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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

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THIS AGREEMENT is made and entered into as of the 25 day of March, 1994 by and between The Casual Male, Inc. ("Tenant") and LASALLE NATIONAL BANK, a national banking association ("Mortgagee").

### RECITALS:

A. Mortgagee is the holder of a certain Mortgage dated ~~March~~ <sup>April 1,</sup> ~~xxxxxxx~~, 1994, to be recorded concurrently herewith (the "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to \$ 530,000.

B. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as the "Lease Agreement", and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as the "Lease") dated September 30, 1987 with M & J Wilkow, Ltd., as agent for American National Bank UTN 105008-09

(the "Original Landlord"), pursuant to which Tenant leased certain premises (the "Leased Premises") consisting of approximately 3,040 rentable square feet of space designated as Store 2 in the building (the "Building") on the parcel of land (the "Land") legally described in Exhibit "A" attached hereto and commonly known as the Evergreen Commons Shopping Plaza (the Land and Building herein being collectively referred to as the "Real Estate"). The Lease is for a term of 11 yrs (3) months, commencing on September 30, 1987 and expiring on December 31, 1998, provided that Tenant has the right to extend said lease term for Two additional period(s) of five years each. All right, title and interest of the Original Landlord in, to and under the Lease heretofore has been acquired by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust No. 105008-09 dated March 28, 1988 ("Landlord").

NOW, THEREFORE, the parties do hereby covenants and agree as follows:

1. Tenant represents and warrants to Mortgagee that the Lease is the only document or agreement governing the tenancy of Tenant with respect to the Leased Premises.
2. Tenant hereby agrees not to amend or modify the Lease without the prior written consent of Mortgagee.
3. Tenant has executed and delivered to Mortgagee a certain Tenant Estoppel Certificate (the "Estoppel Certificate") dated on or about the date hereof. The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and Tenant acknowledges that Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

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4. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee sixty (60) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such sixty (60) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 4, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

5. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

6. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee.

7. Mortgagee agrees that so long as Tenant is not in default under the lease:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage; and

(b) The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially

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adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

8. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease;

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord);

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

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(vi) bound by, or liable for any breach of, any representation or warranty to indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Lease Premises.

9. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee:

LaSalle National Bank  
120 South LaSalle Street  
Chicago, Illinois 60603  
ATTN: Mr. James C. Ring

With a copy to:

Greenberger Krauss & Tenenbaum, Chtd.  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
ATTN: Mr. David Glickstein, Esq.

To Tenant:

The Casual Male  
555 Turnpike Road  
Canton, MA 02021

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

10. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

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STATE OF Massachusetts  
COUNTY OF Norfolk )  
SS.

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that Joseph H. Cornely III, a \_\_\_\_\_ of First Senior V.P. of The Casual Milk Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on March 25, 1994.

*[Handwritten Signature]*

NOTARY PUBLIC

*[Handwritten Commission Expiration Date]*

STATE OF IL  
COUNTY OF Will )  
SS.

I, ROSEMARY HEYNEN, a Notary Public in and for said County in the State aforesaid, do hereby certify that James J. Nink, a Asst Vice President of LaSalle National Bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on April 6, 1994.

*[Handwritten Signature]*

NOTARY PUBLIC

"OFFICIAL SEAL"  
ROSEMARY HEYNEN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 12/31/98

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## EXHIBIT A

### PARCEL 1:

THE EAST 132 FEET OF THE NORTH 125 FEET OF THE WEST 1/2 OF THE EAST 1/2 (EXCEPT THE WEST 10 FEET THEREOF) OF BLOCK 5 IN HARRY W. HONORE, JR.'S SUBDIVISION OF THE NORTH 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THE NORTH 125 FEET OF THAT PART OF THE EAST 1/4 OF BLOCK 5 LYING WEST OF THE EAST 188.6 FEET THEREOF IN HARRY W. HONORE JR.'S SUBDIVISION OF THE NORTH 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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24-12-201-038 + 039  
2637-41 W. 95th ST.  
Evergreen Park, Ill

Prepared by Return to  
Schwartz Casper & Krauss  
180 N. Tadpole #2700  
Chgo, Ill 60601  
Attn: Paul Gayson

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