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Doc#: 0800203013 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/02/2008 02:16 PM Pg: 1 of 12

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Property of Cook County Clerk's Office

LEASE SUBORDINATION AGREEMENT

box 334

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AFTER RECORDING RETURN TO:

Washington Mutual Bank
Attn. POST CLOSING - 3545RMTX
c/o National Commercial Operations Center
P.O. Box 9011
Coppell, TX 75019-9011
Loan No. 780837365

Handwritten notes: 2 of 3 e-111, 8421595, 12/28/07

LEASE SUBORDINATION AGREEMENT

THIS LEASE SUBORDINATION AGREEMENT (this "Agreement") is made as of December 24, 2007, by and between WASHINGTON MUTUAL BANK, a federal association (together with its successors and assigns, "Lender"), Chicago Title Land Trust Company, a Corporation of Illinois, as Trustee of Trust Agreement dated March 12, 1998 known as Trust Number 1105656 ("Borrower"), and Blue Chicago Inc. ("Tenant").

Borrower is or expects to become the landlord and Tenant is the tenant under a lease dated 12/28/07 (as amended, the "Lease"). The Lease covers all or a portion (such leased premises, the "Leased Premises") of the real property described on the attached Exhibit A and the improvements thereon (the "Property"). Borrower has obtained or applied for a loan (the "Loan"), payment of which is to be secured by a mortgage, deed of trust or other security instrument (any of the foregoing, "Security Instrument") encumbering the Property. (All documents evidencing or securing the Loan, including the Security Instrument, are referred to as the "Loan Documents.") Tenant has agreed to subordinate the Lease to the Security Instrument in accordance with the terms and conditions set forth below. The parties agree as follows:

1. **Subordination.** The Lease, and all other rights and interests of Tenant in the Property (including any purchase options and rights of first refusal) are and at all times will be subordinate to the Loan Documents and the lien of the Security Instrument, to all advances made or to be made thereunder, and to any and all renewals, extensions, modifications, or replacements thereof. Tenant acknowledges and agrees that no right of first refusal held by Tenant will be exercisable in connection with any transfer pursuant to a Foreclosure Event (as defined below).

2. **Attornment.** After any transfer of the Property pursuant to a Foreclosure Event, if Lender elects in its sole discretion not to foreclose out the Lease, Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon such Foreclosure Event. Notwithstanding any other provision of this Agreement, Successor Landlord will not be liable for or bound by any of the following:

- (a) any act, omission, breach of the Lease, representation or warranty of Borrower or any other prior landlord;

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- (b) any offset or credit Tenant may have against Borrower or any other prior landlord;
- (c) any obligation with respect to any prepaid rent for greater than one (1) month, unless such payment is required under the Lease;
- (d) any obligation to return or give credit for any security deposit under the Lease, unless such security deposit has actually been delivered to Successor Landlord;
- (e) unless previously approved in writing by Lender, any modification or waiver of any provision of the Lease;
- (f) any payment of rent by Tenant to Borrower in violation of Section 4 below;
- (g) termination, sublease or assignment of the Lease occurring after the date of this Agreement, unless expressly approved in writing by Lender; or
- (h) any purchase option or right of first refusal with respect to the Property granted under the Lease or otherwise held by Tenant.

"Foreclosure Event" means: (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies as a result of which a Successor Landlord becomes the owner of the Property; or (iii) delivery to Lender (or its designee or nominee) of a deed or other conveyance of the Property in lieu of (i) or (ii) above.

"Successor Landlord" means Lender or any other person or entity that becomes the owner of the Property as the result of, or after, a Foreclosure Event.

3. **Notice and Opportunity To Cure Defaults.** Tenant shall notify Lender of any default by Borrower under the Lease and offer Lender the opportunity (without the obligation to) to cure such default and not terminate (or otherwise exercise any remedies with respect to) the Lease for a period of thirty (30) days following Lender's actual receipt of such notice; or such longer period as reasonably necessary to cure such default, provided Lender commences such cure within the initial 30-day period and prosecutes the same with reasonable diligence (which, if such cure requires possession of the Property, shall include the foreclosure of the Security Instrument).

4. **Other Acknowledgments and Agreements.** Tenant acknowledges and agrees that: (a) the Lease will be assigned to Lender under the Security Instrument; (b) upon and after Lender's written request and written notice that an event of default has occurred under any of the Loan Documents, Tenant will (and Borrower authorizes Tenant to) pay all rent and other amounts due and owing to Borrower under the Lease directly to Lender; (c) Lender has no obligation to Tenant regarding Borrower's application of the proceeds of the Loan; (d) Tenant shall at the request of Lender certify promptly in writing to Lender and any proposed assignee of the Loan whether or not any default on the part of Borrower then exists under the Lease; (e) notwithstanding Section 1 above, Lender may in its sole discretion at any time record (or otherwise provide in accordance with applicable law) notice that it elects the Security Instrument to become subordinate to the Lease, which recorded or other notice need only be executed by Lender; and upon such recording (or the giving of such other notice), the Security Instrument shall be subordinate to the Lease; and (f) if Lender

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becomes the Successor Landlord, Lender shall have no liability to Tenant with respect to the Lease after Lender no longer has any ownership interest in the Property, except to the extent such liability arises solely by acts or omissions of Lender during the period of Lender's ownership of the Property.

5. Miscellaneous.

(a) Binding Effect. This Agreement will inure to the benefit of and be binding upon the parties hereto, their successors and assigns and the holder from time to time of the Note.

(b) Entire Agreement. This Agreement constitutes the final expression of the entire agreement of the parties with respect to the subordination of the Lease to the lien of the Security Instrument. If there are any conflicts between the Security Instrument and the Lease, the Security Instrument shall control. This Agreement may not be modified other than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

(c) Effect on Lease. Except as modified by this Agreement, all of the terms and provisions of the Lease will remain in full force and effect. If there are any conflicts between the Lease and this Agreement, the terms and provisions of this Agreement will control.

(d) Counterparts. This Agreement may be executed in any number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts will collectively constitute one agreement.

(e) Waiver of Jury Trial. BORROWER, TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(f) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located, without regard to its conflicts of laws principles.

(g) Legal Costs. In the event of any litigation to enforce the terms of this Agreement or to recover damages for the breach thereof, the prevailing party or parties will be entitled to recover from the nonprevailing party or parties all attorneys' fees and other costs and expenses incurred in connection therewith.

(h) Notices. All notices under this Agreement will be in writing and mailed or delivered by recognized overnight delivery service (such as Federal Express) at the following addresses:

If to Lender:

Washington Mutual Bank
National Commercial Operations Center
3929 W. John Carpenter Freeway
Portfolio Administration – Transactions
3545 PMTX
Irving, TX 75063

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Loan No. 780837365

All such notices will: (a) if mailed, be effective three (3) business days following deposit in the United States mail with postage prepaid and return receipt requested; and (b) if delivered as provided above, be effective upon delivery. Any party to this Agreement may change the address for notices to that party by written notice to the other parties to this Agreement.

DATED as of the day and year first above written.

LENDER:

WASHINGTON MUTUAL BANK, a federal association

By _____
Its _____

BORROWER:

Chicago Title Land Trust Company, a Corporation of Illinois, as Trustee of Trust Agreement dated March 12, 1998 known as Trust Number 1105656

By *Lynda J. Barrie*
Its **ASST. VICE PRESIDENT**

TENANT:

Blue Chicago, Inc.

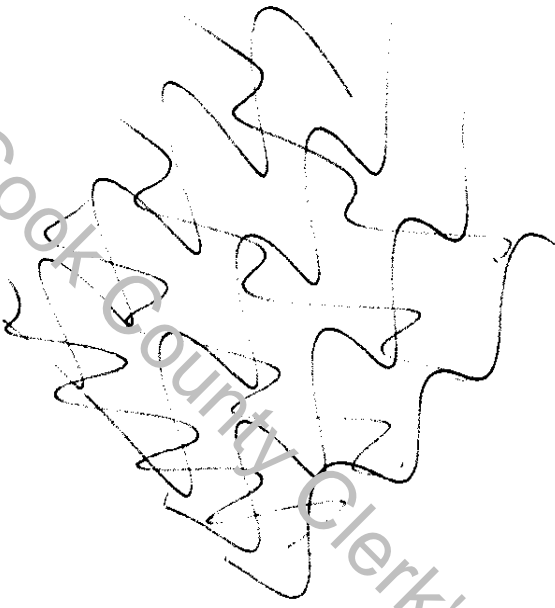
By *[Signature]*
Its *[Signature]*

It is expressly understood and agreed by and between the parties hereto, and it is to be read by and construed, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee or for the purpose of or in intention of holding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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[INSERT APPROPRIATE ACKNOWLEDGMENT
FORMS FOR EACH OF THE ABOVE
SIGNATORIES]

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EXHIBIT A

Legal Description

Property of Cook County Clerk's Office

A large, diagonal watermark reading "Property of Cook County Clerk's Office" is overlaid on the page. In the center of the page, there are several overlapping, handwritten scribbles in black ink, which appear to be illegible signatures or initials.

EXHIBIT A

SE 219922 v11

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A (CONTINUED)

ORDER NO.: 1401 008421595 F1

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS :

~~PARCEL 1:~~

~~LOT 1 IN BLOCK 14 IN ASSESSOR'S DIVISION OF LOTS 1 TO 8, INCLUSIVE IN BLOCK 14 IN WOLCOTT'S ADDITION TO CHICAGO, IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS~~

PARCEL #: *Blue Chicago, Inc / 17-09-239-024-0000 / Trust #: 1105654*

LOT 2 IN ASSESSOR'S DIVISION OF LOTS 1 TO 8, INCLUSIVE, IN BLOCK 14 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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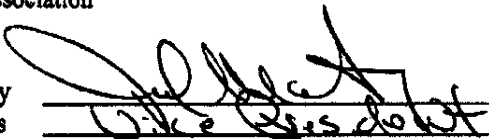
Loan No. 780837365

All such notices will: (a) if mailed, be effective three (3) business days following deposit in the United States mail with postage prepaid and return receipt requested; and (b) if delivered as provided above, be effective upon delivery. Any party to this Agreement may change the address for notices to that party by written notice to the other parties to this Agreement.

DATED as of the day and year first above written.

LENDER:

WASHINGTON MUTUAL BANK, a federal association

By 
Its _____

BORROWER:

Chicago Title Land Trust Company, a Corporation of Illinois, as Trustee of Trust Agreement dated March 12, 1998 known as Trust Number 1105656

By _____
Its _____

TENANT:

Blue Chicago Inc.

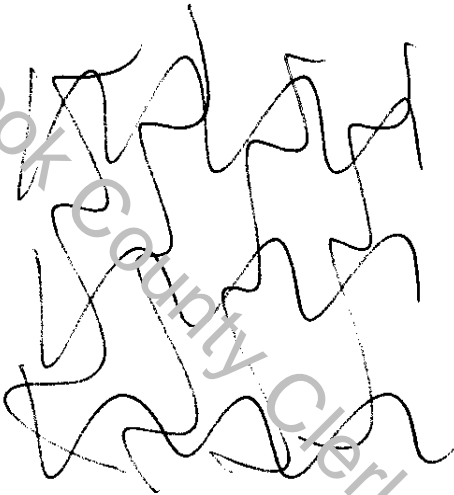
By _____
Its _____

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[INSERT APPROPRIATE ACKNOWLEDGMENT
FORMS FOR EACH OF THE ABOVE
SIGNATORIES]

Property of Cook County Clerk's Office

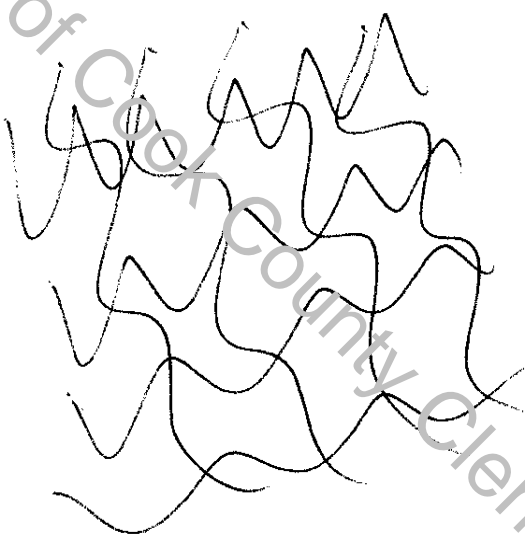
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EXHIBIT A

Legal Description

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State of Texas
County of Dallas

) ss.
)

On the 27 day of December
in the year 2007, before me, the undersigned, a Notary
Public in and for said state, personally appeared

Judy McKinney

personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s)
is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same
in his/her/their capacity(ies), and that by his/her/their
signature(s) on the instrument, the individual(s), or the
person upon behalf of which the individual(s) acted,
executed the instrument, and that such individual made
such appearance before the undersigned in the city of
Coppell and the state of Texas.

Jennifer Bragg
Signature of Notary Public



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