



Doc#: 0909355047 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/03/2009 02:26 PM Pg: 1 of 9

08-03861 Repairer
After Recording, Return to:
Attn: General Counsel
Vitamin Shoppe Industries Inc.
2101 91st Street
North Bergen, New Jersey 07047

(The Above Space for Recorder's Use Only)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT

A. THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the 19 day of Feb, 2009, by and between First Midwest Bank, a National Banking [corporation] [limited] [general] [partnership] [national banking association], having an office at 770 W. Dundee Arlington Heights (the "Mortgagee") and VS DIRECT INC., a Delaware corporation, having an office at 2101- 91st Street, North Bergen, New Jersey 07047 (the "Tenant").

WITNESSETH:

WHEREAS, Mortgagee is the holder of a mortgage (the "Mortgage") covering a parcel of land owned by ELSTON AVENUE PROPERTIES, L.L.C., an Illinois limited liability company, with an office at c/o Novak Construction Company, 3423 North Drake Avenue, Chicago, Illinois 60618 (the "Landlord") together with the improvements [to be] erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "Shopping Center" and being more particularly described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of 1/29/09 (the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "Premises"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, as an inducement to Tenant to enter into the Lease, the Lease provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee; and

PREMIER TITLE COMPANY
1350 W. NORTHWEST HIGHWAY
ARLINGTON HEIGHTS, IL 60004
(847) 255-7100

PREMIER TITLE

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WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage; and]

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the estate of the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof (and such subordination shall not lessen or diminish Tenant's rights under the Lease), subject, however, to the provisions of this Agreement.

3. Mortgagee agrees that so long as the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and grace period.

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby;

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will Tenant's obligations under the Lease be increased, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding brought upon the Mortgage or the bond or note or other obligation secured thereby or 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 Premises or the Shopping Center, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

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4. If Mortgagee or any future holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center 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 Tenant and the then owner of the Shopping Center, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) 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 Renewal Option Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Option Periods, if Tenant elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest of "landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord if such new owner had not succeeded to the interest of "landlord"; provided, however that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) unless such act or omission results from (A) any default or breach by such prior landlord following which Tenant provided notice thereof to the Mortgagee or (B) any default or breach by such prior landlord which continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

(ii) subject to any defenses which Tenant may have against any prior landlord (including Landlord) unless resulting from any default or breach by such prior landlord following which Tenant provided notice thereof to the Mortgagee or from any default or breach by such prior landlord which continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

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(iii) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any fixed rent or additional rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease; or

(v) bound by any amendment or modification of the Lease made without its consent; notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner.

(c) Tenant's obligations hereunder shall be effective only so long as Mortgagee is bound to Mortgagee's obligations hereunder.

5. Tenant will notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to terminate the Lease or abate the rent payable thereunder and agrees that notwithstanding any provision of the Lease, no notice of termination thereof nor any abatement shall be effective unless Mortgagee has received the aforesaid notice and has failed to cure the subject default within the same time period allowed Landlord under the Lease. It is understood that the abatement provisions of this Section relate to abatements by reason of Landlord's default and do not apply to provisions of the Lease whereby Tenant has the automatic right to abate rentals such as, for example, abatement upon casualty or condemnation.

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6. Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

7. Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address or persons as Mortgagee may designate by notice in the manner herein set forth, or (b) if to Tenant, at the address of Tenant as hereinabove set forth, "Attn: General Counsel", with duplicate copies to VS Direct Inc., 2101 91st Street, North Bergen, New Jersey 07047, Attn: Real Estate Dept., or such other address or persons as Tenant may designate by notice in the manner herein set forth. All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

8. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors, assigns, and sublessees.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

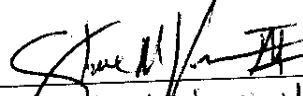
10. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

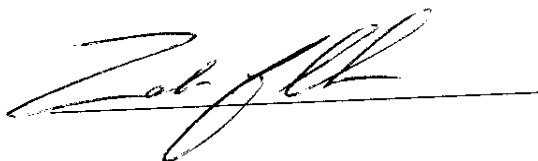
IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

ATTEST:

MORTGAGEE:

FIRST MIDWEST BANK

By: 
Name: STEVEN M. VERDON II
Title: Assistant Vice - President



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TENANT:

VS DIRECT INC.

ATTEST:

By: *Cosmo La Forgia* *llc*
Name: Cosmo La Forgia
Title: VP of Finance

Alexandra Jimenez

Property of Cook County Clerk's Office

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STATE OF)
) : ss.
COUNTY OF)

On this 19 day of February, 2009, before me personally came S. Vernen III to me known, who being by me duly sworn, did depose and say that he is the AVP of First Midwest Bank, the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

Notary Public



My Commission Expires:



STATE OF NEW JERSEY)
) : ss.
COUNTY OF HUDSON)

On this 23rd day of January, 2009, before me personally came Cosmo La Forgia to me known, who being by me duly sworn, did depose and say that he is the VP of Finance of VS DIRECT INC., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.



Notary Public

My Commission Expires:



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EXHIBIT A

Legal Description of Shopping Center

LEGAL DESCRIPTION:

LOTS 11 THROUGH 29 AND LOT 49 IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

ALL THAT PART OF THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY, INCLUDING TWO (2), 5 FOOT BY 5 FOOT TRIANGULAR PUBLIC ALLEYS ADJOINING THE SOUTHEASTERLY TERMINUS OF THE AFORESAID NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY AND TWO (2) IRREGULARLY SHAPED PUBLIC ALLEYS ADJOINING THE NORTHERLY TERMINUS OF THE AFORESAID NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY, LYING EASTERLY AND NORTHEASTERLY OF THE EASTERLY AND NORTHEASTERLY LINES OF LOT 18, LYING NORTHEASTERLY OF THE NORTHEASTERLY LINE OF LOTS 19 TO 27, BOTH INCLUSIVE, LYING NORTHWESTERLY, SOUTHWESTERLY AND SOUTHERLY OF THE NORTHWESTERLY, SOUTHWESTERLY AND SOUTHERLY LINES OF LOT 49 LYING SOUTHERLY OF THE NORTHERLY LINE OF LOT 27 EXTENDED SOUTHEASTERLY TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF LOT 49 EXTENDED WESTERLY, LYING SOUTH AND SOUTHERLY OF THE NORTH LINE OF LOT 49 EXTENDED WESTERLY TO THE POINT OF INTERSECTION WITH THE NORTHERLY LINE OF LOT 27 EXTENDED SOUTHEASTERLY AND LYING NORTHWESTERLY OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE EASTERLY AND SOUTHEASTERLY LINES OF LOT 28 TO THE POINT OF INTERSECTION OF THE SOUTHEASTERLY AND SOUTHERLY LINES OF LOT 49 ALL IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN THE SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. SAID PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS THE NORTHWESTERLY-SOUTHEASTERLY 6 FOOT PUBLIC ALLEY WHOSE SOUTHWESTERLY LINE IS 120 FEET, MORE OR LESS, NORTHEASTERLY OF THE NORTHEASTERLY LINE OF N. ELSTON AVENUE, SAID PART OF PUBLIC ALLEY LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF A NORTHEASTERLY-SOUTHWESTERLY 20 FOOT PUBLIC ALLEY WHOSE SOUTHEASTERLY LINE IS 125 FEET, MORE OR LESS, NORTHWESTERLY OF THE NORTHWESTERLY LINE OF W. LOGAN BOULEVARD SAID PART OF THE PUBLIC ALLEY ALSO LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE EAST-WEST 16 FOOT PUBLIC ALLEY WHOSE NORTH LINE IS 125 FEET, MORE OR LESS, SOUTH OF THE SOUTH LINE OF W. DIVERSEY AVENUE AND LYING SOUTHERLY OF THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF THE EASTERLY-WESTERLY 20 FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY W. DIVERSEY AVENUE, W. LOGAN BOULEVARD AND N. ELSTON AVENUE AS VACATED PER ORDINANCE RECORDED DECEMBER 31, 2007 AS DOCUMENT NO. 0736503042.

ALSO

THAT PART OF THE 20 FOOT ALLEY THAT RUNS IN A NORTHEASTERLY AND SOUTHWESTERLY DIRECTION LYING NORTHWESTERLY AND ADJOINING LOTS 12 THROUGH 17 AND LYING SOUTHEASTERLY OF LOTS 18 AND 49 AND LYING NORTHEASTERLY OF A LINE DRAWN FROM THE WESTERLY MOST CORNER OF LOT 17 TO THE MOST SOUTHERLY CORNER OF LOT 18 AND LYING SOUTHWESTERLY OF A LINE 20 FEET SOUTHWESTERLY OF AND PARALLEL WITH THE MOST NORTHEASTERLY LINE OF LOT 12 EXTENDED NORTHWESTERLY TO THE SOUTHEASTERLY LINE OF LOT 49, ALL IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

EXCEPT THE NORTHEASTERLY 20.00 FEET OF LOT 12, IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SAID AREA CONTAINS 125,898 SQUARE FEET OR 2.890 ACRES, MORE OR LESS.