



Doc#: 0827733060 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 10/03/2008 09:45 AM Pg: 1 of 10

PREPARED BY AND AFTER RECORDING
RETURN TO:

Becker Gurian
513 Central Avenue, Suite 400
Highland Park, IL 60035

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-disturbance, and Attornment Agreement (this "Agreement") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), 7230 Caldwell, LLC, an Illinois limited liability company ("Landlord"), and AFN, LLC, an Illinois limited liability company ("Tenant") is dated September 29, 2008.

Background:

A. Lender will make or has made a loan (the "Loan") to Landlord secured or to be secured by that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing executed by Landlord in favor of Lender (as amended from time to time, the "Mortgage") encumbering the property commonly known as 7230 Caldwell Avenue, Niles, Illinois 60714 (the "Property"), which Property is more particularly described on Exhibit A attached to and incorporated into this Agreement by this reference.

B. Tenant has leased the Property (the "Premises") under that certain Office Lease Agreement dated September 29, 2008 (the "Lease").

C. Lender requires the agreements, statements, and assurances contained in this Agreement. Tenant understands that, in making the Loan, Lender will rely on the agreements, assurances, and statements made in this Agreement.

Agreements:

In consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Lender, Tenant, and Landlord agree as follows:

1. **Subordination.** The Lease, and the rights of Tenant in, to, and under the Lease (including purchase options, rights of first refusal, and similar rights, if any) and the Property, are

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subject and subordinate to, and shall remain in all respects and for all purposes subject and subordinate to, the provisions and lien of the Mortgage, and to all renewals, modifications, replacements, and extensions of the Mortgage, and all other instruments held by Lender as security for the Loan.

2. **Tenant Not To Be Disturbed.** Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless the joinder is necessary to foreclose the Mortgage, and then only for that purpose and not for the purpose of terminating the Lease. If Lender or any other party becomes the owner of the Premises by reason of foreclosure, whether judicial or non-judicial or other proceedings brought to enforce the Mortgage or by deed in lieu of foreclosure (collectively a "Succeeding Owner"), the Succeeding Owner agrees that so long as Tenant is not in default under the Lease or this Agreement (beyond the cure period, if any, granted to Tenant under the terms of the Lease), Tenant's possession or occupancy of the Premises shall not be disturbed by Lender during the remaining term of the Lease.

3. **Tenant To Atorn To Lender.** If a Succeeding Owner becomes the owner of the Premises by reason of foreclosure, whether judicial or non-judicial or other proceedings brought to enforce the Mortgage or by deed in lieu of foreclosure, the Lease shall, subject to the provisions set forth in clauses (a) through (d) below, continue in full force and effect. In addition, the Succeeding Owner shall perform (but shall not personally assume) the obligations of the original Landlord under the Lease that accrue after the Succeeding Owner becomes the Owner of the Premises, and Tenant shall atorn to the Succeeding Owner as Tenant's lessor under the Lease, provided, however, that in all events, the Succeeding Owner shall not be:

(a) liable for any act or omission of any prior lessor (including Landlord) or subject to any offsets or defenses that Tenant might have against any prior lessor;

(b) liable or obligated to expand the Property; pay tenant improvement allowances, construct additional improvements, or otherwise expend funds that are capital in nature, other than expenses for ordinary maintenance and repair;

(c) liable to reconstruct the Premises or the Property to the extent insurance proceeds are not available;

(d) bound by any rent or additional rent paid more than 30 days in advance;

(e) bound by any amendment to the Lease made without Lender's or the Succeeding Owner's prior written consent;

(f) liable for the retention, application, or return of any security deposit not actually received by the Succeeding Owner; or

(g) liable or bound by any right of first refusal or option to purchase all or any portion of the Property set forth in the Lease.

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The agreements to attorn contained in this paragraph are intended to be self-effectuating in favor of any Succeeding Owner. Nevertheless, upon written request Tenant shall provide written evidence reasonably required by any Succeeding Owner of the continuing effectiveness of Tenant's obligations under this Agreement and the Lease as modified by this Agreement.

4. **Assignment of Lease and Payment of Rent.** Tenant understands that Landlord's interest in the Lease has been assigned to Lender in connection with the Loan and that no amendment, modification, or termination of the Lease shall be effective unless approved in writing by Lender. Except as provided in this Agreement, however, Lender shall assume no duty, liability, or obligation to Tenant under the Lease. Upon written demand from Lender at any time prior to release of the Mortgage, Tenant shall pay rent under the Lease directly to Lender. Landlord releases Tenant from all claims arising out of Tenant's payment of rent as instructed by Lender in writing.

5. **Notice and Right to Cure.** Tenant shall provide Lender with a copy of each notice of default given to Landlord under the Lease at the same time it gives the notice of default to Landlord. In the event of any default by Landlord under the Lease, Tenant will take no action to terminate the Lease: (a) if the default is not curable by Lender (so long as the default does not interfere with Tenant's use and occupancy of the Premises), or (b) if the default is curable by Lender, unless the default remains uncured for a period of 60 days after written notice of the default shall have been given Landlord and Lender, provided, however, that if the default cannot be cured reasonably within the 60 day period, the period shall be extended for the additional period of time necessary (including, without limitation, a reasonable period of time to obtain possession of the Premises and to foreclose the Mortgage), if Lender gives Tenant written notice within the 60 day period of Lender's election to cure the default and if curative action (including, without limitation, action to obtain possession and foreclosure) is instituted within a reasonable period of time and is diligently pursued. Lender shall have no obligation to cure any default under the Lease.

6. **Notices.** Notices and demands required, desired, or permitted to be given under this Agreement shall be in writing and shall not be effective unless it is served either by personal delivery with a receipt requested, by nationally recognized overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

if to Lender: The PrivateBank and Trust Company
70 West Madison Street, Suite 200
Chicago, Illinois 60602-4202
Attention: Loan Operations

with a copy to: Becker Gurian
513 Central Avenue, Suite 400
Highland Park, Illinois 60035
Attention: Robert E. Blacher

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if to Landlord: 7230 Caldwell, LLC
1435 Lake Cook Road
Deerfield, Illinois 60015

with a copy to: Daspin & Aument, LLP
227 West Monroe Street, Suite 3500
Chicago, Illinois 60606
Attention: Christina Brotto

if to Tenant: AFN, LLC
7230 Caldwell Avenue
Niles, Illinois 60714

with a copy to: Daspin & Aument, LLP
227 West Monroe Street, Suite 3500
Chicago, Illinois 60606
Attention: Christina Brotto

Notices and demands shall be deemed to have been received 3 days after mailing if sent via regular mail, otherwise upon delivery. A party may change its address for receipt of notices by giving notice to the other parties.

7. **Tenant's Agreements.** Tenant covenants and agrees that Tenant: (a) shall not pay any rent under the Lease more than one month in advance; (b) shall have no right to appear in any foreclosure action under the Mortgage; (c) shall not amend, modify, cancel, or terminate the Lease without Lender's prior written consent, and any attempted amendment, modification, cancellation, or termination of the Lease without that consent shall be of no force or effect; (d) shall not subordinate the Lease to any lien or encumbrance (other than the Mortgage) without Lender's prior written consent; (e) shall not assign the Lease or sublet all or any portion of the Premises without Lender's prior written consent; and (f) shall promptly deliver to Lender, from time to time, a written statement in form and substance satisfactory to Lender certifying to certain matters relating to the Lease.

8. **WAIVER OF JURY TRIAL.** THE PARTIES, HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

9. **Miscellaneous.** This Agreement (a) shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; (b) may not be changed, terminated, or

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modified orally or in any manner other than by an instrument in writing signed by the parties to this Agreement; (c) shall be governed by and construed under the laws of the jurisdiction where this Agreement is recorded; and (d) may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had executed the same document.

[The signature page follows]

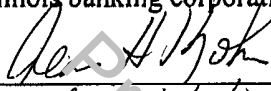
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Signed:

LENDER:

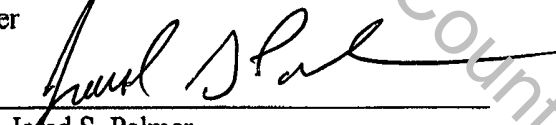
The PrivateBank and Trust Company,
an Illinois banking corporation

By: 
Name: ALAN H. ISAACS
Its: MANAGING DIRECTOR

LANDLORD:

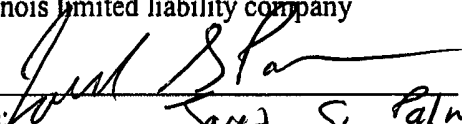
7230 Caldwell, LLC,
an Illinois limited liability company

By: M & R Business Management Services, Inc.,
an Illinois corporation
Its: Manager

By: 
Jared S. Palmer
Its: Secretary

TENANT:

AFN, LLC,
an Illinois limited liability company

By: 
Name: Jared S. Palmer
Its: General Counsel

Property of Cook County Clerk's Office

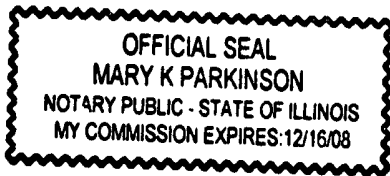
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State of Illinois)

County of Lake) ss.

On September 29, 2008, before me, Mary K. Parkinson, a notary public, personally appeared Alan H. Kohn, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Mary K. Parkinson
Notary Public

(seal)

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State of Illinois)
)
County of Lake) ss.

On September 29, 2008, before me, Mary K Parkinson, a notary public, personally appeared David S. Palmer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary K Parkinson
Notary Public



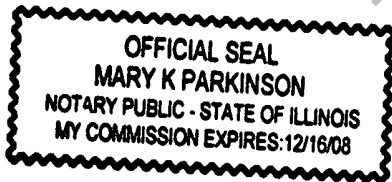
(seal)

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State of Illinois)
)
County of Lake) ss.

On September 29, 2008, before me, Mary K. Parkinson, a notary public, personally appeared David S. Palmer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Mary K. Parkinson
Notary Public

(seal)

UNOFFICIAL COPY**EXHIBIT A****[REAL PROPERTY DESCRIPTION]****PARCEL 1:**

THAT PART OF LOT 1 IN KINZIE'S SUBDIVISION OF JANE MIRANDA'S RESERVATION IN TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 1, THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, 240 FEET; THENCE NORTHEASTERLY ALONG A LINE 240 FEET SOUTHEASTERLY OF AND PARALLEL TO THE NORTHWESTERLY LINE OF SAID LOT 1, 176.69 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING NORTHEASTERLY ALONG SAID LINE PARALLEL TO THE NORTHWESTERLY LINE OF SAID LOT 1, 492.94 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 1; THENCE SOUTHEASTERLY ALONG NORTHEASTERLY LINE OF LOT 1, 13.04 FEET TO ITS INTERSECTION WITH THE WESTERLY LINE OF CALDWELL AVENUE AS PER DOCUMENT NUMBERS 11657313 TO 11657318; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE OF CALDWELL AVENUE BEING CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2577.92 FEET TO THE POINT OF CURVE; THENCE CONTINUING SOUTHEASTERLY ON SAID WESTERLY LINE OF CALDWELL AVENUE 46.82 FEET TO THE NORTHWESTERLY LINE OF GROSS POINT ROAD, SAID NORTHWESTERLY LINE OF GROSS POINT ROAD BEING 33 FEET NORTHWESTERLY OF AND PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID LOT 1; THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF GROSS POINT ROAD, TO A POINT 134.62 FEET NORTHEASTERLY OF THE INTERSECTION OF NORTHERLY LINE OF TOUHY AVENUE AND SAID NORTHWESTERLY LINE OF GROSS POINT ROAD; THENCE NORTHERLY 392.01 FEET TO THE POINT OF BEGINNING.

ALSO

PARCEL 2

THAT PART OF LOT 'B' LYING SOUTHEASTERLY OF THE NORTHEASTERLY EXTENSION OF SAID LOT 1, 240 FEET SOUTHEASTERLY OF AND PARALLEL TO THE NORTHWESTERLY LINE OF SAID LOT 1 IN KINZIE 'S SUBDIVISION AFORESAID SAID LOT 'B' BEING IN THE SUBDIVISION OF ALL OF LOT 3 AND LOT 2 (EXCEPT THE EASTERLY ½ OF LOT 2 MEASURED FROM THE CENTER OF THE NORTH LINE OF SAID LOT 2 TO A POINT IN THE CENTER OF THE SOUTHEASTERLY LINE OF SAID LOT 2) IN THE RESUBDIVISION OF CALEDONIA PARK BEING A SUBDIVISION OF THE FRACTIONAL EAST ½ OF THE SOUTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF CALEDONIA ROAD (EXCEPT THE NORTH 30 ACRES THEREOF), IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 10-30-402-029-0000

Common Address: 7230 Caldwell Avenue, Niles, Illinois