

# UNOFFICIAL COPY

PREPARED BY AND RECORDING  
REQUESTED BY:

Steven F. Ginsberg, Esq.  
Levenfeld Pearlstein, LLC  
2 North LaSalle Street  
Suite 1300  
Chicago, IL 60602



Doc#: 0812733169 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/06/2008 11:39 AM Pg: 1 of 8

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") made as of this 2nd day of May, 2008 by Natural Wellness USA, Inc., d/b/a Veria ("Tenant"), 2010 N. Halsted, LLC ("Landlord") and NATIONAL CITY BANK ("Lender").

### Background

A. Lender is the owner and holder of a mortgage or other similar security instrument (the "Security Instrument"), covering, among other things, the real property commonly known and described as 2010 N. Halsted, Chicago, Illinois, and further described on Exhibit "A" attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "Property").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated February 25, 2008 ("Lease"), demising the Property described more particularly in the Lease ("Leased Space").

C. Landlord, Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

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2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate or amend the Lease or Tenant's rights thereunder provided, however, that (a) the term of the Lease shall commence on May 15, 2008, (b) Tenant is in possession of the premises demised pursuant to the Lease, and (c) the Lease is in full force and effect and no uncured default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease, (except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or (g) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is given to Lender. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy

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under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

## 6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the attornment, subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the attornment, subordination and nondisturbance of the Lease. This Agreement controls in case of any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days for performance shall be calendar days, and a "**business day**" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) **WAIVER OF JURY TRIAL.** TENANT, AS AN INDUCEMENT FOR LENDER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO TENANT OFFERED HEREBY, HEREBY WAIVES ITS RIGHT, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of

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any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

(signature pages follows)

Property of Cook County Clerk's Office



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**LANDLORD:**

2010 N. HALSTED, LLC

By: \_\_\_\_\_  
 Name: Fred S. Latsko  
 Its: Manager  
 Address: 908 North Halsted  
 Chicago, IL 60622

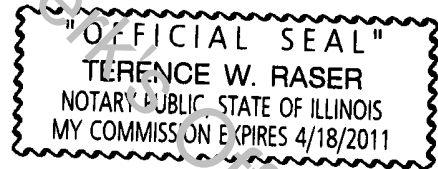
STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

On this 27th day of March, 2008, before me appeared Fred S. Latsko, to me personally known, who, being by me duly sworn did say that such person is the Manager of 2010 N. Halsted, LLC, and that the seal affixed to the foregoing instrument is the seal of said \_\_\_\_\_, and that said instrument was signed and sealed on behalf of said \_\_\_\_\_, by authority of its Board of Directors, and who acknowledged said instrument to be the free act and deed of said \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written

Terence W. Raser  
 Notary Public


My Commission Expires: 4-18-11



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**LENDER:**

NATIONAL CITY BANK

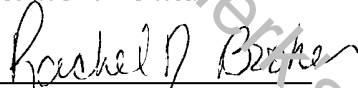
By:   
 Name: Mr. Tracy S. Larrison  
 Its: Senior Vice President  
 Address: One North Franklin  
 Suite 2150  
 Chicago, Illinois 60606

STATE OF ILLINOIS)

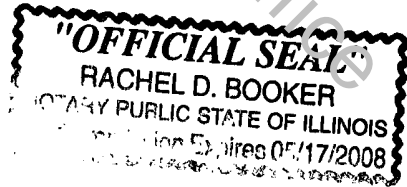
COUNTY OF COOK )

On this 1st day of May, 2008, before me appeared Mr. Tracy S. Larrison, to me personally known, who, being by me duly sworn did say that such person is a Senior Vice President of National City Bank, and that the seal affixed to the foregoing instrument is the corporate seal of said banking association, and that said instrument was signed and sealed on behalf of said banking association, by authority of its Board of Directors, and who acknowledged said instrument to be the free act and deed of said banking association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written

  
 Notary Public

My Commission Expires: 5-17-08



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## Exhibit "A"

LOT 20 IN BLOCK 8 IN CUSHMAN'S SUBDIVISION OF BLOCK 4 OF SHEFFIELDS ADDITION TO CHICAGO IN SECTIONS 29 THROUGH 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-32-228-041-0000  
ADDRESS: 2010 N. HALSTED, CHICAGO, IL

Property of Cook County Clerk's Office