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Doc#: 0922229052 Fee: \$54.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 08/10/2009 03:25 PM Pg: 1 of 10

Property of Cook County Clerk's Office

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT
BY AND BETWEEN
U.S. BANK NATIONAL BANKING ASSOCIATION,
METRO COMMONS, L.L.C.,
AND
HARLEM FURNITURE LLC

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EXHIBIT "H"

Subordination, Nondisturbance and Attornment Agreement

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the 11 day of November, 2008, by and between U. S. BANK NATIONAL ASSOCIATION, a national banking association ("Lender"), METRO COMMONS, L.L.C., an Illinois limited liability company ("Lessor"), and HARLEM FURNITURE LLC, a Delaware limited liability company ("Lessee").

WITNESSETH:

WHEREAS, by Lease by and between Lessor and Lessee, dated November 11, 2008 ("Lease"), Lessee leased from Lessor approximately 27,000 square feet of space ("Premises") within Hillside Town Shopping Center, located upon the land situated in the City of Hillside, County of Cook and State of Illinois, as more particularly described on Exhibit A attached hereto and hereby made a part hereof; and

WHEREAS, the Premises have been mortgaged to Lender under a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), dated June 10 2008, filed for record on the 11 day of June, 2008, in the office of the Recorder in and for Cook County, Illinois and recorded as security for loans from Lender to Lessor and Lessor's affiliate (collectively, the "Loan") in the aggregate original principal amount of \$47,440,000, the proceeds of which may be used to pay certain of the costs of constructing the Premises; and

WHEREAS, Lender has required the execution of this Agreement as a condition to making said Loan; and

WHEREAS, Lender, Lessor and Lessee have agreed to the following, with respect to their mutual rights and obligations pursuant to and under the Lease and the Mortgage.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the making of the Loan by Lender to Lessor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Lessee's interest in the Lease, and all rights of Lessee thereunder, including but not limited to any option in favor of Lessee to renew the Lease and/or to purchase the Premises set forth in the Lease, shall be and hereby are declared to be subject and subordinate to the Mortgage in all respects. The term "Mortgage", as used herein, shall include the Mortgage and any and all amendments, supplements, modifications, renewals, extensions or replacements thereto, thereof or therefor.
2. Lender does hereby agree that the rights of Lessee under the Lease shall remain in full force and effect, and its possession of the Premises thereunder shall remain undisturbed by Lender during the term of the Lease, and during any renewal or extension thereof in accordance with its terms; provided Lessee shall have performed and shall continue to perform all of the covenants

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and conditions of the Lease to be performed by Lessee and a continuing mature default shall not exist thereunder.

3. After the receipt by Lessee of notice from Lender of completion of a foreclosure under the Mortgage or that Lender has received a conveyance of the Premises in lieu of foreclosure, Lessee will attorn to and recognize Lender, its successors and assigns, or any purchaser at the foreclosure sale, as its substitute lessor under the Lease, and, having thus attorned, Lessee's possession shall not thereafter be disturbed by Lender during the term of the Lease, and during any renewal or extension thereof in accordance with its terms; providing, and as long as, Lessee shall continue to pay the rental provided under the Lease in the manner provided therein and otherwise to observe and perform the covenants, terms and conditions of the Lease to be observed and performed by Lessee thereunder in all respects. The parties shall execute and deliver, upon request, appropriate agreements of attornment and recognition, but this Agreement shall be deemed to be self-operative, and no such separate agreements shall be required to effectuate the foregoing attornment and recognition. Any such attornment and recognition of a substitute lessor shall be upon all of the terms, covenants, conditions and agreements as are set forth in the Lease, except as amended hereby.

4. In the event that Lender or any other person, party or entity becomes the owner of the Premises ("New Owner") as a result of a foreclosure sale under the Mortgage or a conveyance in lieu of foreclosure, Lessee shall have no claim against the New Owner resulting from, and the New Owner shall not be liable for, any act, omission and/or breach of the Lease by any prior or subsequent landlord under the Lease, including but not limited to Lessor, provided, however, New Owner shall agree to cure any default of Lessor that is continuing as of the date Lender forecloses the Premises within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender or New Owner shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender or New Owner diligently and continuously proceeds to cure such default; and the rights of the New Owner in and to the Premises and in, to and under the Lease shall not be subject to any right of set-off or defense which Lessee may have against any prior landlord under the Lease, including but not limited to Lessor, unless Lessee shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Lessor under the Lease.

In addition, the New Owner shall not be (a) bound by any rent or additional rent that Lessee might have paid for more than one (1) month in advance to any prior lessor (including Lessor); (b) bound by any amendment or modification of the Lease made after the date of this Agreement without Lender's prior written consent; (c) liable for the return of any security deposit to the extent not received by New Owner; or (d) obligated or liable with respect to the construction and completion of any improvements for Lessee's use and occupancy. Upon any sale or other transfer by a New Owner of its interest in the Premises after acquiring title to the same, said New Owner shall thereupon automatically be released and discharged from all liability thereafter accruing under the Lease.

5. Notwithstanding anything to the contrary herein set forth, in the event a New Owner becomes the owner of the Premises as a result of a foreclosure sale under the Mortgage or a conveyance in

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- lieu of foreclosure, the New Owner shall not be bound by any provision of the Lease relating to (a) the application of insurance or condemnation proceeds or the restoration of the Premises by the landlord in the event of a casualty loss thereto or a taking thereof, or (b) restrictions on the use of other properties owned by Lessor or the New Owner for purposes which compete with Lessee. The New Owner shall have the option either to use any such insurance or condemnation proceeds to restore the Premises in accordance with the Lease or with the provisions of the Mortgage or to terminate the Lease and retain all such proceeds as its own.
6. Lessee shall not prepay any of the rents or income due from the Premises for more than one (1) month in advance, except with the written consent of Lender.
 7. The Lease may be amended or altered only with the written consent of Lender.
 8. Lessee agrees not to terminate the Lease by reason of any default of Lessor without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was granted to Lessor in which to remedy the default, and the lapse of thirty (30) days after the expiration of such time as Lessor was permitted to cure such default; provided, however, that with respect to any default of Lessor under the Lease which cannot be remedied by Lender within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts, Lender shall have such time as is reasonably necessary to complete curing such default.
 9. After notice is given to Lessee, pursuant to the Mortgage, that the rentals under the Lease should be paid to Lender, Lessee shall pay to Lender all rentals and other monies due and to become due to Lessor under the Lease, and Lessor hereby expressly authorizes Lessee to make such payments to Lender and hereby releases and discharges Lessee of and from any liability to Lessor on account of such payments.
 10. In the event that Lender shall acquire title to the Premises, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest, if any, in the Premises, and Lessee shall look exclusively to such interest of Lender, if any, in the Premises for the payment and discharge or any obligations or liability imposed upon Lender hereunder, or under the Lease.
 11. Neither Lessor nor Lessee shall permit the Lease to become subordinate to the lien of any mortgage or security instrument, other than the Mortgage.
 12. Lessee hereby represents, warrants and certifies to Lender as follows: (a) the Lease is in full force and effect and has not been modified, amended or terminated; and (b) to its knowledge, Lessor is not in default under the Lease and no event or circumstance has occurred which would, after expiration of all applicable notice and cure periods, constitute a default by Lessor under the Lease.
 13. Each party hereto shall be entitled to specific performance of the covenants, agreements and rights contained in this Agreement. It is the express intent of all parties hereto that all remedies provided at law or in equity, including the right to specific performance as herein provided, shall be cumulative.

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14. This Agreement may not be amended or modified in any manner other than by an agreement in writing signed by all of the parties hereto.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any purchaser of the Premises at a foreclosure sale.

16. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing, and shall be deemed given or served when sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Lender: U. S. BANK NATIONAL ASSOCIATION
209 South La Salle St., Suite 410
Chicago, Illinois 60604
Attention: Emad Murrar

If to Lessor: Metro Commons, L.L.C.
12040 Raymond Court
Huntley, IL 60142
Attention: Daniel L. Shepard

If to Lessee: Harlem Furniture LLC
1000-46 Rohlwing Road
Lombard, Illinois 60148
Attn: Bruce Berman

Each party hereto may change its above-stated address from time to time by serving written notice of the change upon the other parties hereto as above provided at least ten (10) days prior to the effective date of said change.

17. This Agreement and the Lease shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

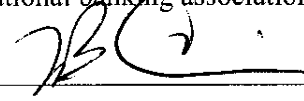
18. Lessee has executed this Agreement for the purpose of inducing Lender to make the Loan and realizes that Lender will rely upon this Agreement in making the Loan.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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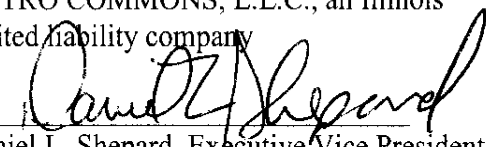
IN WITNESS WHEREOF, This Agreement has been duly executed as of the day and year first above written.

LENDER:
U. S. BANK NATIONAL ASSOCIATION,
a national banking association

By 

Its VICE PRESIDENT

LESSOR:
METRO COMMONS, L.L.C., an Illinois
limited liability company

By 
Daniel L. Shepard, Executive Vice President

TENANT:
HARLEM FURNITURE LLC,
a Delaware limited liability company

By _____

Its _____

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IN WITNESS WHEREOF, This Agreement has been duly executed as of the day and year first above written.

LENDER:
U. S. BANK NATIONAL ASSOCIATION,
a national banking association

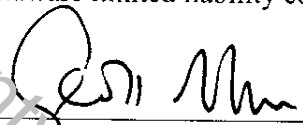
By _____

Its _____

LESSOR:
METRO COMMONS, L.L.C., an Illinois
limited liability company

By _____
Daniel L. Shepard, Executive Vice President

TENANT:
HARLEM FURNITURE LLC,
a Delaware limited liability company

By  _____

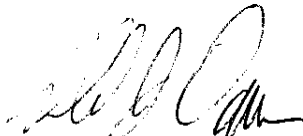
Its CEO _____

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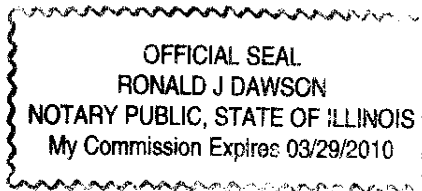
STATE OF ILL)
) ss.
COUNTY OF WILL)

The foregoing was acknowledged before me this 5th day of August, 2008, by Trevor Cain, the Vice President of U.S. BANK NATIONAL ASSOCIATION, a national banking association under the laws of the United States of America, on behalf of said national banking association.



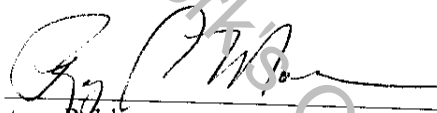
Notary Public

Lessee Acknowledgment:

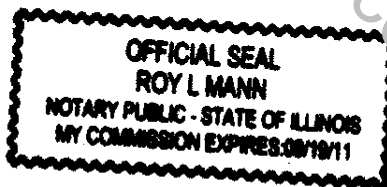


STATE OF ILL)
) ss.
COUNTY OF WILL)

The foregoing was acknowledged before me this 1st day of November, 2008, by Geoffrey Maxwell, the COO of HARLEM FURNITURE LLC, a limited liability company under the laws of the State of Delaware, on behalf of the corporation.



Notary Public



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Lessor Acknowledgment:

STATE OF Illinois
) ss.
COUNTY OF Kane

The foregoing was acknowledged before me this 11th day of November, 2008, by Daniel L. Shepard, the Executive Vice President of METRO COMMONS, L.L.C., a limited liability company under the laws of the State of Illinois, on behalf of the limited liability company.

Cynthia L. Romano
Notary Public



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EXHIBIT A to SNDA

Lot 2 in Metro Commons, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 17,
Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

PIN 15-17-403-026

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