



Doc# 1709729101 Fee \$54.00

RHSP.FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/07/2017 03:53 PM PG: 1 OF 9

A10 CAPITAL

Prepared by, recording requested by,
and when recorded mail to:

A10 Capital, LLC

Attn: Jackie Cox

800 W. Main Street, Suite 1100

Boise, Idaho 83702

NCS-828337 3 of 8 MZ

Address of Property: 3535 Commercial Avenue, Northbrook, Illinois

Permanent Parcel Number(s): 04-05-104-002-0000

Loan No. AP-IL-KS-17-031-0276-001

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "*Agreement*") is entered into as of March 31st, 2017, by and among Rosfam Capital SPE LLC, a Michigan limited liability company (the "*Landlord*"); Daijhs U.S.A., Inc., a California corporation (the "*Tenant*"); and A10 Capital, LLC, a Delaware limited liability company (the "*Lender*").

RECITALS:

A. Landlord is the owner in fee simple of certain real property commonly known as 3535 Commercial Avenue, Northbrook, Illinois, and more particularly described on Exhibit A attached hereto, together with the improvements located thereon (the "*Property*");

B. Landlord and Tenant have entered into a certain Lease agreement dated effective March 31, 2017 (as the same may have been or may hereafter be amended, modified, renewed, extended or replaced, the "*Lease*"), which Lease covers certain premises described in the Lease and being part of the Property;

C. Lender has made a loan to Landlord (the "*Loan*"), which Loan is evidenced by a Promissory Note (the "*Note*") in the amount of the Loan and secured by, among other things, a certain Mortgage With Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "*Security Instrument*") encumbering the Property, which Security Instrument is recorded in the real estate records of Cook County, Illinois, as Document No. 1709729100

D. In connection therewith, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

R/OK

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AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, the parties hereto agree as follows:

1. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby, is and shall continue to be subordinate in all respects to the Security Instrument and the liens thereof and all advances and rights of Lender thereunder, and to any and all renewals, modifications, consolidations, replacements and extensions thereof, as fully and as if the Security Instrument and all of its renewals, modifications, consolidations, replacements and extensions had been executed, delivered and recorded prior to execution of the Lease. Without affecting the foregoing subordination, Lender may, from time to time: (a) extend, in whole or in part, by renewal or otherwise, the terms of payment or performance of any obligation secured by the Security Instrument; (b) release, surrender, exchange or modify any obligation secured by the Security Instrument, or any security for such obligation; or (c) settle or compromise any claim with respect to any obligation secured by the Security Instrument or against any person who has given security for any such obligation.

2. Any option to purchase right of first refusal, or other right that Tenant has to acquire all or any portion of the Property is set forth in the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Security Instrument and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof. Completion of the foreclosure of the Security Instrument or delivery of a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Security Instrument or deed given in lieu of foreclosure.

3. In the event it should become necessary to foreclose the Security Instrument or Lender should otherwise come into possession of the Property, Lender will not join Tenant under said Lease in summary or foreclosure proceedings and will not disturb the use and occupancy of Tenant under the Lease so long as (i) Tenant is not in default under any of the terms, covenants, or conditions of the Lease and (ii) Tenant has not prepaid the rent except monthly in advance as provided by the terms of the Lease (although absent another default, Tenant's rights hereunder shall not be disturbed due to any such prepayment, but Tenant shall not be entitled to credit therefor).

4. Tenant agrees that in the event Lender or its successors, assigns or designees or any other purchaser (a "**Successor Landlord**"), shall acquire the interest of Landlord under the Lease by reason of the exercise of the power of sale contained in the Security Instrument or by foreclosure or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, Successor Landlord shall be substituted as Tenant's landlord under the Lease, and Tenant shall attorn to Successor Landlord without the necessity of

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attornment or other act or agreement, and the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor Landlord and Tenant. Said purchaser by virtue of such foreclosure shall be deemed to have assumed and agreed to be bound, as Successor Landlord, by the terms and conditions of the Lease until the resale or other disposition of its interest by such purchaser; provided, however, Successor Landlord shall not be subject to any claims, offsets, or defenses which Tenant might have against any prior landlord (including Landlord) nor shall Successor Landlord be liable for any act or omission of any prior landlord (including Landlord), nor shall Successor Landlord be bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Landlord) nor shall it be bound by any amendment or modification of the Lease made without its written consent. All rights and obligations of the parties herein and hereunder shall continue as though such foreclosure proceedings had not been brought, except as aforesaid. Tenant agrees to execute and deliver to any such purchaser such further assurance and other documents, including a new lease upon the same terms and conditions as the Lease, confirming the foregoing as such purchaser may reasonably request. Tenant waives the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give it any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder by reason of any such foreclosure proceeding.

5. Tenant acknowledges that Landlord has executed and delivered to Lender an assignment of leases and rents and all other sums due thereunder as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant agrees to notify Lender of any default by Landlord under the Lease. Lender shall have the same right to cure such default as is provided to Landlord under the Lease. In the event that Lender notifies Tenant of a default under the Security Instrument, and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice. Landlord shall have no claim against Tenant for any amounts paid to Lender pursuant to any such notice.

6. Tenant agrees to promptly execute and deliver all further instruments and documents, and take any and all further action, as may be necessary or desirable or that Lender may reasonably request to implement the terms of this Agreement.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Nothing contained herein shall prevent or delay Lender from seeking, in any court of competent jurisdiction, specific performance or other equitable remedies in the event of any breach or intended breach by Landlord or Tenant of their obligations hereunder.

8. This Agreement and the obligations of Landlord and Tenant and the rights and privileges of Lender hereunder shall continue until payment in full of all obligations of Landlord to Lender relating to the Loan which are secured by the Property or any part thereof.

9. Any and all notices required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt

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requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided that for facsimile delivery, an identical notice is also sent simultaneously by mail, overnight courier or personal delivery as otherwise provided in this Section 9). All such notices shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below.

If to Tenant:

Daiohs U.S.A., Inc.
 Attn: Jeff Hein
 1 S 660 Midwest Road
 Oakbrook Terrace, IL 60181
 Facsimile No.: 630-599-1213

If to Landlord:

Rosfam Capital SPE LLC
 180 East Brown Street
 Birmingham, Michigan 48009
 Attn: James L. Rosenthal
 Facsimile: (586) 778-7213

If to Lender:

A10 Capital, LLC
 Attn: Jackie Cox
 800 W. Main Street, Suite 1100
 Boise, Idaho 83702
 Facsimile No.: 208.577.5050

Any notice so addressed and sent by United States mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first business day after deposit with an overnight air courier service, or (3) on the third business day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee. Any notice so delivered in person shall be deemed to be given when received for by, or actually received by the recipient party. If given by facsimile, a notice shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 9. Except for notices sent via facsimile as expressly described above, no notice hereunder shall be effective if sent or delivered by electronic means. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

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10. This Agreement and all provisions contained herein shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto. When used herein, the term "Landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease, and the term "Lender" refers to Lender and to any successor-in-interest of Lender under the Security Instrument.

11. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

12. In all cases where there is more than one Tenant, then all words used in this Agreement in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Tenant named in this Agreement or when this Agreement is executed by more than one Tenant, the word "Tenant" shall mean all and any one or more of them. The words "Tenant," "Landlord" and "Lender" include the heirs, successors, assigns and transferees of each of them. If this Agreement is executed by more than one Tenant, then each Tenant is jointly and severally liable under and bound by the terms of this Agreement.

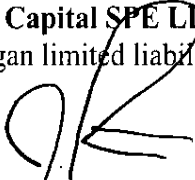
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.


LANDLORD:

Rosfam Capital SPE LLC,
a Michigan limited liability company

By: 
Name: James I. Rosenthal
Title: Manager

STATE OF Michigan §
 §
COUNTY OF Monroe §

This instrument was acknowledged before me, a notary public, on this 23 day of March, 2017, by James I. Rosenthal, as Manager of **Rosfam Capital SPE LLC**, a Michigan limited liability company.


Notary Public, State of Michigan
Name: Erika L. Back
My commission expires: 9-11-17

The original of this document bears an impression notary seal which is not inked and so not visible when copied.

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TENANT:

Daiohs U.S.A., Inc.,
a California corporation

By: *Jeffrey C. Hein*
Name: Jeffrey C. HEIN
Title: TREASURER

STATE OF Illinois §
COUNTY OF DuPage §

This instrument was acknowledged before me, a notary public, on this 24th day of March, 2017, by Jeffrey C. HEIN [name], as TREASURER [title] of **Daiohs U.S.A., Inc.**, a California corporation.

Laura Perich
Notary Public, State of Illinois
Name: Laura Perich
My commission expires: 5-13-19



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LENDER:

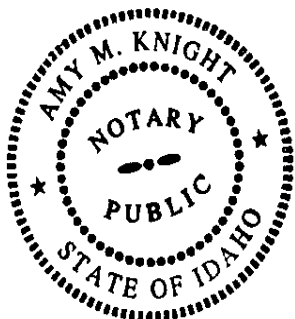
A10 Capital, LLC,
a Delaware limited liability company

By: *Jacqueline Cox*
Jacqueline C. Cox
Executive Vice President

STATE OF IDAHO §

COUNTY OF ADA §

This instrument was acknowledged before me, a notary public, on this 28 day of March, 2017, by Jacqueline C. Cox, as Executive Vice President of **A10 Capital, LLC**, a Delaware limited liability company.



Amy M Knight
Notary Public, State of Idaho
Name: AMY M KNIGHT
My commission expires: 7-14-2017

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**EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

Property Description

LOT 9 IN NORTHBROOK EDENS INDUSTRIAL PARK SUBDIVISION UNIT NO. 1, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 5 AND PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, ALL IN TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Tax Parcel ID: 04-05-104-002-0000

Street Address: 3535 Commercial Avenue, Northbrook, Illinois

Property of Cook County Clerk's Office