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PREPARED BY:
JPMorgan Chase Bank, NA
5 N. Randall Road
Batavia, IL 60510



Doc#: 0915318021 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/02/2009 11:54 AM Pg: 1 of 7

WHEN RECORDED RETURN TO:
5 N. Randall Road
Batavia, IL 60510

ATTN: Anthony Anesi

Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made on April 27, 2009, among JPMorgan Chase Bank, NA, whose business address is 5 N. Randall Road, Batavia, IL 60510, and its successors and assigns, ("Mortgagee"), David S. Hemmer, whose address is 4 N 668 Burr Road, ~~Elgin, IL 60120~~ ("Landlord") and Fox Valley Ear, Nose & Throat Associates, S.C. whose address is 1015 Summit St., Elgin, IL 60120 ("Tenant").

↑
St. Charles, IL
60175

RECITALS:

- A. Landlord and Tenant have entered into a lease agreement dated August 1, 2006, which covers certain premises (the "Premises") in the real property (the "Property") commonly known 1015 Summit Street, Lower Level, Elgin, IL 60120 and more particularly described on the attached Exhibit A (said lease agreement and any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof, whether now existing or hereafter entered into, are collectively called the "Lease").
- B. Landlord is the owner of fee simple title to the Property and the Premises.
- C. Mortgagee has made or has agreed to make a loan or other extension of credit to Landlord, secured or to be secured by, among other collateral, a mortgage from Landlord to Mortgagee (said mortgage and all amendments, modifications, extensions, renewals, consolidations and replacements thereof, whether now existing or hereafter entered into, are collectively called the "Mortgage") on the Property; and
- D. Tenant has agreed to subordinate the Lease to the lien of the Mortgage and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

- 1. **Subordination.** The Lease, and all of the terms, covenants and provisions thereof (including but not limited to purchase options and first refusal rights), is subordinate in all respects to the Mortgage, to the full extent of any and all of the Liabilities (the term "Liabilities" means "Indebtedness" as that term is defined in the Mortgage), all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.
- 2. **Attornment.** Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize Mortgagee or any other New Landlord (as defined below), and the successors and assigns of Mortgagee or any other New Landlord, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease, subject to the limitations on liability that are set forth in Paragraph 3 below. This attornment to be effective and self-operative without the execution of any further instruments.
- 3. **Non-disturbance.** Mortgagee, for itself and its successors and assigns, for any purchaser at any foreclosure, public or private sale under the Mortgage, for any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and for the successors and

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assigns of such purchaser and transferee (Mortgagee and each such other party being collectively called "New Landlord") hereby covenants and agrees with Tenant that if any New Landlord shall commence foreclosure of the Mortgage, for any reason whatsoever, or shall succeed to the interest of Landlord by foreclosure, sale by advertisement, power of sale, deed in lieu thereof or otherwise, and provided Tenant is not then in default (after expiration of any applicable grace period) under the Lease, then: (a) Tenant shall not be named as a party defendant in any foreclosure action, exercise of power of sale, sale by advertisement or any other proceeding to enforce the Mortgage, unless Tenant is deemed to be a necessary party; (b) subject to the next succeeding grammatical paragraph, the Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between such New Landlord and Tenant, with the same force and effect as if originally entered into with such New Landlord; and (c) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be diminished, interfered with or disturbed by any New Landlord by such foreclosure, sale or other action under the Mortgage or by any such attempt to foreclose, sell or succeed to the interests of Landlord by foreclosure, sale or other action under the advertisement, deed in lieu thereof or otherwise.

If any New Landlord shall succeed to the interest of Landlord under the Lease, Tenant agrees as follows:

(a) Such New Landlord shall not be: (i) subject to any credits, offsets, abatements, deductions, defenses, claims or counterclaims, of any nature or type, which Tenant might have against any prior landlord (including Landlord); (ii) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord); (iii) bound by any covenants to undertake or complete any improvement to the Premises or the Property; or (iv) bound by (A) any amendment, modification, renewal or extension (except for extensions unilaterally made by Tenant pursuant to extension options that are contained in the Lease) to the Lease, (B) any assignment, sublease, mortgage, encumbrance or other disposition of all or any part of Tenant's interest in the Lease or the Premises, (C) any surrender, cancellation or termination of the Lease, whether in whole or in part (unless the surrender, cancellation or termination is effected unilaterally by Tenant under a specific term of the Lease; provided, however, that if Tenant's right to cancel, surrender or terminate the Lease arises because of a default by Landlord under the Lease, Tenant shall not terminate, cancel or surrender the Lease because of that default unless (1) Landlord is in default under the Lease beyond any cure period provided in the Lease; (2) Tenant has given Mortgagee prior written notice of the default as provided in Paragraph 5 below; and (3) the cure period provided to Mortgagee in Paragraph 5 below has expired without Mortgagee having cured the default), (D) any option in the Lease obligating Landlord under the Lease to provide additional space at the Property to Tenant or (E) any waiver of any provision of the Lease, in each of cases (A) through (E) above, which has not been consented to in writing by Mortgagee.

(b) No New Landlord shall be liable for: (i) any act or omission of any prior landlord (including Landlord); (ii) the return of any security deposit made by Tenant to any prior landlord (including Landlord), unless such New Landlord shall have actually received such security deposit from the prior landlord; or (iii) any payment to Tenant of any sums or allowances, or any granting to Tenant of any credit, abatement or other rental concession, in the nature of a contribution towards the cost of preparing, furnishing or completing improvements at, or moving into, the Premises, the Property or any portion thereof.

(c) Tenant shall look solely to the Property for the recovery of any judgement or damages from Mortgagee or any other New Landlord and neither any New Landlord, any partner, officer, director, shareholder, member, manager, employee or agent of any of them or any successor or assign of any of the foregoing shall have any personal liability, directly or indirectly, under or in connection with the Lease, this Agreement or any amendment or amendments to either the Lease or this Agreement made at any time or times heretofore or hereafter. Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to any New Landlord under this Agreement, at law, in equity or under any other contract, agreement or instrument.

(d) Mortgagee shall be released from all duties and obligations under the Lease from and after the date that it conveys its interest in the Property to any third party.

4. Mortgagee's Consent. Landlord's consent, approval or waiver under or with respect to the Lease, the Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by written consent of Mortgagee.

5. Landlord's Default. Tenant hereby agrees to provide Mortgagee with prompt written notice of any default under the Lease by the Landlord and to provide Mortgagee a period of time equal to (a) one hundred twenty (120) days in excess of the Landlord's cure period, if any, under the Lease in connection with such default by the Landlord, plus (b) such reasonable period of time as is necessary thereafter to remedy such default if Mortgagee has commenced and is diligently pursuing such remedy. Notwithstanding the foregoing, Tenant agrees that Mortgagee shall have no obligation to remedy any such Landlord default.

6. Estoppel Certificate. Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee, within ten (10) days following Landlord's or Mortgagee's written request therefore: (a) a statement in writing certifying that (i) the Lease is in full force and effect, (ii) Landlord is not in default thereunder (or

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specifying any defaults by Landlord which Tenant alleges), (iii) rent has not been prepaid more than one (1) month in advance and (iv) any further information about the Lease or the Premises which Landlord, Mortgagee or said third party may reasonably request; (b) a statement in writing that Tenant will recognize any New Landlord as the assignee of Landlord's rights under the Lease; and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. Tenant understands that Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within ten (10) days, as described above, is a material obligation of Tenant hereunder and under the Lease.

7. Further Subordination. Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Tenant will not: (a) enter into any subordination agreement with any person other than Mortgagee; or (b) agree to attorn to or recognize any purchaser or transferee of the Property at any foreclosure sale, by exercise of power of sale, by sale by advertisement by deed in lieu thereof or otherwise, in each case, under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Property).

8. Insurance Proceeds and Condemnation Awards. Tenant agrees that any interest of Tenant in any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises and/or the Property shall be subordinate to the interests of Mortgagee in such proceeds or awards. Tenant will neither seek nor accept any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises and/or the Property until all amounts secured by the Mortgage have been paid in full. However, Tenant reserves the right to make a separate claim for trade fixtures and moving expenses if separately allocated.

9. Modification of Liabilities. From time to time, Mortgagee may, without notice to or consent of Tenant and without impairing or affecting this Agreement, do any of the following as to any of the Liabilities: (a) amend, modify, extend, or renew any or all of the Liabilities; (b) change the rate of interest being charged on any or all of the Liabilities; (c) release Landlord, any guarantor, any surety or any other third party from liability on any or all of the Liabilities; (d) compromise or settle the terms of any or all of the Liabilities; (e) forbear or agree to forbear from taking any action against Landlord, any guarantor, any surety or any other party in regard to any or all of the Liabilities; or (f) substitute, release, exchange, or take any other action in regard to any collateral, including the Property, for any or all of the Liabilities.

10. Notice. Any notices and demands under or related to this document shall be in writing and delivered to the intended party at its address stated herein, and if to the Bank, at its main office if no other address of the Mortgagee is specified herein, by one of the following means: (a) by hand, (b) by a nationally recognized overnight courier service, or (c) by certified mail, postage prepaid, with return receipt requested. Notice shall be deemed given: (a) upon receipt if delivered by hand, (b) on the Delivery Day after the day of deposit with a nationally recognized courier service, or (c) on the third Delivery Day after the notice is deposited in the mail. "Delivery Day" means a day other than a Saturday, a Sunday, or any other day on which national banking associations are authorized to be closed. Any party may change its address for purposes of the receipt of notices and demands by giving notice of such change in the manner provided in this provision.

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successor and assigns. Tenant and Landlord agree that Mortgagee may at any time sell or transfer one or more participation interests in all or any part of the Liabilities to one or more purchasers, whether or not related to Mortgagee.

12. Recording. The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.

13. Counterparts. This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

14. Captions. Captions in this Agreement are for convenience of reference only and do not limit the provisions of this Agreement.

15. Time. Time is of the essence in this Agreement.

16. Information Waiver. Tenant and Landlord agree that Mortgagee may provide any information or knowledge Mortgagee may have about Landlord, Tenant or any matter relating to this Agreement or the Related Documents (as defined in the Mortgage) to JPMORGAN CHASE & CO., or any of its subsidiaries or affiliates or their successors or to any one or more purchasers or potential purchasers of all or any part of the Liabilities and/or any Related Documents.

17. Governing Law and Venue. This Agreement is delivered in the State of Illinois and governed by Illinois law (without giving effect to its laws of conflicts). The Tenant and Landlord agree that any legal action or proceeding with respect to any of their obligations under this

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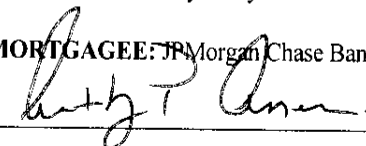
Agreement may be brought in any state or federal court located in such state, as the Mortgagee in its sole discretion may elect. By the execution and delivery of this Agreement, the Tenant and Landlord submit to and accept, for themselves and in respect of its property, generally and unconditionally, the jurisdiction of those courts. The Tenant and Landlord waive any claim that the State of Illinois is not a convenient forum or the proper venue for any such suit, action or proceeding.

18. WAIVER OF SPECIAL DAMAGES. THE TENANT AND LANDLORD WAIVE, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM MORTGAGEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

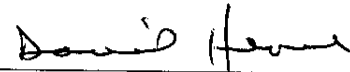
19. JURY WAIVER: LANDLORD, TENANT AND MORTGAGEE HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) AMONG ANY OF LANDLORD, TENANT AND/OR MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE MORTGAGEE TO PROVIDE THE FINANCING DESCRIBED HEREIN.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the day and year first above written.

MORTGAGEE: JPMorgan Chase Bank, NA

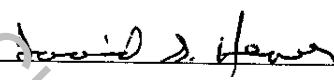


TENANT: Fox Valley Ear, Nose & Throat Associates, S.C.



President

LANDLORD: David S. Hemmer



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ACKNOWLEDGEMENT OF MORTGAGEE

State of Illinois)
) ss.
County of DuPage)

I, The Undersigned, a Notary Public in and for said County and State, certify that Anthony P. Anesi, a 1st Vice Pres of JPMorgan Chase Bank, personally known to me to be the person whose name is subscribed to the foregoing instrument as such 1st Vice Pres, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said JPMorgan Chase Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of April, 2009.

My Commission Expires: _____ Jeanne M. Matule, Notary Public

ACKNOWLEDGEMENT OF TENANT



Individual Acknowledgement

State of _____)
) ss.
County of _____)

I, _____, a Notary Public in and for said County and State, certify that _____, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes herein set forth.

Given under my hand and notarial seal this _____ day of _____, 20_____.

My Commission Expires: _____, Notary Public

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Entity Acknowledgement

State of Illinois)
) ss.
County of DePue)

I, the Undersigned, a Notary Public in and for said County and State, certify that David Hemmer, a President of Fox Valley Ear, Nose & Throat Assoc. S.C., a(n) Illinois corporation and _____, a _____ of said _____, personally known to me to be the persons whose names are subscribed to the foregoing instrument as such Resident and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Fox Valley Ear, Nose & Throat Associates, S.C., for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of April, 2009.

My Commission Expires: _____



Jeanne M. Matule, Notary Public

ACKNOWLEDGEMENT OF LANDLORD

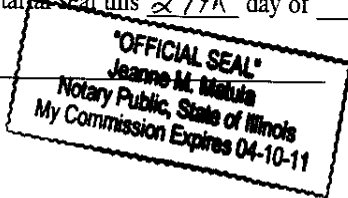
Individual Acknowledgement

State of Illinois)
) ss.
County of DePue)

I, the Undersigned, a Notary Public in and for said County and State, certify that David S. Hemmer, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes herein set forth.

Given under my hand and notarial seal this 27th day of April, 2009.

My Commission Expires: _____



Jeanne M. Matule, Notary Public

Entity Acknowledgement

State of _____)
) ss.
County of _____)

I, _____, a Notary Public in and for said County and State, certify that _____, a _____ of _____, a(n) _____ and _____, a _____ of said _____, personally known to me to be the persons whose names are subscribed to the foregoing instrument as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 20____.

My Commission Expires: _____

_____, Notary Public

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EXHIBIT "A"

THAT PART OF THE SOUTH ½ OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LORD'S PARK, BEING ALSO THE NORTHWEST CORNER OF THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 89 DEGREES 38 MINUTES EAST 916.73 FEET FOR THE PLACE OF BEGINNING; THENCE NORTH 02 DEGREES 45 MINUTES EAST 517.88 FEET TO THE SOUTHERLY RIGHT OF WAY OF STATE ROUTE 58; THENCE SOUTH 88 DEGREES 49 MINUTES EAST ALONG SAID RIGHT OF WAY LINE, 190.0 FEET; THENCE SOUTH 02 DEGREES 45 MINUTES WEST 510.41 FEET TO THE NORTH LINE OF PARKWOOD, UNIT NUMBER 1 ACCORDING TO THE PLAT RECORDED AS DOCUMENT 21330815; THENCE SOUTH 88 DEGREES 30 MINUTES WEST ALONG SAID NORTH LINE 190.39 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 1015 SUMMIT STREET, ELGIN, IL 60120

Tax Parcel Identification # 06-07-302-064-0000

Cook County Clerk's Office