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Doc#: 1131333065 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/09/2011 11:36 AM Pg: 1 of 12

8 F 19171 DEEM 6 of 9

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Cooper's Hawk South Barrington, LLC,
Tenant

AND

CIBC INC,
Lender

Section: 33
Block: N/A
Lot: 8
County: Cook
State: Illinois

Premises: 100 W. Higgins Road
South Barrington, IL 60010

Dated: as of ^{October} ~~September~~ 31, 2011

Prepared by,
Record and return by mail to:

MCKENNA LONG & ALDRIDGE LLP
303 Peachtree St., Suite 5300
Atlanta, GA 30308
Attention: Barbara McIntyre, Esq.

Box 400-CTCC

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this 31st day of October, 2011, by and among Arboretum Mall Owner LLC ("Landlord"), CIBC INC., a Delaware corporation ("Lender"), and Cooper's Hawk South Barrington, LLC ("Tenant").

RECITALS:

A. Tenant has executed that certain lease dated May 28, 2008, as amended by written agreements dated June 20, 2008 and February 20, 2010 (the foregoing, the "Lease"), with Arboretum of South Barrington, LLC, Landlord, as lessor, covering the premises described in the Lease consisting of approximately a 9,604 square foot space (the "Premises") in that certain building located at 100 W. Higgins Road, South Barrington, IL 60010 (the "Property") and more particularly described in Exhibit A attached hereto and made a part hereof by this reference; and

B. Lender has made (or agreed to make) a loan to Landlord secured by a mortgage or deed of trust encumbering the Property and an assignment of Landlord's interest in the Lease (said mortgage or deed of trust and assignment of leases, together with any amendments, renewals, increases, modifications, substitutions or consolidations of either of them, collectively, the "Security Instrument"); and

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. The Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase, right of first refusal to purchase or right of first offer to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

2. Tenant agrees to deliver to Lender, in the manner set forth in Paragraph 13 of this Agreement, a copy of any notice of default sent to Landlord by Tenant. If Landlord fails to cure such default within the time provided in the lease, Lender shall have the right, but not the obligation, to cure such default on behalf of Landlord within thirty (30) calendar days after the time provided for Landlord to cure such default in the Lease has expired or, if such default cannot be cured within that time, within a reasonable period provided Lender is proceeding with due diligence to cure such default. In such event, Tenant shall not terminate the Lease while such remedies are being diligently pursued by Lender. Further, Tenant shall not terminate the Lease on the basis of any default by Landlord which is incurable by Lender (such as, for example, the bankruptcy of Landlord or breach of any representation by Landlord), provided Lender is proceeding with due diligence to commence an action to appoint a receiver or to obtain title to the Property by foreclosure, deed in lieu of foreclosure, or otherwise (collectively, "Foreclosure"). Tenant hereby agrees that no action taken by Lender to enforce any rights under the Security Instrument or related security documents, by reason of any default thereunder (including, without limitation, the appointment of a receiver, any Foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Tenant to terminate the Lease nor shall such action invalidate or constitute a breach of any of the terms of the Lease.

3. So long as Tenant is not in default under the Lease, Lender shall not disturb Tenant's possession and occupancy of the Premises during the term of the Lease.

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4. If Lender or its nominee or designee, or another purchaser of the Property upon a Foreclosure (any such person or entity, a "**Successor Owner**") succeeds to the interest of Landlord under the Lease, subject to Tenant's performance of its obligations under the Lease, the Lease will continue in full force and effect. Thereupon, Successor Owner shall recognize the Lease and Tenant's rights thereunder and Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Lease, including, but not limited to, any option to purchase, right of first refusal to purchase or right of first offer to purchase the Property as may be provided in the Lease. Notwithstanding the foregoing, Tenant agrees that any such option, right of first refusal or right of first offer to purchase the Property or any portion thereof, as may be provided in the Lease shall not apply to any Foreclosure, as defined herein, and shall not apply to any transfer of the Property by Successor Owner following such Foreclosure. In consideration of the foregoing, Lender agrees that any such option, right of first refusal or right of first offer shall not be terminated by any Foreclosure or conveyance of the Property by Successor Owner following such Foreclosure; rather, any such option, right of first refusal or right of first offer shall remain as an obligation of any party acquiring the Property following the conveyance of the Property by Successor Owner following such Foreclosure. Furthermore, Tenant expressly confirms to Lender that any acquisition of title to all or any portion of the Property pursuant to Tenant's exercise of any option, right of first refusal or right of first offer contained in the Lease shall result in Tenant taking title subject to the lien of the Security Instrument.

5. Tenant agrees that, if Successor Owner shall succeed to the interest of Landlord under the Lease, Successor Owner shall not be:

- (a) liable for any prior act or omission of Landlord or any prior landlord or consequential damages arising therefrom, except for damages (excluding consequential damages) arising out of any continuing default of Landlord that Successor Owner fails to cure and to the extent such damages first accrue after the date Successor Owner succeeds to the interests of Landlord; or
- (b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord unless Lender has failed to cure any default by Landlord as herein provided and to the extent such offset accrues after the date that Successor Owner succeeds to the interest of Landlord; or
- (c) required or obligated to credit Tenant with any rent or additional rent for any rental period beyond the then current month which tenant might have paid Landlord; or
- (d) bound by any amendments or modifications of the Lease made without Lender's or Successor Owner's prior written consent; or
- (e) liable for refund of all or any part of any security deposit unless such security deposit shall have been actually received by Lender.

6. Tenant agrees that, without the prior written consent of Lender in each case, Tenant shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, or tender a surrender of the Lease (except in each case that, upon a default by Landlord under the Lease, Tenant may exercise its rights under the Lease after giving to Lender the notice and cure period required by this Agreement), (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

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7. To the extent that the Lease shall entitle Tenant to notice of the existence of any Security Instrument and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

8. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to require that Tenant pay all rent under the Lease as directed by Lender, which payment shall, to the extent made, satisfy the obligations of Tenant under the Lease. Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant to Lender.

9. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Landlord under the Lease unless and until Lender takes title to the Property. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Property or the portion thereof containing the Premises, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease, and Successor Owner is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

10. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

11. EACH OF TENANT, LENDER AND LANDLORD HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. The provisions of the Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. The words, "Lender", "Landlord" and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

13. All notices and all other communication with respect to this Agreement shall be directed as follows: if to Lender, 200 West Madison, Suite 2610, Chicago, Illinois 60606, Attn: Real Estate Group, or such other address as Lender may designate in writing to Tenant; and, if to Tenant, at the address set forth in the Lease or at such other address as tenant may designate in writing to Lender. All notices shall be in writing and shall be (a) hand-delivered, (b) sent by United States express mail or by private overnight courier, or (c) served by certified mail postage prepaid, return receipt requested, to the appropriate address set forth above. Notices served as provided in (a) and (b) shall be deemed to be effective upon delivery or upon refusal thereof. Any notice served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

14. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

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15. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

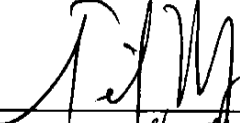
COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office

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

Cooper's Hawk South Barrington, LLC

By: 
 Name: Timothy McEneaney
 Title: Manager of Managing Member

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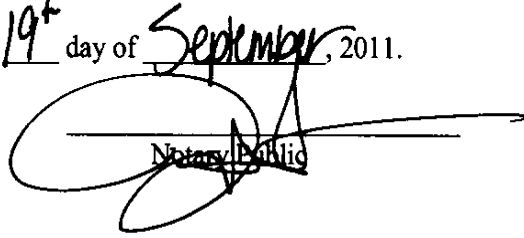
COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

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STATE OF IL)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY THAT Timothy McEnany, personally known to me to be the Mgr of Managing Member of CH South Barrington, LLC a limited liability company whose name is subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that he / she signed, sealed and delivered the said instrument as his / her free and voluntary act and as the act of said limited partnership for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 19th day of September, 2011.


Notary Public

My Commission Expires:
05/17/2014



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

CIBC INC., a Delaware corporation


By: 
 Name: Todd Roth
 Title: Authorized Signatory

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 Recorder of Deeds
 SCANNED BY _____
 Cook County Clerk's Office

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STATE OF NEW YORK
COUNTY OF NEW YORK

On the 7th day of OCTOBER in the year 2011, before me, the undersigned, personally appeared INDIA RATH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of CIBC Inc., and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

My commission expires: _____

CHRISTOPHER F. GRAHAM
NOTARY PUBLIC, State of New York
No. 02GR0071208
Qualified in Westchester County
Commission Expires March 11, 2014

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AGREED AND CONSENTED TO:

ARBORETUM MALL OWNER LLC,
a Delaware limited liability company

By: GFIII ARBORETUM LLC,
a Delaware limited liability company,
its sole member

By: ARBNEXT LLC,
an Illinois limited liability company,
its manager

By: 
Name: Michael Jaffe
Its: Manager

 **COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

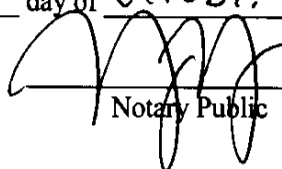
Proprietor of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY THAT Michael Jaffe, personally known to me to be the manager of ARBNEXT LLC, an Illinois limited liability company, the manager of GFIII ARBORETUM LLC, a Delaware limited liability company, the sole member of ARBORETUM MALL OWNER, LLC, a Delaware limited liability company, whose name is subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that he / she signed, sealed and delivered the said instrument as his / her free and voluntary act and as the act of said limited partnership for the uses and purposes therein set forth.

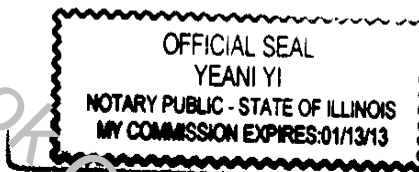
Given under my hand and Notary Seal this 27th day of October, 2011.



Notary Public

My Commission Expires:

1/13/13



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EXHIBIT A

Legal Description of Property

PARCEL 1:

LOTS 1 AND 3 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT 072115094 IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 7 AND 8 IN THE ARBORETUM OF SOUTH BARRINGTON SECOND RESUBDIVISION, BEING A RESUBDIVISION OF LOT 6 IN ARBORETUM OF SOUTH BARRINGTON FIRST RESUBDIVISION, IN PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 30, 2008 AS DOCUMENT 0812122096 IN COOK COUNTY, ILLINOIS.

Address: 100 West Higgins Road
South Barrington, Illinois

PIN: 01-33-209-002-0000
01-33-209-006-0000
01-33-209-007-0000
01-33-209-013-0000
01-33-209-014-0000
01-33-209-015-0000
01-33-209-016-0000

Cook County Clerk's Office