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This document prepared by and after recording return to:



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Chicago, Illinois 60606
Attn: Thomas D. Gianturco, Esq.

Doc#: 1203918043 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/08/2012 12:58 PM Pg: 1 of 12

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 31st day of January, 2012, is made by and among STOETZEL'S PLANET CHIROPRACTIC, an Illinois limited liability company ("Tenant"), OS LEMONT DEVELOPMENT COMPANY, LLC, an Illinois limited liability company ("Landlord"), and RBS CITIZENS, N.A. d/b/a CHARTER ONE, as successor by merger to CHARTER ONE BANK, N.A., a national banking association, as lender (together with its successors and assigns, "Mortgagee").

WHEREAS, Mortgagee has made a loan to Landlord in the principal amount of Nine Million Six Hundred Seventy One Thousand Eight Hundred and 00/100 Dollars (\$9,671,800.00), secured by, among other things, a Second Amended and Restated Open-End Mortgage, Security Agreement and UCC Fixture Filing dated May 24, 2011 (herein, as may from time to time be extended, amended, restated or supplemented, the "Mortgage"), covering, among other property, the land (the "Land") described in **Exhibit "A"** which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property");

WHEREAS, Tenant is the tenant under that certain Lease with Tenant dated January 12, 2011 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

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WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Mortgage and the rights of Mortgagee thereunder, and all right, title and interest of

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Mortgagee in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Mortgagee which cover or affect all or any portion of the Property (collectively, the "Security Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Mortgagee. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property, shall be subject and subordinate to the Mortgagee's right, title and interest in and to such proceeds and awards pursuant to the Security Documents.

2. Non-Disturbance. Beneficiary agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default),

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Beneficiary in the exercise of any of its foreclosure rights under the Deed of Trust or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Beneficiary will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Deed of Trust.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Mortgage, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Mortgagee if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for New Owner to perform; provided, however, that in no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

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(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any amendment or modification of the Lease hereafter made, without the written consent of Mortgagee;

(v) liable for or bound by any Construction-Related Obligation under the Lease. As used herein, a "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Property, including the Premises; or

(vi) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. Estoppel Certificate. Tenant agrees to execute and deliver from time to time, upon the request of Landlord, Mortgagee, or of any holder(s) of any of the indebtedness or obligations secured by the Mortgage, a certificate regarding the status of the Lease, consisting of statements, if true (or if not, specifying why not), (a) that the Lease is in full force and effect, (b) the date through which rentals have been paid, (c) the date of the commencement of the term of the Lease, (d) the nature of any amendments or modifications of the Lease, (e) to the best of Tenant's knowledge no default, or state of facts which with the passage of time or notice (or both) would constitute a default, exists under the Lease, (f) to the best of Tenant's knowledge, no setoffs, recoupments, estoppels, claims or counterclaims exist against Landlord, and (g) such other matters as may be reasonably requested.

5. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant acknowledges that the Mortgage contains or will contain an assignment of rents and leases. Tenant hereby expressly consents to such assignment and agrees that such assignment shall, in all respects, be superior to any interest Tenant has in the Lease of the Property, subject to the provisions of this Agreement. Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of the Lease without the prior written consent of Mortgagee. Tenant will not voluntarily surrender the Premises demised under the Lease or terminate the Lease without cause or shorten the term thereof. Tenant shall not prepay any rents or other sums

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due under the lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Mortgagee will rely upon this instrument in connection with such financing.

(b) Mortgagee, in making any disbursements to Landlord, is not under any obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.

(c) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Mortgagee; and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Mortgagee and following the time when Mortgagee shall have become entitled under the Mortgage to remedy the same, but in any event thirty (30) days after receipt of such notice or such longer period of time as may be necessary to cure or remedy such default, act, or omission including such period of time necessary to obtain possession of the Property and thereafter cure such default, act, or omission, during which period of time Mortgagee shall be permitted to cure or remedy such default, act or omission; provided, however, that Mortgagee shall not have any duty or obligation to cure or remedy any breach or default. It is specifically agreed that Tenant shall not, as to Mortgagee, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Mortgagee.

(d) In the event that Mortgagee notifies Tenant of a default under the Mortgage, Note, or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage, Security Documents or otherwise in connection with the Note, and notwithstanding any contrary instructions of or demands from Landlord.

(e) Tenant shall send a copy of any notice or statement under the Lease to Mortgagee at the same time such notice or statement is sent to Landlord if such notice or statement has a material impact on the economic terms, operating covenants or duration of the Lease.

(f) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Mortgagee and New Owner.

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(g) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement and Tenant waives any requirement to the contrary in the Lease.

(h) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(i) In the event that Mortgagee or any New Owner shall acquire title to the Premises or the Property, Mortgagee or such New Owner shall have no obligation, nor incur any liability beyond Mortgagee's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or New Owner, if any, for the payment and discharge of any obligations imposed upon Mortgagee or New Owner hereunder or under the Lease or for recovery of any judgment from Mortgagee or New Owner, and in no event shall Mortgagee, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

(j) Tenant has never permitted, and will not permit, the generation, treatment, storage or disposal of any hazardous substance as defined under federal, state, or local law, on the Premises or Property except for such substances of a type and only in a quantity normally used in connection with the occupancy or operation of buildings (such as non-flammable cleaning fluids and supplies normally used in the day to day operation of first class establishments similar to the Improvements), which substances are being held, stored, and used in strict compliance with federal, state, and local laws. Tenant shall be solely responsible for and shall reimburse and indemnify Landlord, New Owner or Mortgagee, for any loss, liability, claim or expense, including without limitation, cleanup and all other expenses, including, without limitation, legal fees that Landlord, New Owner or Mortgagee, may incur by reason of Tenant's violation of the requirements of this Section 5(j).

6. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee and/or any Lender of any of its rights under the Mortgage, Note or any of the other Security Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Security Documents; (b) the provisions of the Mortgage, Note and the other Security Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in Section 5(d) above from Mortgagee and that Tenant is not

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obligated to inquire as to whether a default actually exists under the Mortgage, Security Documents or otherwise in connection with the Note. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement. Landlord represents and warrants to Mortgagee that a true and complete copy of the Lease has been delivered by Landlord to Mortgagee.

7. Lease Status. Landlord and Tenant represent and warrant to Mortgagee and Lenders that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

8. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Section 8 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan evidenced by the Note or to require giving of notice or demand to or upon any person in any situation or for any reason.

9. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage, Note or Security Documents.

(c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Mortgagee, all obligations and liabilities of the assigning Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Mortgagee's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW.

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(e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063:

THE SOUTH 5.18 METERS (17 FEET) OF THE NORTH 15.24 METERS (50 FEET) OF THE WEST 50.29 METERS (165 FEET) OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO EXCEPT THE FOLLOWING DESCRIBED LAND CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED MAY 2ND 2011 AND RECORDED MAY 18, 2011 AS DOCUMENT NUMBER 1113818053 IN COOK COUNTY, ILLINOIS:

THE NORTH 50.00 OF THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063:

THE SOUTH 5.18 METERS (17 FEET) OF THE NORTH 15.24 METERS (50 FEET) OF THE WEST 50.29 METERS (165 FEET) OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 2 IN COMMUNITY BANK OF LEMONT SUBDIVISION OF LOT 1 IN THE PLAT OF CONSOLIDATION OF PART OF LOT 3 IN COUNTY CLERK'S DIVISION OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 123.72 FEET OF THE WEST 208.70 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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PARCEL 4:

PARCEL 1: THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE SOUTH 100 FEET OF THE WEST 225 FEET OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 1237, 1243 and 1251 State Street
1217 State Street
15454 127th Street
Lemont, Illinois

PIN No: 22-32-200-034-0000
22-32-200-048-0000
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22-32-200-029-0000