



Doc#: 1303055076 Fee: \$84.00  
Karen A. Yarbrough RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 01/30/2013 01:57 PM Pg: 1 of 8

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") is entered into by and among Qualtex Corporation ("Tenant"), Chicago Title Land Trust Company as Successor to LaSalle Bank National Association as Successor Trustee to American National Bank Company of Chicago, as Successor Trustee to First Chicago Trust Company of Illinois as Trustee under Trust Agreement dated August 19, 1976 known as Trust Number 2204 ("Landlord"), and CenTrust Bank, N.A. ("Mortgagee") (Tenant, Landlord and Mortgagee are sometimes collectively referred to herein as the "Parties").

### Recitals

**Whereas**, Mortgagee and Landlord entered into a Loan Agreement dated November 15, 2012 whereby Mortgagee agreed to make a loan (the "Loan") to Landlord on the terms and conditions contained therein.

**Whereas**, Landlord executed and delivered to Mortgagee a certain promissory note (the "Note") dated November 15, 2012 payable to the order of Mortgagee for the sum therein set forth and payable as therein provided.

**Whereas**, the Loan and Note were secured by a mortgage (the "Mortgage") dated November 15, 2012, which is to be recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder"), encumbering, among other things, the property described on Exhibit A attached hereto and made a part hereof and all improvements thereon (the "Real Estate").

**Whereas**, Tenant has entered into a Lease Agreement dated January 2, 2004 (the "Lease") with Landlord pursuant to which Landlord has leased the Real Estate to Tenant for the term and on the terms and conditions set forth in the Lease.

**Whereas**, for the purposes of completing the Loan, the Parties hereto desire expressly to subordinate the Lease to the lien of the Mortgage and to set forth their rights and obligations if certain events occur, it being a condition precedent to Mortgagee's obligation to consummate the Loan that the lien of the Mortgage be unconditionally and at all times prior and superior to the leasehold interests and estates created by the Lease.

**Whereas**, Tenant has requested that Mortgagee agree not to disturb Tenant's possessory rights in the Real Estate in the event Mortgagee should foreclose the Mortgage; provided that Tenant is not then in default under the Lease and has failed to cure within any applicable cure period, and further provided that Tenant attorns to Mortgagee or the purchaser at any foreclosure or trustee's sale of the Real Estate.

**Now, therefore**, in consideration of the mutual covenants and agreements of the Parties, the sufficiency of which the Parties acknowledge, the Parties hereby covenant and agree as follows:

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1. Definitions. As used herein, the following terms shall have the following meanings for purposes of this Agreement:

(a) "Foreclosure Event" means (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of its rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Note and/or the Mortgage, as a result of which a Successor Landlord becomes owner of the Real Estate; or (iii) delivery to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Real Estate in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Real Estate as the result of a Foreclosure Event.

(c) Initially capitalized terms used in this Agreement and not expressly defined herein have the meanings given them herein.

2. Subordination of Lease. Notwithstanding anything to the contrary set forth in the Lease, the Lease and the leasehold estate created thereby, including all of Tenant's rights and interests thereunder, shall be and shall at all times remain subject, subordinate and inferior to the Mortgage and the lien thereof, and all rights of Mortgagee thereunder, including without limitation any and all renewals, modifications, consolidations, replacements and extensions thereof.

3. Non-Disturbance. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage, unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

4. Attornment. (a) Tenant shall attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the Real Estate by deed in lieu of foreclosure, and the successors and assigns of such purchaser(s), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease on the same terms and conditions set forth in the Lease.

(b) If the Lease has not been terminated, then, when Successor Landlord takes title to Landlord's Real Estate: (a) Successor Landlord shall not terminate or disturb Tenant's possession of leased premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant under the Lease as affected by this Agreement as provided herein; and (d) the Lease shall continue in full force and effect as a direct lease, in

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accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

(c) The provisions of this Agreement shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Agreement in writing upon request by either of them.

5. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees that:

(a) Mortgagee would not make the Loan without this Agreement;  
 (b) It consents to the Mortgage and the agreements evidencing and securing the Loan;

(c) Mortgagee, in making any disbursements to Landlord, is under no 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 Real Estate;

(d) 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 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.

(e) It has notice that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to Mortgagee as security for the Loan secured by the Mortgage. In the event that Mortgagee notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease to Mortgagee, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Mortgagee or as otherwise required pursuant to such notice.

(f) It 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.

(g) It has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Real Estate, 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.

(h) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

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6. Rights and Obligations of Successor Landlord under Lease. In the event of attornment, Successor Landlord shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of base rent or additional rent, or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Successor Landlord for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) Liable for any act or omission of or any claims against any prior landlord (including Landlord), including return of the security deposit; or

(b) Subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or

(e) Liable for any sum that any prior landlord (including Landlord) owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Successor Landlord; or

(f) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or

(g) Liable for any construction obligation of any prior landlord, including Landlord; or

(h) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

7. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Real Estate from time to time, including insurance and condemnation proceeds and Successor Landlord's interest in the Lease (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as amended or affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest

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(or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

8. Mortgagee's Right to Cure. In the event Tenant has, attempts or desires to assert a claim against Mortgagee or a Successor Landlord, any such claim is subject to the following conditions:

(a) Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any remedies under the Lease, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same ("Default Notice") and thereafter, the opportunity to cure such breach or default as provided for below.

(b) Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

9. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and benefit the Parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(b) Entire Agreement. This Agreement constitutes the entire agreement among Mortgagee, Landlord, and Tenant regarding the rights and obligations of Tenant, Landlord, and Mortgagee as to the subject matter of this Agreement.

(c) Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of non-disturbance agreements by the holder of the Mortgage.

(d) Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement, or the amendments to the Lease set forth herein.

(e) Interpretation; Governing Law. The interpretation, validity, and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Illinois, excluding its principles of conflicts of law.

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(f) Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the Parties hereto.

(g) Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Representations & Warranties. Each Party represents that it has full authority to enter into this Agreement, and each Party's execution of this Agreement has been duly authorized by all necessary actions.

10. Notices. All notices, waivers, demands, requests, or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served, and received (i) if delivered by messenger, when delivered; (ii) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested; (iii) if telexed, telegraphed, or telecopied, six (6) hours after being dispatched by telex, telegram, or telecopy, if such sixth hour falls on a business day within the hours of 9:00 a.m. through 4:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such sixth hour is later than 4:00 p.m.; or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the party to be notified as follows:

In the case of Mortgagee, to:                    CenTrust Bank, N.A.  
385 Waukegan Road  
Northbrook, Illinois 60062

In the case of Tenant, to:                        Qualtex Corporation  
3360 N. Elston  
Chicago, Illinois 60618

In the case of Landlord, to:                    Timber Lanes, Inc.  
1845 W. Irving Park Road  
Chicago, Illinois 60613


or such other address or in care of such other person as hereafter shall be designated in writing by the applicable Party and shall be deemed to have been given as of the date of receipt. The parties have executed this Agreement as of the date first above written.


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In Witness Whereof, the parties have executed this Subordination, Nondisturbance, and Attornment Agreement as of December 6, 2012.

Qualtex Corporation

CenTrust Bank, N.A.

  
By: \_\_\_\_\_  
Title: Brad Sherman  
Pres

  
By: \_\_\_\_\_  
Title: Vice President

Chicago Title Land Trust Company, trustee  
and not personally under  
trust no 2104

  
By: Nancy A. Carlin  
Title: Trust Officer

All expressly understood and agreed by and between the parties hereto notwithstanding, that each and all of the covenants, conditions, representations, warranties and agreements herein made on the part of the Trustee shall in no way constitute a personal liability, responsibility, covenant, or agreement of said Trustee or for the purposes or which shall bind or obligate the Trustee or any of the Trustee's agents or employees for the purpose of binding only that party or parties primarily liable therefor, and shall be deemed and delivered by said Trustee as in and to the extent of a power of attorney executed by said Trustee; and that no personal liability or personal responsibility is assumed by or on behalf of said Trustee or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, and such personal liability, if any, being expressly waived and released.

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## FIDELITY NATIONAL TITLE INSURANCE COMPANY

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PHONE:

FAX:

ORDER NUMBER: 2011 053008130 USC  
STREET ADDRESS: 1845 - 1851 W. IRVING PARK RD.

CITY: CHICAGO  
TAX NUMBER: 14-19-201-002-0000

COUNTY: COOK

**LEGAL DESCRIPTION:**

THE WEST 1/4 OF LOT 18 AND ALL OF LOTS 19, 20 AND 21 IN BLOCK 3 IN CHARLES J. FORD'S SUBDIVISION OF BLOCKS 3, 4, 5 AND LOTS 1, 2 AND 3 OF BLOCK 16 OF SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office