

UNOFFICIAL COPY



Doc# 1906445099 Fee \$58.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 03/05/2019 03:15 PM PG: 1 OF 11

Recording Requested
by and When
Recorded Return to:

Attn: Darrett J. Schultz, Esq.
Ginsberg Tarobis LLC
300 S. Wacker Drive, #2750
Chicago, IL 60606

CCH11803476LD 4 of 8

(Space Above For Recorder's Use)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is as of the 27th day of February, 2019, between CIBC BANK USA, an Illinois-chartered bank, in its capacity as administrative agent for itself and certain other lenders ("Lender"), Redden's Switchback LLC ("Landlord") and LUXOTTICA OF AMERICA INC., an Ohio corporation, f/k/a Luxottica Retail North America, Inc., successor-in-interest to LensCrafters, Inc., an Ohio corporation ("Tenant").

RECITALS

A. Tenant is the tenant under a certain lease (the "Lease"), dated as of August 31, 2016 with Landlord, of premises for approximately 1,437 square feet at Walton on the Park South, located at 908 N. State Street, Chicago, IL (the "Premises").

B. This Agreement is being entered into in connection with a certain loan (the "Loan") which Lender is making to Landlord, secured, in part, by a Mortgage, Assignment of Leases and Rents and Security Agreement on that certain property described on Exhibit A attached hereto (the "Property") of which the Premises are a part (the "Security Instrument") and an Assignment of Leases and Rents (the "Assignment"; the Security Instrument, the Assignment and the other documents executed and delivered in connection with the Loan are hereinafter collectively referred to as the "Loan Documents").

C. The term "Lender" as used herein shall be deemed to include the Lender states hereinabove and any of its successors, and assigns, including anyone who shall have succeeded to Landlord's interest by, through or under judicial foreclosure or private trustee's sale or other proceedings brought pursuant to the Security Instrument, or deed in lieu of such foreclosure or proceedings, or otherwise.

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

R
Lax
Vittor

UNOFFICIAL COPY

1. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby are and shall be subject and subordinate in all respects to the lien of the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.

2. Lender agrees that, if Lender exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including, but not limited to, an entry by Lender pursuant to the Security Instrument, a foreclosure of the Security Instrument, a power of sale under the Security Instrument or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and subject to all the terms, covenants and conditions of the Lease, and (b) Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of an exercise of the power of sale or foreclosure of the Security Instrument by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to ownership of the Premises, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including, but not limited to, all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease and the Lease shall become a direct lease between Tenant and Lender and, subject to Section 4 hereof, Lender shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable in any way for any act, omission, neglect or default of any prior Landlord (including, without limitation, the then defaulting Landlord), except for any act, omission, neglect or default that is of a continuing nature and which continues to occur after the date Lender becomes landlord under the Lease or

(b) subject to any claim, defense, counterclaim or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), except for any claim, defense, counterclaim, or offsets pursuant to any act or omission that is of a continuing nature and which continues to occur after the date Lender becomes landlord under the Lease, or

(c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or

(d) (i) unless otherwise consented to by Lender, bound by any amendment or modification to the Lease that changes the term of the Lease or that reduces Tenant's monetary obligations under the Lease (other than to a de minimis extent) or that increases Landlord's obligations or liabilities under the Lease (other than to a de minimis extent) or that reduces Tenant's other obligations or liabilities under the Lease (other than to a de minimis extent), or (ii) except for a surrender or termination expressly permitted by the Lease, bound by any surrender of the Premises or termination of the Lease; or

UNOFFICIAL COPY

(e) accountable for any monies deposited with any prior Landlord (including, but not limited to, security deposits), except to the extent such monies are actually received by Lender, or

(f) obligated to complete any construction work required to be done by the Landlord pursuant to the provisions of the Lease or to reimburse the Tenant for any construction work done by the Tenant; provided, however, that Tenant shall retain any lease termination or set off rights expressly permitted under the Lease should successor landlord not perform the aforementioned construction work; or

(g) except as expressly required of "landlord" by the terms of the Lease, required to make any repairs to the Premises or to the premises demised under the Lease required as a result of fire or other casualty or by reason of condemnation unless the Lender as "landlord" shall be obligated under the Lease to make such repairs; or

(h) required to make any capital improvements to the Premises which the Landlord may have agreed to make, but had not completed; provided, however, that Tenant shall retain any lease termination or set off rights permitted under the Lease that may arise should successor landlord not make such capital improvements; or

(i) liable to Tenant hereunder or under the Lease beyond Lender's interest in the Property and any income, rents or proceeds derived therefrom.

In addition, should the Lender take title to the Premises (whether directly or through an assignee or nominee), the Lender shall not have any liability under the Lease for the actions of any landlord that occur from and after the date that the Lender (or its nominee or designee) transfers title and is no longer the landlord under the lease.

Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Lender shall have the right but no obligation to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender, in addition to the period given to Landlord for remedying defaults, an additional thirty (30) days to remedy, or cause to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. If possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Loan Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee remains, the owner of the Premises. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Property and all rents, income or proceeds derived therefrom for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or

UNOFFICIAL COPY

other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Security Instrument or to accept a deed in lieu of foreclosure of the Security Instrument or to otherwise acquire the Premises or to exercise any other remedies under the Loan Documents.

6. Tenant has no actual knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the making of the Assignment from Landlord to Lender in connection with the Loan. Subject to the terms herein, Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in the Assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of the Assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.

7. If Tenant is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. If Landlord is a partnership or limited liability company, each individual executing this Agreement on behalf of said partnership or limited liability company represents and warrants the s/he is duly authorized to execute and deliver this Agreement on behalf of said partnership or limited liability company in accordance with the partnership agreement for the partnership or operating agreement for the limited liability company.

8. Tenant acknowledges notice of the Security Instrument and agrees with Lender and Landlord that, in the event the Lender becomes a mortgagee-in-possession of the Premises, or otherwise takes title to the Premises (whether directly or through a nominee or designee) upon demand or notice as provided in the Security Instrument, the Tenant shall make payment of all monies due and to become due under the Lease directly to the Lender (at any time that the Lender is acting as a mortgagee-in-possession or has otherwise taken title to the Premises, whether directly or through a nominee or designee). Landlord shall have no claim against Tenant for any amounts paid to Lender pursuant to any such notice. Landlord hereby acknowledges and agrees that Tenant may rely on any such notice from Lender without the necessity of inquiring as to its validity.

9. This Agreement may not be amended without the prior express written consent of the parties.

10. This Agreement may be executed in separate counterparts, all of which shall constitute a single instrument.

11. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be at the following addresses:

If to Tenant: Luxottica of America Inc.
4000 Luxottica Place
Mason, OH 45040
Attention: Lease Administration

UNOFFICIAL COPY

with a copy to: Luxottica of America Inc. (dba LensCrafters #8616)
 4000 Luxottica Place
 Mason, OH 45040
 Attention: Assistant General Counsel Real Estate & Business Services

If to Lender: CIBC Bank USA
 120 N. LaSalle Street
 Chicago, Illinois 60603
 Attn: Maria Alexakis

with a copy to: _____

12. In the event Lender shall acquire Landlord's interest in the Property, Tenant shall look only to the estate and interest, if any, of Lender in the Property and any rent, income or proceeds derived therefrom for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as a successor landlord under the Lease or under this Agreement and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, the relationship of the landlord and tenant under the Lease or Tenant's use or occupancy of the Property or any claim arising under this Agreement.

13. The term "Lender" as used herein includes any successor, assign, designee or nominee of the named Lender herein, including without limitation, any co-lender, at the time of making the Loan, any purchaser at a foreclosure sale and any transferee who acquires possession or title to the Premises pursuant to a deed in lieu of foreclosure or other means, and their successors and assigns, and the term "Tenant" as used herein includes any successor and assign of the named Tenant herein.

14. If any provision of this Agreement is held to be invalid or unenforceable 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.

15. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

UNOFFICIAL COPY

16. This Agreement shall be construed in accordance with the laws of the State where the Premises is located.

[Signatures to appear on the following page]

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed this 11th day of January, 2019.

Mailing Address:

Luxottica of America Inc., (dba
LensCrafters #8616)
4000 Luxottica Place
Mason, OH 45040
Attn: Lease Administration

TENANT:

Luxottica of America Inc.,
an Ohio corporation

By:

Stefano Vittori

Name: Stefano Vittori

Its: Global Real Estate SVP

January 11th, 2019

STATE OF OHIO)

) SS.

COUNTY OF WARREN)

The foregoing instrument was acknowledged before me this 11th day of January, 2019, by Stefano Vittori, the Global Real Estate SVP of Luxottica of America Inc., an Ohio corporation, on behalf of the corporation.

GIVEN under my hand and notarial seal this 11th day of January, 2019.

R. Zimmer

Notary Public

My Commission Expires:



~~R. ZIMMER~~
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
08-29-2022
Recorded in
Montgomery County

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed this 25th day of February, 2018¹⁹.

Mailing Address:

CIBC Bank USA
 120 S. LaSalle Street
 Chicago, Illinois 60603
 Attn: Maria Alexakis

LENDER:

CIBC BANK USA, an Illinois state-chartered bank

By: _____
 Name: Matthew S. Campbell
 Its: Officer

STATE OF ILLINOIS)
) SS.
 COUNTY OF Cook

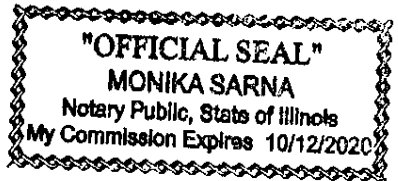
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Matthew S. Campbell, being the Officer of **CIBC BANK USA**, an Illinois state chartered bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of February, 2018¹⁹.

 Notary Public

My Commission Expires:

10/12/20



Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed this 22 day of February, 2019.

Mailing Address:

c/o Newcastle Limited LLC
150 N. Michigan Avenue
Suite 3610
Chicago, Illinois 60601

LANDLORD:

REDDEN'S SWITCHBACK LLC
an Illinois limited liability company

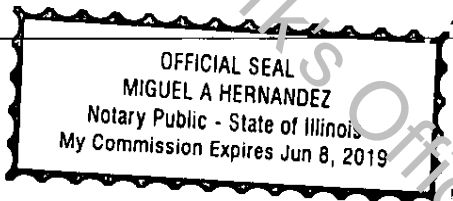
By: _____
Name: Jack Potts
Its: Senior Vice President

STATE OF Illinois)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jack Potts, being the SVP of REDDEN'S SWITCHBACK LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of FEBRUARY, 2019.

Notary Public
My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

Lot 2 in Walton On The Park South Subdivision recorded July 27, 2010 as Document Number 1020834063, a Resubdivision of Lot 5 of Walton on the Park Subdivision recorded September 10, 2008 as Document Number 0825418053, in the East 1/2 of the Southeast 1/4 of Section 4, and in the South Fractional 1/2 of Section 3, all in Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Also, the following easement parcels shown below for the benefit of Parcel 1:

Parcel 2A:

Non-exclusive easements, as granted and described in Grant of Easements: Temporary Construction Easements and Easements for Permanent Encroachments recorded March 19, 2009 as Document No. 0907822026.

Parcel 2B:

Non-exclusive easements as granted and described in Declaration of Easements for Mutual Encroachments and Maintenance of Facilities: Walton Mansions and Walton South recorded March 19 2009 as document number 0907822030.

Parcel 2C:

Non-exclusive easements as granted and described in Declaration of Covenants, Conditions Restrictions and Easements: Reciprocal Easement Agreement recorded May 27, 2010 as document number 1014716028, as amended by Amendment to Declaration of Covenants, Conditions, Restrictions and Easements: Reciprocal Easement Agreement recorded March 14, 2016 as document number 1607444025 and as affected by Assignment and Assumption of Declarant Rights recorded March 27, 2014, as Document No. 1408639083, and as affected by Assignment and Assumption of Declarant Rights recorded June 5, 2018, as Document No. 1815619108.

Parcel 2D:

Non-exclusive easements as granted and described in Declaration of Easements for Access, Construction, Encroachments and Shared Facilities recorded May 11, 2010 as document number 1013118085, as amended by First Amendment recorded April 30, 2015 as document number 1512041141 and Second Amendment recorded November 20, 2017 as document number 1732429055.

PIN: 17-04-435-033-0000

UNOFFICIAL COPY

ADDRESS: 902 North State, Chicago, IL 60610

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**