

# UNOFFICIAL COPY

Doc#: 1618022003 Fee: \$66.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/28/2016 08:13 AM Pg: 1 of 10

Recording Requested By,  
And After Recording, Return To:  
WELLS FARGO BANK,  
NATIONAL ASSOCIATION  
MAC: D4003-01E  
801 W. 4<sup>th</sup> Street  
Winston-Salem, NC 27101-2501  
Attn: **Wealth Custom Trailing Documents**

---

## SUBORDINATION, NON-DISTURBANCE, ATTORNMEN AND ESTOPPEL AGREEMENT (MORTGAGE)

THIS AGREEMENT is entered into as of June 22, 2016, by and between FASHION GALLERY, INC. ("Lessee"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

### RECITALS

A. Bank has extended credit or may hereafter extend credit to LANSING PARTNERS I LLC ("Borrower") secured, in whole or in part, by a mortgage (the "Mortgage") covering that certain real property situated in The Landings Shopping Center, Lansing, Illinois, and described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Lessee leases all or a portion of the Property pursuant to a lease entered into between LANSING PARTNERS I LLC ("Lessor") and Lessee dated as of April 28, 2015 (the "Lease"). It is a condition of Bank's agreement to extend or continue credit to Borrower secured by the Property that the security of the Mortgage be and at all times remain a lien or charge on the Property prior and superior to the rights of Lessee under the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. SUBORDINATION.

(a) Subordination of Lease. The Mortgage and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. Lessee intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Lessee's right and interest to the Property thereunder to the lien or charge of the Mortgage, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Lessee acknowledges that Bank, in extending credit or continuing to extend credit to Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Lessee. Lessee acknowledges that it has such information with respect to any credit extended by Bank to Borrower, and all loan documents executed in connection therewith, as Lessee deems necessary in order to provide this subordination. Lessee further agrees that Bank is under no obligation or duty to, nor has Bank represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

# UNOFFICIAL COPY

(d) **Entire Subordination Agreement.** This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Mortgage; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Mortgage and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. **LEASE.** Lessee hereby covenants and agrees that, so long as the Mortgage remains in force and effect:

(a) **INTENTIONALLY DELETED**

(b) **Notice of Default.** Lessee shall notify Bank in writing concurrently with any notice given to Lessor of Tenant's election to terminate the Lease due to any breach of or default by Lessor under the Lease. Lessee agrees that Bank shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and Lessee shall not declare a default of the Lease, as to Bank, if Bank cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided however, that if such breach or default cannot with diligence be cured by Bank within such thirty (30) day period, the commencement of action by Bank within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Bank pursues such cure with continuity and diligence.

(c) **No Advance Rents.** Lessee shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) **Assignment of Rents.** Upon receipt by Lessee of written notice from Bank that Bank has elected to terminate the license granted to Lessor to collect rents, as provided in the Mortgage, and directing Lessee to make payment thereof to Bank, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor or Borrower is in default under any obligations to Bank. Lessor or Borrower irrevocably directs Tenant to comply with such notice from Bank, notwithstanding any directions or instructions to the contrary given by Lessor or Bank, and agrees that Lessee's compliance with such notice shall not be deemed a violation of the Lease and Lessor hereby releases and discharges Lessee from any liability to Lessor or Borrower on account of any such payments made by Lessee pursuant to such notice.

3. **ATTORNMEN**. If Bank or any other transferee acquires Lessor's right, title and interest in and to the Property pursuant to a foreclosure of the Mortgage or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, Lessee agrees as follows for the benefit of Bank or such transferee:

(a) **Payment of Rent.** Lessee shall pay to Bank or such transferee all rental payments required to be made by Lessee pursuant to the terms of the Lease for the remaining term thereof.

(b) **Continuation of Performance.** Lessee shall be bound to Bank or such transferee in accordance with all of the terms of the Lease for the remaining term thereof, and Lessee hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee.

(c) **No Offset.** Neither Bank nor such transferee shall be liable for, or subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor as the prior lessor under the Lease except for those of a continuing nature, nor for the return of any sums which Lessee may have

# UNOFFICIAL COPY

paid to Lessor as the prior lessor under the Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Bank or such transferee.

(d) Subsequent Transfer. If Bank or such transferee, by succeeding to Lessor's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Bank or such transferee.

4. NON-DISTURBANCE. In the event of a foreclosure of the Mortgage, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, so long as there shall then exist no breach, default or event of default by Lessee under the Lease beyond any applicable notice or cure periods under the Lease, (a) the leasehold interest of Lessee shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Bank and its successors-in-interest shall recognize and accept Lessee as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. INTENTIONALLY DELETED

6. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower, Lessor or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Lessee or any other person or entity.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing, delivered to each party at the address set forth below its signature, with copies for Tenant to: 1000 Pennsylvania Avenue, Brooklyn, NY, Attn: Lease Administration #698 and; 1000 Pennsylvania Avenue, Brooklyn, NY, Attn: General Counsel #698 or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Borrower; Lessor. If Borrower and Lessor are the same, each reference in this Agreement to Borrower or Lessor shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of New York.

# UNOFFICIAL COPY

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

(i) At Tenant's election, this Agreement shall not be binding on Tenant if within thirty (30) days after the Tenant's execution hereof, a fully executed copy of this Agreement is not delivered to Tenant.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

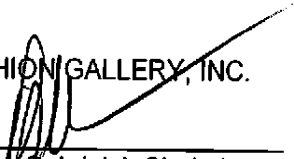
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

LESSEE:

BANK:

FASHION GALLERY, INC.

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By:   
Name: Gabriel J. Chehebar  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 1000 Pennsylvania Avenue  
Brooklyn NY 11207  
Attr. Joseph Chehebar #698

Address: \_\_\_\_\_  
\_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT A  
TO  
SUBORDINATION, NON-DISTURBANCE,  
ATTORNEY AND ESTOPPEL AGREEMENT  
(MORTGAGE)

Legal Description of Property:

EXHIBIT B-2 LEGAL DESCRIPTION OF LANDLORD'S PARCEL

All that certain real property located in the County of Cook, State of Illinois, described as follows:

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 ON 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 ON 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

# UNOFFICIAL COPY

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 MERCHANDISE 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 MERCHANDISE COMPANY INC. AND SM LTCB LANSING, LLC DATED DECEMBER 3, 2002 RECORDED ON DECEMBER 24, 2002 AS DOCUMENT NUMBER 0021433426.

Parcel Identification Number(s): 30-19-300-019-0000;  
30-19-300-038-0000; and  
30-19-300-039-0000

Property Address: 16795 Torrence Avenue, Lansing, Illinois 60438

# UNOFFICIAL COPY

(e) Borrower; Lessor. If Borrower and Lessor are the same, each reference in this Agreement to Borrower or Lessor shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors; Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of New York.

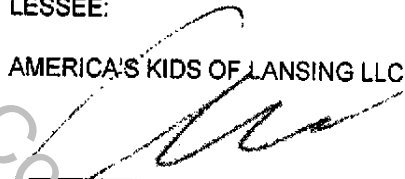
(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

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

LESSEE:

AMERICA'S KIDS OF LANSING LLC



Abe Harari, Chief Executive Officer  
19 West 34th Street, 11th Floor  
New York, NY 10001

BANK:

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By: Colin Koester  
Name: COLIN KOESTER  
Title: SR PRIVATE BANKER  
Address: 150 E 42 ST  
NY NY 10017



# UNOFFICIAL COPY

## New York Acknowledgement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of May in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared \_\_\_\_\_ 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, 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

STATE OF NEW YORK  
COUNTY OF KINGS

On the 8<sup>th</sup> day of June in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Gabriel J. Chehebar 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, 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

TONETTE WILLIAMS  
NOTARY PUBLIC, State of New York  
No. 01W16229200  
Qualified in Queens County  
Commission Expires October 4, 20 18

# UNOFFICIAL COPY

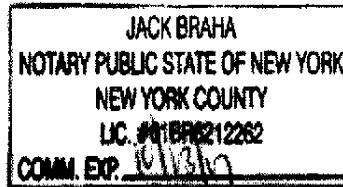
New York Acknowledgement

STATE OF New York  
COUNTY OF New York

On the 8 day of June in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared ABE HARARI 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

STATE OF New York  
COUNTY OF New York



On the 22 day of June in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Colin Hoester 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

MICHAEL HALL GRAN  
NOTARY PUBLIC STATE OF NEW YORK  
NEW YORK COUNTY  
LIC. #01HA6316250  
COMM. EXP. 12/08/2018