

# UNOFFICIAL COPY



Doc#: 1035010104 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/16/2010 03:55 PM Pg: 1 of 7

8823078  
D-1 JK

Property of Cook County Clerk's Office

Above Space for Recorder's Use Only

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

by and between

Wells Fargo Bank, National Association, as Lender,

And

P.H. Lansing, Inc., as Tenant

Property Address: 16795 S. Torrence Ave., Lansing, Illinois

PIN: 30-19-300-019-0000 (Affects Part of PIQ)  
30-19-300-038-0000 (Affects Part of PIQ)  
30-19-300-039-0000 (Affects Part of PIQ)

Prepared by and after recording mail to:

Matthew C. Susman  
Susman, Duffy & Segaloff, P.C.  
59 Elm Street  
New Haven CT 06510

# UNOFFICIAL COPY

PREPARED BY: Matthew C. Susman, Esq.  
 RETURN TO:  
 Susman, Duffy & Segaloff, PC  
 59 Elm Street  
 New Haven, CT 06510

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereafter referred to as "Agreement") made ~~November 12~~<sup>December</sup>, 2010, by and between Wells Fargo Bank, National Association, a national banking association, whose address is 12 East 49<sup>th</sup> Street, 20<sup>th</sup> Floor, New York, NY 10017 ("Bank"), and P.H. Lansing, Inc., whose address is c/o A&E Stores, Inc., 1000 Huyler Street, Teterboro, NJ 07608 ("Tenant").

As security for a loan made by Bank to Lansing Partners I, LLC ("Landlord"), Landlord has given to Bank a Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of dated ~~November 12~~<sup>December</sup>, 2010, which has been or is about to be recorded in the public records of the Town of Lansing, State of Illinois (the "Security Instrument"), and constitutes a first lien against the real property known as 16795 Torrence Avenue, Lansing, Illinois, more particularly described on Schedule "A" attached hereto (the "Property").

Tenant has entered into a lease dated as of June 15, 2005 with Landlord (the "Lease") covering all or a portion of the Property (the "Leased Premises"). As a condition of making the loan, Bank has required that the Lease be subordinated to the lien of the Security Instrument and that Tenant agree to attorn to the purchaser of the Property in the event of foreclosure of the Security Instrument, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under the Lease, and Tenant is willing to so attorn if Bank will recognize Tenant's rights under the Lease as hereinafter provided.

Relying on the covenants, agreements, representations and warranties contained in this Agreement, Bank and Tenant agree as follows:

**Subordination of Lease.** The Lease is and shall be subject and subordinate to the provisions and lien of the Security Instrument and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as if the Lease had been executed and delivered after the execution, delivery and recording of the Security Instrument.

**Attornment.** Tenant agrees that, Tenant will attorn to and recognize: (i) Bank, whether as mortgagee in possession or otherwise; or (ii) any purchaser at a foreclosure sale under the Security Instrument, or any transferee who acquires possession of or title to the Property, or any successors and assigns of such purchasers and/or transferees (each, a "Successor"), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the terms and conditions set forth therein. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto; provided, however, that Tenant will, upon request by Bank or any Successor, execute a written agreement attorning to Bank or such Successor.

**Non-Disturbance.** So long as Tenant complies with Tenant's obligations under this Agreement and is not in default under the Lease beyond any applicable grace or cure periods, if any, Bank will not disturb Tenant's use, possession and enjoyment of the Leased Premises nor will Tenant's rights under the Lease be impaired (except as provided in paragraph entitled Tenant's Agreement, below) in any foreclosure action, sale under a power of sale, transfer in lieu of the foregoing, or the exercise of any other remedy pursuant to the Security Instrument.

# UNOFFICIAL COPY

**Assignment of Leases.** Tenant consents to the Assignment of Leases contained in the Security Instrument (the "Assignment"). Tenant agrees that if Bank, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have canceled such election, thereafter pay to Bank all rent and other sums payable under the Lease. Any such payment shall be made notwithstanding any right of setoff, defense or counterclaim which Tenant may have against Landlord, or any right to terminate the Lease.

**Limitation of Liability.** In the event that Bank succeeds to the interest of Landlord under the Lease, or title to the Property, then Bank and any Successor shall assume and be bound by the obligations of the landlord under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Leased Premises, but Bank and such Successor shall not be: (i) liable for any act or omission of any prior landlord, except for defaults caused by Bank or such Successor subsequent to obtaining title or possession; (ii) liable for the retention, application or return of any security deposit to the extent not paid over to Bank; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord; (iv) bound by any base or minimum rent or additional rent (unless Bank is actually in possession of such additional rent) which Tenant might have paid for more than the current month to any prior landlord; or (v) bound by any amendment or modification of the Lease made without Bank's or such Successor's prior written consent, which consent Bank agrees is Landlord's obligation to obtain. Any failure of Landlord to obtain any such consent shall not, in any event, create any liability against Tenant or Bank, or any inference that Bank has consented to such amendment or modification. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

Tenant agrees that any person or entity which at any time hereafter becomes the landlord under the Lease, including without limitation, Bank or any Successor, shall be liable only for the performance of the obligations of the landlord which arise during the period of its or their ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership, except for maintenance or repair obligations of landlord which are specifically set forth in the Lease and which arise subsequent to Bank or any Successor becoming the landlord under the Lease. Tenant further agrees that any such liability shall be limited to the interest of Bank or such Successor in the Property.

**Right to Cure Defaults.** Tenant agrees to give notice to Bank of any default by Landlord under the Lease, specifying the nature of such default, and thereupon Bank shall have the right (but not the obligation) to cure such default, and Tenant shall not terminate the Lease or abate the rent payable thereunder by reason of such default until it has afforded Bank thirty (30) days after Bank's receipt of such notice to cure such default and a reasonable period of time in addition thereto (i) if the circumstances are such that said default cannot reasonably be cured within said thirty (30) day period and Bank has commenced and is diligently pursuing such cure, or (ii) during and after any litigation action including a foreclosure, bankruptcy, possessory action or a combination thereof, provided such extended period of time does not exceed an additional ninety (90) days. It is specifically agreed that Tenant shall not require Bank to cure any default which is not susceptible of cure by Bank.

**Tenant's Agreements.** Tenant hereby covenants and agrees that: (i) Tenant shall not pay any rent under the Lease more than one month in advance, except as set forth in the Lease, including any amounts subject to year-end reconciliations; (ii) Tenant shall have no right to appear in any foreclosure action under the Security Instrument; (iii) Tenant shall not amend or modify the Lease, or cancel or terminate the Lease (except as expressly set forth therein) without Bank's prior written consent, and any attempted amendment, modification, cancellation or termination of the Lease without such consent shall be of no force or effect as to Bank; (iv) Tenant shall not subordinate the Lease to any lien or encumbrance (other than the Security Instrument) without Bank's prior written consent; (v) Tenant shall not assign the Lease or sublet all or any portion of the Leased Premises (except as permitted by the terms of the Lease) without Bank's prior written consent (which consent shall not be unreasonably withheld); (vi) Tenant shall promptly deliver to Bank, from time to time upon Bank's request, a written statement in form and substance satisfactory to Bank certifying to certain matters relating to the Lease;

# UNOFFICIAL COPY

and (vii) this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement.

**Miscellaneous.** (i) The provisions hereof shall be binding upon and inure to the benefit of Tenant and Bank and their respective successors and assigns; (ii) Any demands or requests shall be sufficiently given Tenant if in writing and mailed or delivered to the address of Tenant shown above and to Bank if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019, or such other address as Bank may specify from time to time. Notices to Bank must include the mail code; (iii) The Agreement may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (iv) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not part of this Agreement; (v) This Agreement shall be governed by and construed under the laws of the jurisdiction where this Agreement is recorded. (vi) **Telephone Communication Monitoring.** Tenant agrees that Tenant's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. (vii) **Final Agreement.** This Agreement and the other loan documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

[SIGNATURES PROVIDED ON FOLLOWING PAGES]

# UNOFFICIAL COPY

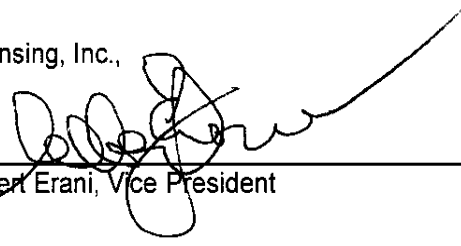
IN WITNESS WHEREOF, the parties hereto have duly signed and sealed this instrument as of the day and year first above written.

**Tenant**

P.H. Lansing, Inc.,

By: \_\_\_\_\_

Albert Erani, Vice President



Signed, sealed and delivered in presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

State of NJ  
County of Bergen

### Corporate Acknowledgment

I certify that before me appeared this day Albert Erani, a person known to me, who after being sworn said he is Vice President of P.H. Lansing, Inc., , an Illinois corporation, and is duly authorized to act on behalf of said Corporation, that the seal affixed to the foregoing instrument is the seal of said Corporation and that said instrument was signed and sealed by him/her on behalf of said Corporation, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said Corporation.

Witness my hand and official seal, this 22nd day of November, 2010.

\_\_\_\_\_  
Notary Seal

JUDI OLSEN  
\_\_\_\_\_  
(Printed Name of Notary)

**JUDI A. OLSEN**  
Notary Public, State of New Jersey  
No. 2273216  
My Commission Expires: ~~Commission Expires~~ April 3, 2011

# UNOFFICIAL COPY

Bank  
Wells Fargo Bank, National Association

By: W. Andrew Z...

State of New York  
County of New York

### Bank Acknowledgment

I certify that before me appeared this day, Scott Thomas, a person known to me, who after being sworn said he/she is Vice President of Wells Fargo Bank, National Association, a national banking association, and is duly authorized to act on behalf of said Bank, that the seal affixed to the foregoing instrument is the seal of said Bank and that said instrument was signed and sealed by him/her on behalf of said Bank, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said Bank.

Witness my hand and official seal, this 17<sup>th</sup> day of December, 2010.

Notary Seal

Brian Brown, Notary Public

Brian Brown  
(Printed Name of Notary)

My Commission Expires: 8-9-2012

**BRIAN BROWN**  
Notary Public, State of New York  
No. 01BR6114248  
Qualified in Bronx County  
Commission Expires Aug. 9, 2012

**UNOFFICIAL COPY**

PARCEL 1:

LOT 8 (EXCEPT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 10, THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST OF THE EAST LINE OF LOT 10 EXTENDED NORTH A DISTANCE OF 6.5 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 10 SECONDS WEST A DISTANCE OF 15.0 FEET TO THE WEST LINE OF LOT 8; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST A DISTANCE OF 6.5 FEET TO THE NORTH LINE OF LOT 10; THENCE SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST A DISTANCE OF 15.0 FEET TO THE POINT OF BEGINNING)

ALSO

THE SOUTH 8.5 FEET OF THE EAST 18.25 FEET OF THE WEST 33.0 FEET OF LOT 9; ALSO THE SOUTH 1.00 FOOT OF THE EAST 241 FEET OF LOT 9;

ALSO

THAT PART OF OUTLOT A DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHWESTERLY CORNER OF LOT 9, THENCE SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST OF THE SOUTH LINE OF LOT 9 A DISTANCE OF 14.75 FEET TO THE POINT OF BEGINNING. THENCE CONTINUING SOUTH 89 DEGREES 44 MINUTES 10 SECONDS EAST A DISTANCE OF 3.25 FEET TO THE WEST LINE OF LOT 8; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST A DISTANCE OF 168.5 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 10 SECONDS WEST A DISTANCE OF 3.25 FEET; THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST A DISTANCE OF 168.5 FEET TO THE POINT OF BEGINNING, ALL IN THE LANDINGS PLANNED UNIT DEVELOPMENT, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR THE PURPOSE OF PARKING, INGRESS AND EGRESS, AND COMMON UTILITY FACILITIES AS SET FORTH IN DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING COVENANTS RECORDED AUGUST 16, 1985 AS DOCUMENT NUMBER 85149087 AND AS CREATED BY DEED FROM AMALGAMATED TRUST & SAVINGS BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 21, 1984 AND KNOWN AS TRUST NUMBER 4951, TO SERVICE MERCHANDISE COMPANY, INC., RECORDED OCTOBER 15, 1985 AS DOCUMENT 85235395 AND AS AMENDED BY FIRST AMENDMENT TO SAID DECLARATION RECORDED DECEMBER 18, 1985 AS DOCUMENT 85329731 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO SAID DECLARATION RECORDED MARCH 11, 1988 AS DOCUMENT 88103519, AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING AGREEMENT RECORDED MAY 10, 2000 AS DOCUMENT 00331108, OVER AND ACROSS "COMMON AREA" AS SUCH IS DEFINED AND LIMITED THEREIN AND ASSIGNED BY VIRTUE OF QUITCLAIM, ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT MADE BY AND BETWEEN SERVICE MERCHANDIZING COMPANY INC AND SM LTCB

LANSING, LLC. DATED DECEMBER 3, 2002 RECORDED ON DECEMBER 24, 2002 AS DOCUMENT NUMBER 0021433426

PARCEL 3:

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AND UTILITY FACILITIES AS SET FORTH IN ROAD AND UTILITY RECIPROCAL EASEMENT AGREEMENT DATED JULY 31, 1985 RECORDED AUGUST 16, 1985 AS DOCUMENT 85149084 AND AMENDMENT THERETO DATED JANUARY 15, 1986 RECORDED SEPTEMBER 30, 1986 AS DOCUMENT 86446672, OVER THAT PORTION OF NORTH EDGE ROAD RIGHT OF WAY AS DEFINED AND LIMITED THEREIN. AND ASSIGNED BY VIRTUE OF QUITCLAIM, ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT MADE BY AND BETWEEN SERVICE MERCHANDIZING COMPANY INC AND SM LTCB LANSING, LLC. DATED DECEMBER 3, 2002 RECORDED ON DECEMBER 24, 2002 AS DOCUMENT NUMBER 0021433426