenant covenants with the Lender that the Lease shall be 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

CHI-33683 / 04.07291B
TCL

UNOFFICIAL COPY

foregoing subordination provision, the 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 subordinate to the Lender's right, title and interest in and to such proceeds and awards.

4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and 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, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.

5. The Lender agrees that so long as the Tenant is not in default beyond any applicable notice and cure period under the Lease:

(a) The 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 the Tenant is a necessary party under applicable law); and

(b) The possession by the Tenant of the Leased Premises and the 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.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and (b) allow the Lender not less than fifteen (15) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such fifteen (15) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this Section 6, 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 the Landlord having effectuated a cure thereof.

7. If the Lender 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 the 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 subsection (b) below), and in such event:

(a) The 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 the Tenant elects or has elected to exercise its options to extend the term), and the 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 the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant

UNOFFICIAL COPY

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 the Landlord), provided that New Owner will be: (1) subject to any right of set-off from rent which the Lease expressly affords to Tenant, to the extent Tenant has, in accordance with the notice provisions of the Lease and this Agreement, timely delivered written notice to Lender of the default giving rise to such right of set-off and has afforded the time period specified in the Lease for Landlord to cure such default; and (2) obligated to cure any continuing default under the Lease to the extent written notice thereof was provided to Lender prior to foreclosure and such default remains uncured;

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender 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 6 above;

(iii) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(iv) bound by any amendment or modification of the Lease made without the Lender's consent that reduces the term of the Lease or the rental payable under the Lease, it being understood, that Landlord shall obtain Lender's consent to any amendment or modification of the Lease which reduces the term of the Lease or the rental payable under the Lease, as the case may be, prior to execution of any such amendment or modification by Landlord and Tenant and shall provide Tenant with evidence of such consent upon Tenant's request;

(v) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord), except New Owner will be responsible for any construction allowance not paid by a prior landlord, provided Tenant has satisfied all conditions to payment of the construction allowance; or

(vi) 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. Tenant will not pay the rent or any other sums due under the Lease more than one month in advance, except with the written consent of Lender.

9. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (b) by overnight express carrier, addressed in each case as follows:

To the Lender: 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

UNOFFICIAL COPY

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

To the Landlord: Opus Real Estate IL VII Burr Ridge, L.L.C.
c/o Opus North Corporation
9700 West Higgins Road, Suite 900
Rosemont, Illinois 60018
Attn.: Vice President

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

To the Tenant: Lenscrafters, Inc.
4000 Luxottica Place
Mason, Ohio 45040
Attention: Lease Administration

With a copy to: Lenscrafters, Inc.
4000 Luxottica Place
Mason, Ohio 45040
Attention: Vice President Real Estate

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 section shall be deemed received on the date of receipt or refusal.

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 the Lender, 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

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

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

TENANT:

LENSCRAFTERS, INC., an Ohio corporation

By: Steve Benton
Name: **Steve Benton**
Title: **Sr Vice President**

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: Don Blazewicz
Name: **Don Blazewicz**
Title: **FVP**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DOW BRODERICK , the FVP of LaSalle Bank National Association, a national banking association, as trustee as aforesaid, who is 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 as such FVP , he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking association, as trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of July, 2007.

 Sheila Davis
Notary Public



My Commission Expires:

 7-25-08

UNOFFICIAL COPY

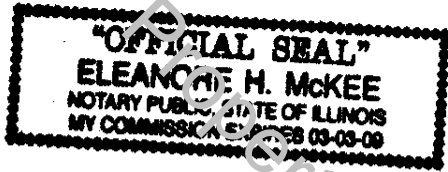
STATE OF)
) ss.
COUNTY OF)

This instrument was acknowledged before me on the 3rd day of July, 2007 by Robert A. Galante, the V.P. of Opus Real Estate IL VII Burr Ridge L.L.C., a Delaware limited liability company, on behalf of the company.

Eleanore H. McKee
NOTARY PUBLIC SIGNATURE

Eleanore H. McKee
Printed Name of Notary Public

My Commission Expires: 03-03-09



(SEAL)

City of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF OHIO)
) SS.
COUNTY OF WARREN)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steve Benton, the Senior Vice President, of LensCrafters, Inc., an Ohio corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. VP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of June, 2007.



CHRISTINE OSBORNE
Notary Public, State of Ohio
My Commission Expires
April 30, 2011

Christine Osborne
Notary Public

My Commission Expires:
4-30-11

Proprietary Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit "A"

Legal Description of Real Estate

LOTS 1 THROUGH 6 OF THE BURR RIDGE VILLAGE CENTER PLANNED UNIT DEVELOPMENT SUBDIVISION, RECORDED OCTOBER 2, 2006 AS DOCUMENT NUMBER 0627510200 IN COOK COUNTY, ILLINOIS.

18-30-300-028
.029
Property of Cook County Clerk's Office