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RHSP Fee:\$10.00 Affidavit Fee:
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/17/2013 11:06 AM Pg: 1 of 14

This Document Prepared by
and after Recording Return to:

Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606
Attn: Derek L. Cottier, Esq.

Doc#: 1306033030 Fee: \$64.00
Karen A. Yarbrough RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 03/01/2013 09:19 AM Pg: 1 of 14

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(4005)

Derek Cottier

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of January 11, 2013, by and among JPMORGAN CHASE BANK, N.A., a national banking association ("Mortgagee"), SVT, LLC, an Indiana limited liability company ("Tenant"), and CR CONGRESS, LLC, a Delaware limited liability company, and its successors and assigns ("Landlord").

RECITALS:

- A. Landlord owns the real estate commonly known as the Prospect Crossing Shopping Center described in Exhibit A attached hereto (the "Property").
- B. Under the terms of a certain Indenture of Lease (the "Lease") dated December 27, 2012, between Tenant and Landlord, Tenant has leased the real estate described in Exhibit B attached hereto (the "Demised Premises").
- C. Landlord has executed a mortgage in favor of Mortgagee (the "Mortgage") pursuant to which Landlord has encumbered Landlord's interest in the Property to secure, among other things, the payment of certain indebtedness owing by Landlord and other obligors to Mortgagee as described therein and in all other documents evidencing, securing or guaranteeing such indebtedness (the "Loan Documents").
- D. The parties hereto desire to have the Lease be subordinate to the Mortgage and the lien thereof, to establish certain rights of non-disturbance for the benefit of Tenant under the Lease, and further to define the terms, covenants and conditions precedent for such rights.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the parties hereto mutually agree as follows:

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THIS DOCUMENT IS BEING RE-RECORDED TO COMPLETE
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RECORDING.

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1. Subordination. The Lease, as the same may hereafter be modified, amended or extended, and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Mortgage, including without limitation, all renewals, increases, modifications, consolidations, extensions and amendments thereof with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration of the term of the Lease, including any extensions and renewals of such term now provided thereunder, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable notice and cure periods, Mortgagee agrees on behalf of itself, its successors and assigns, including any purchaser at such foreclosure (each being referred to herein as an "Acquiring Party"), that Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the Demised Premises, and the sale of the Property in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Mortgage shall be made subject to all rights of Tenant under the Lease (subject to the terms of this Agreement).

3. Attornment. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, Tenant shall, at the election of the Acquiring Party, either: (i) attorn to and recognize the Acquiring Party as the new landlord under the Lease, which Lease shall thereupon become a direct lease between Tenant and the Acquiring Party 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 (subject to the terms of this Agreement); or (ii) if any Landlord default under the Lease is not susceptible to cure and results in the termination of the Lease, or the Lease is terminated for any other reason, including, without limitation, as a result of rejection in a bankruptcy or similar proceeding, then upon receiving the written request of the Acquiring Party, Tenant shall enter into a new lease of the Demised Premises with the Acquiring Party (a "New Lease"), which New Lease shall be upon substantially the same terms, covenants and conditions as are set forth in the Lease (subject to the terms of this Agreement) for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised). In either such event described in the preceding clauses (i) or (ii) of this Section 3, Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease (or the New Lease, as applicable) for the benefit of the Acquiring Party. For all purposes of this Agreement, the word "Lease" shall be deemed to mean the Lease or any such New Lease, as applicable.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, the liability of Mortgagee, its successors and assigns, or Acquiring Party, as the case may be,

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shall be limited to its interest in the Property; provided, however, that Mortgagee or Acquiring Party, as the case may be, and their respective successors and assigns, shall in no event and to no extent:

(a) subject expressly to the provisions of Section 6 below, be liable to Tenant for any past act, omission or default on the part of any prior landlord (including Landlord) and Tenant shall have no right to assert the same or any damages arising therefrom as an offset, defense or deficiency against Mortgagee, Acquiring Party or the successors or assigns of either of them;

(b) subject expressly to the provisions of Section 6 below, be liable for or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord);

(c) subject expressly to the provisions of Section 6 below, be liable for any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date thereof or any deposit, rental security or any other sums deposited with any prior landlord (including Landlord), except to the extent such monies are actually received by Mortgagee or Acquiring Party, as applicable;

(d) be bound by any amendment or modification of the Lease that (i) modifies the amount of the rent, common area charges or any other amount payable by Tenant under the Lease; (ii) modifies the amount of, or the other terms of, Tenant's setoff rights under Section 7.5 of the Lease; or (iii) otherwise materially diminishes the obligations of the Tenant under, or materially increases the obligations of the Landlord under, the Lease; or

(e) be bound by any warranty, representation or indemnity of any nature whatsoever made by any prior landlord (including Landlord) under the Lease including any warranties, representations or indemnities regarding any work required to be performed under the Lease, use, compliance with zoning, hazardous wastes or environmental laws, habitability, fitness for purpose, title or possession.

5. Rent. Tenant hereby agrees to and with Mortgagee that, upon receipt from Mortgagee of a notice of any default by Landlord under the Mortgage, Tenant will pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited, to attorney's fees and expenses, sustained by Tenant as a result of any and all claims by third parties claiming through Landlord all or any portion of the rent, additional rents, and other sums due under the Lease which are paid by Tenant directly to Mortgagee in accordance with the terms and conditions hereof.

6. Rent Offset Rights. Mortgagee acknowledges that (i) Tenant has agreed to loan to Landlord and certain principals of Landlord the sum of \$1,224,000.00 to pay certain delinquent real estate taxes encumbering the Property (for both PIN 03-21-301-031-0000 and

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PIN 03-21-301-032-0000), such loan being evidenced by that certain Promissory Note in the stated principal amount of \$1,224,000.00 made by Landlord and certain principals of Landlord to the order of Tenant dated January 11, 2013 (the "Tax Loan Note"); and (ii) pursuant to Section 7.5 of the Lease, Landlord has agreed to credit against each monthly payment of rent payable by Tenant under Section 7.3 of the Lease, as and when due, the monthly payment, in an equal amount, due and payable under the Tax Loan Note, until such time as the Tax Loan Note is repaid in full. Mortgagee covenants and agrees, on behalf of itself and each Acquiring Party that, in the event Mortgagee, or any Acquiring Party, shall succeed to the interest of the Landlord under the Lease, then Landlord and/or such Acquiring Party shall be bound by, and shall honor, the rent offset and credit of Tenant under Section 7.5 of the Lease, without qualification, limitation or exception.

7. Lease Termination or Modification. Landlord and Tenant each agree not to (a) terminate the Lease, or (b) amend or modify the Lease in violation of Section 4(d) hereof, in each case without the prior written consent of Mortgagee.

8. Further Documents. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Tenant agrees, however, to execute and deliver to Mortgagee or Acquiring Party, as the case may be, or such other person to whom Tenant herein agrees to attorn such other instruments as such party shall reasonably request in order to effectuate said provisions.

9. Notice and Cure. Tenant agrees that if there occurs a default by Landlord under the Lease:

(a) A copy of each notice given to Landlord pursuant to the Lease shall also be given simultaneously to Mortgagee; and

(b) If Landlord shall fail to cure any default within the time prescribed by the Lease, then Mortgagee shall have the right (but not the obligation) to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and shall be allowed such additional time as may be reasonably necessary to cure such default, or obtain possession of, or the appointment of a receiver for, the Property, and so long as Mortgagee shall be proceeding diligently to cure the defaults that are reasonably susceptible of cure, or proceeding diligently to obtain possession of, or the appointment of a receiver for, the Property, no such default shall operate or permit Tenant to terminate the Lease, provided, however, that in no event shall such additional time exceed one hundred eighty (180) days from the date of the giving of notice to Mortgagee under Section 9.(a) (the "Mortgagee's Cure Period"); and provided further, however, that notwithstanding the foregoing, Tenant shall nevertheless have the right to exercise all of its rights under Section 25.4(a) of the Lease at any time prior to the expiration of the Mortgagee's Cure Period, and shall not otherwise be required to forebear the exercise of such rights.

10. Notices. All notices, demands, approvals and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given upon receipt when personally served or sent by overnight delivery service or upon the third (3rd)

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business day after mailing if sent by U. S. registered or certified mail, postage prepaid, addressed as follows:

Mortgagee:

JPMorgan Chase Bank, N.A.
10 South Dearborn Street
Mail Code IL1-1415
Chicago, IL 60603-2003
Attention: Joseph A. Patek

with a copy to:

Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, IL 60606
Attention: Derek L. Cottier

Tenant:

SVT, LLV
2244 - 45th Street
Highland, Indiana 46322
Attention: David Wilkinson, President

with a copy to:

Glenn R. Patterson
Lucas, Holcomb & Medrea, LLP
300 East 90th Drive
Merrillville, Indiana 46410

Landlord:

CR Congress, LLC
837 East Nerge Road
Rochelle, Illinois 60172
Attention: Manny Rafidia

or to such other address in the United States as such party may from time to time designate by written notice to the other parties.

11. Binding Effect. The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of Mortgagee, Landlord and Tenant and their respective successors and assigns.

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12. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto or their respective successors in interest.

13. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Illinois.

14. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

15. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect 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 Agreement, and the other provisions of this Agreement shall remain in full force and effect.

16. Authority. Each of the undersigned parties further represents and warrants to the other parties hereto that the person executing this Agreement on behalf of each such party hereto has been duly authorized to so execute this Agreement and to cause this Agreement to be binding upon such party and its successors and assigns.

17. Tenant's Personal Property. It is expressly agreed to between Mortgagee, Landlord and Tenant that in no event shall the mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof), (a) any of Tenant's moveable trade fixtures, business equipment, furniture, signs or other personal property at any time placed in, on or about the Property, or (b) any leasehold improvements made to the Demised Premises by Tenant, to the extent such improvements are removable by Tenant without damaging the Demised Premises.

18. Subsequent Transfer. If any Acquiring Party by succeeding to the interest of Landlord under the Lease, should become obligated to perform the covenants of Landlord thereunder, then, upon any transfer of Landlord's interest by such Acquiring Party, all obligations shall terminate as to such Acquiring Party.

19. Waiver of Jury Trial. LANDLORD, TENANT AND MORTGAGEE HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

20. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

MORTGAGEE:

JPMORGAN CHASE BANK, N.A., a national banking association

By: Denise Saletta
Name: Denise Saletta
Title: Authorized Officer

TENANT:

SVT, LLC, an Indiana limited liability company

By: _____
Name: David Wilkinson
Title: President

LANDLORD:

CR CONGRESS, LLC, a Delaware limited liability company

By: _____
Name: Manny Rafidia
Title: Managing Member

Property of Cook County Clerk's Office

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ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss.

On December 27, 2012, before me, MARY FEI, a Notary Public in and for said State, personally appeared DENNIS SALETTA, an Authorized Officer of JPMorgan Chase Bank, N.A., a national banking association ("Bank"), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the Bank executed the instrument.

WITNESS my hand and official seal.



Mary Fei
Notary Public
My Commission Expires: 4-27-2014

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

MORTGAGEE:

JPMORGAN CHASE BANK, N.A., a national banking association

By: _____
Name: _____
Title: Authorized Officer

TENANT:

SVT, LLC, an Indiana limited liability company

By:  _____
Name: David Wilkinson
Title: President

LANDLORD:

CR CONGRESS, LLC, a Delaware limited liability company

By: _____
Name: Manny Rafidia
Title: Managing Member

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STATE OF INDIANA)
)
COUNTY OF LAKE) ss.

On December 27, 2012, before me, Glenn R. Patterson, a Notary Public in and for said State, personally appeared David Wilkinson, the president of SVT, LLC, an Indiana limited liability company ("SVT"), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument SVT executed the instrument.

WITNESS my hand and official seal.



Notary Public , **Glenn R. Patterson**
My Commission Expires: **November 25, 2016**
My County Of Residence: **Lake**



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

MORTGAGEE:

JPMORGAN CHASE BANK, N.A., a national banking association

By: _____
Name: _____
Title: Authorized Officer

TENANT:

SVT, LLC, an Indiana limited liability company

By: _____
Name: David Wilkinson
Title: President

LANDLORD:

CR CONGRESS, LLC, a Delaware limited liability company

By: 
Name: Manny Rafidia
Title: Managing Member

Property of Cook County Clerk's Office

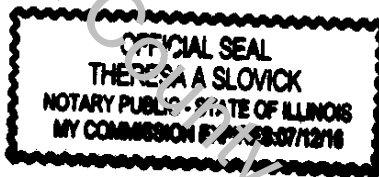
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STATE OF ILLINOIS)
)
COUNTY OF COOK) ss.

On January 3, 2013, before me, Theresa A. Slovick, a Notary Public in and for said State, personally appeared Manny Rafidia, the managing member of CR Congress, LLC, a Delaware limited liability company ("CR Congress"), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument CR Congress executed the instrument.

WITNESS my hand and official seal.

Theresa A. Slovick
Notary Public
My Commission Expires: 7-12-16



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EXHIBIT A

SHOPPING CENTER LEGAL DESCRIPTION

Lots 1 and 2 in Prospect Crossing P.U.D. Subdivision of Lot 1-A in Prospect Crossing consolidation in the Southwest $\frac{1}{4}$ of Section 21, Township 42 North, Range 11 East of the Third Principal Meridian, recorded January 11, 1980 as Document Number 90018171, and filed January 11, 1990 as Document Number LR3853044, in Cook County, Illinois.

Common Address: 1241 North Rand Road, Prospect Heights, Illinois

PINs: 03-21-301-031-0000 and 03-21-301-032-0000

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EXHIBIT B

DEMISED PREMISES LEGAL DESCRIPTION

That part of Lot 1 and Lot 2 in Prospect Crossing P.U.D. subdivision of Lot 1-A in Prospect Crossing Consolidation in the Southwest $\frac{1}{4}$ of Section 21, Township 42 North, Range 11 East of the third principal meridian, recorded January 11, 1980 as Document Number 90018171, and filed January 11, 1990 as Document Number LR3853044, described as follows:

Beginning at a point 122.52 feet West of the East line of said subdivision and 479.49 feet South of the South line of Willow Road; thence West a distance of 216.94 feet to a point, said point being 461.51 feet South of the South line of Willow Road; thence South a distance of 99.25 feet to a point, thence West a distance of 10.13 feet to a point; thence South a distance of 152.07 feet to a point; thence East a distance of 10.00 feet to a point; thence South 123.68 feet to a point; thence East a distance of 61.75 feet to a point, said point being 277.97 feet West of the East line of said subdivision; thence North a distance of 15.96 feet to a point; thence East a distance of 62.17 feet to a point; thence North a distance of 62.17 feet to a point; thence East a distance of 4.68 feet to a point; thence North a distance of 30.67 feet to a point; thence East a distance of 63.33 feet to a point, said point being 79.42 feet West of East line of said subdivision; thence North a distance of 199.63 feet to a point; thence West a distance of 43.04 feet to a point; thence North a distance of 67.32 feet to the point of beginning, all in Cook County, Illinois.