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First American Title
Order # 1902851

DA



Doc#: 0923735139 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/25/2009 02:55 PM Pg: 1 of 8

After Recording, Return To:
Heath B. Turner, Esq.
Cushing, Morris, Ambuster & Montgomery, LLP
191 Peachtree Street, N.E., Suite 4500
Atlanta, Georgia 30303

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") is dated as of the 11th day of August, 2009, between Fairview Commercial Lending, Inc., a Georgia corporation ("Lender"), and Song K. Oh and Jung E. Oh d/b/a Okay Beauty Supply ("Tenant").

RECITALS

A. Tenant is the tenant under a certain lease (as amended, the "Lease") dated January 8, 2008 between Tenant and Michael Kim (the "Landlord"), of premises described in the Lease (the "Premises") located at 8 West Lake Street, Oak Park Cook County, Illinois 60302, comprising the real property and improvements thereon more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Lender is making a loan to Landlord on or about August 11, 2009 (the "Loan") secured by, among other things, a mortgage on and of the Property (the "Mortgage") to be recorded in the real estate records of Cook County, Illinois, and an assignment of leases and rents (the "Assignment of Leases") to be recorded in the aforementioned records (the Mortgage, Assignment of Leases and such other security instruments collectively, the "Security Document").

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Subordination. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof are and shall at all times continue to be subject and subordinate to the Security Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by the Security Documents from time to time subject to the terms and conditions set forth in this Agreement. Said subordination is to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

AS RECORDED CONCURRENTLY HEREWITH

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2. Nondisturbance. Lender agrees that, if the Lender exercises any of its rights under the Security Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, Lender shall not join Tenant as a party defendant, unless required by applicable law, or disturb Tenant's right of quiet possession of the Premises under the terms of the Lease, as the term thereof may be extended pursuant to the terms of the Lease or as said Premises may be expanded as specified in the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease or any provision of this Agreement.

3. Attornment. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership (including, but not limited to, a sheriff's or trustee's sale under power of sale, the termination of any superior lease of the Premises and any other transfer of Landlord's interest in the Premises under peril of foreclosure), Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform in favor of Lender all of the obligations of Tenant pursuant to the Lease. Tenant acknowledges that in the event of Lender's foreclosure of the Mortgage, such foreclosure shall not constitute Landlord's offer to sell the Premises (as defined in the Lease) for purposes of Section 52 of the Lease.

4. Certain Tenant Acknowledgements. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act, omission, negligence or default of any prior landlord (including, without limitation, the then defaulting landlord), or

(b) subject to any credit, claim, defense or offsets which Tenant may have against any prior landlord (including, without limitation, the then defaulting landlord), or

(c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior landlord (including, without limitation, the then defaulting landlord) unless (i) such sums are actually received by Lender or (ii) such prepayment shall have been expressly approved of by Lender, or

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior landlord's interest, or

(e) accountable for any monies deposited with any prior landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) bound by any surrender, termination, amendment or modification of the Lease made without the written consent of Lender, or

(g) liable to Tenant under the terms of the Lease beyond Lender's interest in the Property.

(h) obligated to complete any improvements or construction on the Property;

(i) be required after a fire, casualty or condemnation of the Property or Premises to repair or rebuild the same to the extent that such repair or rebuilding requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Premises and arising out of such fire, casualty or

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condemnation which have actually been received by Lender, and then only to the extent required by the terms of the Lease;

(j) be responsible to provide any additional space at the Property or elsewhere for which Tenant has any option or right under the Lease, or otherwise, unless Lender at its option elects to provide the same, and Tenant hereby releases Lender from any obligation to provide the same, and agrees that Tenant shall have no right to cancel the Lease and shall possess no right to any claim against Lender as a result of the failure to provide any such additional space; or

(k) be liable for or incur any obligation with respect to any representations or warranties of any nature set forth in the Lease or otherwise, including, but not limited to, representations or warranties relating to any latent or patent defects in construction with respect to the Property or the Premises, Landlord's title or compliance of the Property or Premises with applicable environmental, building, zoning or other laws, including, but not limited to, the Americans with Disabilities Act and any regulations pursuant thereto.

5. Limited Liability. Anything herein or in the Lease to the contrary notwithstanding, in the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest in the Property, and Tenant shall look exclusively to such interest of Lender in the Property for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease, or otherwise, subject to the limitation of Lender's obligations provided for in Paragraph 4 above.

6. Insurance Proceeds and Eminent Domain Awards. Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of the mortgage shall continue to govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligations of Landlord to restore the real estate of which the Premises are a part shall, insofar as they apply to Lender, be limited to insurance proceeds or eminent domain awards received by Lender after the deduction of all costs and expenses incurred in obtaining such proceeds or awards.

7. Notice and Right to Cure. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (a) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (b) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Security Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. The Lease shall not be assigned (except in the event of an assignment that is permitted in the Lease without Landlord's consent) by Tenant, modified, amended or terminated (except in the event of a termination that is permitted in the Lease without Landlord's consent) without Lender's prior written consent in each instance. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect

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to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Lender shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Security Documents.

8. Assignment of Leases and Rents. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby consents to that certain Assignment of Leases and Rents from Landlord to Lender executed in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

9. Enforceability. Each individual executing this Agreement on behalf of said corporation represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms.

10. Notice. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant: Okay Beauty Supply
8 W. Lake Street
Oak Park, Illinois 60302
Attention: Song K. Oh / Jung E. Oh

If to Lender: Fairview Commercial Lending, Inc.
1932 N. Druid Hills Road, N.E.
Atlanta, Georgia 30319
Attention: Lawrence Weinberg
Fax: (404) 634-0319

11. Successors. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

12. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this

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Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

13. Miscellaneous. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the state in which the Property is located.

15. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed an original. This Agreement may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[Signatures Appear on Following Page]

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Witness the execution hereof as of the date first above written.

LENDER:

FAIRVIEW COMMERCIAL LENDING, INC.,
a Georgia corporation

Unofficial Witness

By: _____
Lawrence Weinberg, President

State of _____
County of _____

On _____, 2009, before me, _____ [insert name], a Notary Public, personally appeared _____, 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.

Notary Public

Print Name: _____

My commission expires: _____

TENANT:

Song K. Oh

State of Illinois
County of Cook

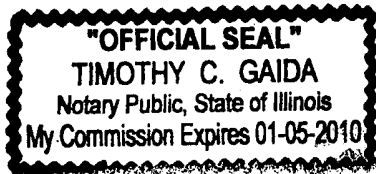
On August 11, 2009, before me, Timothy C. Gaida [insert name], a Notary Public, personally appeared Soung K. Oh, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they 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.

Notary Public

Print Name: Timothy C. Gaida

My commission expires: 01-05-2010



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EXHIBIT A

LEGAL DESCRIPTION

Legal Description: THE WEST 32 FEET AND 3 INCHES OF LOT 15 AS MEASURED ON NORTH LINE OF SAID LOT 15 IN BLOCK 36 IN VILLAGE OF RIDGELAND, A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 7 AND ALSO THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Index #'s: 16-08-123-026-0000 Vol. 0142

Property Address: 8 West Lake Street, Oak Park, Illinois 60302

Property of Cook County Clerk's Office