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Cook County Recorder 31.50



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PREPARED BY AND WHEN  
RECORDED MAIL TO:

Bruce K. Huvad, Esq.  
Cohen, Salk & Huvad, P.C.  
630 Dundee Road  
Suite 120  
Northbrook, Illinois 60062



SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Non-Disturbance Agreement") made the 23 day of July, 1999, by and between FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation ("Lender"), and the CITY OF PROSPECT HEIGHTS, ILLINOIS, An Illinois municipal corporation, with city offices at 14 East Camp McDonald Road, Prospect Heights, Illinois 60070 ("Tenant").

RECITALS

A. FIRST BANK AND TRUST COMPANY OF ILLINOIS, not personally, but as Trustee under Trust Agreement dated June 30, 1999 and known as Trust Number 10-2286 ("Landlord") is the fee simple owner of the Land and entered into a ground lease (the "Lease") dated July 27, 1999 with Tenant with respect to the Land. The capitalized terms used, but not defined in this Non-Disturbance Agreement, shall have the meanings given to such terms in the Lease; and

B. Landlord executed a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, dated July 27, 1999 to Lender, recorded July 27, 1999, as Document 99712337 in the records of the Recorder of Deeds for Cook County (collectively, with all modifications, extensions, renewals, replacements and consolidations thereto, the "Mortgage") to secure a note in the aggregate original principal amount of Ten Million Dollars (\$10,000,000.00), which Mortgage encumbers the Land; and

D. The parties hereto desire to enter into this Non-Disturbance Agreement on the

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terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties agree as follows:

**Section 1. Subordination.** The Lease now is and shall at all times continue to be subject and subordinate in each and every respect, to the Mortgage, and to any advances which may be made from time to time thereunder and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, but any and all such renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to and entitled to the benefits of the terms of this Non-Disturbance Agreement.

**Section 2. Non-Disturbance.** Lender, for itself and its successors and assigns and for any New Owner and its successors and assigns, hereby covenants and agrees with the Tenant that:

2.1. So long as no Event of Default shall have occurred and be continuing as of the date Lender commences a foreclosure action, or at any time thereafter:

(a) Tenant's possession of the Land and Tenant's rights and privileges under the Lease, or any renewals thereof, which may be affected in accordance with any option therefor in the Lease, shall not be terminated, diminished or interfered with by Lender or any New Owner.

(b) Tenant's occupancy of the Land shall not be disturbed by Lender or any New Owner for any reason whatever during the Term of the Lease or any such renewals thereof.

(c) Lender will not join Tenant as a party defendant or otherwise join Tenant in any action under the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* or any successor statute, or other legal proceedings, in any manner which would result in the termination of the Tenant's Leasehold Estate or disturb Tenant in its possession and quiet enjoyment of the Land and Building for any reason other than an Event of Default which would entitle Landlord to terminate this Lease and evict Tenant; and, notwithstanding any such foreclosure, deed in lieu of foreclosure or other acquisition of the Land by Lender or New Owner, the Lease will be recognized as a direct lease between Tenant and Lender or New Owner, as applicable, upon the vesting of title pursuant to foreclosure sale or transfer by deed in lieu of foreclosure.

2.2 If the interests of Landlord shall be transferred to and owned by Lender or any New Owner by reason of foreclosure or other proceedings, or by any other manner, and Lender or any New Owner succeeds to the interest of the Landlord under the Lease or, as a result of the application of this Non-Disturbance Agreement, such party is deemed to have entered into a direct lease with Tenant, upon the same terms and conditions as are contained in the Lease for the balance of the Term which would then be remaining under the Lease, then:

(a) Tenant shall be bound to Lender or New Owner, as applicable, under all the terms, covenants and conditions of the Lease for the balance of the Term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender or New Owner, as applicable, were the landlord under the Lease, and Tenant does hereby attorn to Lender or New Owner, as applicable, as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender or New Owner, as applicable, acquiring fee simple title to the Land or succeeding to the interest of the Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay rent to Lender or New Owner until Tenant receives satisfactory proof from Lender or New Owner, as applicable, that it has acquired fee simple title to the Land succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender or New Owner, as applicable, upon such attornment, to the extent of the then remaining balance of the Term of the Lease and any such extensions and renewals shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Non-Disturbance Agreement by reference with the same force and effect as if set forth at length herein. Nothing in this Non-Disturbance Agreement contained shall be deemed or construed to modify any of the provisions of the Lease as between the Landlord and the Tenant or to waive any rights which Tenant may now or hereafter have against the Landlord by reason of the Lease or anything connected therewith.

(b) Lender or New Owner, as applicable, shall be bound to Tenant under all the terms, covenants and conditions to the Lease, and Tenant shall, from and after Lender's or New Owner's succession (as applicable) to the interest of Landlord under the Lease, have the same remedies against Lender or New Owner, as applicable, for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender or New Owner had not succeeded to the interest of Landlord; provided, further, however, that Lender or New Owner, as applicable, shall not be:

1. liable for any act or omission of any prior landlord (including Landlord); or
2. subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
3. bound by an amendment or modification of the Lease made without its consent.

2.3. Should Lender come into possession of or ownership of title to the Land, or any part thereof, through foreclosure of the Mortgage, or on account of the debt evidenced and secured thereby, the Lease shall not be terminated by or on account of any such act or event, and Tenant shall pay the rent required to be paid by it to the party or parties properly entitled to receive the same and shall perform all other obligations of Tenant under the Lease. In the case of foreclosure and sale of the Land, or any part thereof, pursuant to the Mortgage, or in the event the Land, or any part thereof, is sold or otherwise disposed of pursuant to any right or power contained in the Mortgage, the New Owner, at such sale or acquiring title through or by virtue of such sale, or in any other manner, shall take title subject to the Lease, and Tenant shall attorn to such New Owner.

2.4. Notwithstanding anything to the contrary contained in this Non-Disturbance Agreement, in no event shall Lender or any New Owner terminate the Tenant's Leasehold Estate or disturb Tenant in its possession and quiet enjoyment of the Land and Building, except upon compliance with the Lease, including specifically the terms, provisions, conditions and limitations set forth in Section 2.8 of the Lease regarding the obligation to obtain Approval Of A New Use and make payment of the Equity Fee to Tenant.

**Section 3. Opportunity to Cure the Landlord's Defaults.** Before Lender exercises its rights under the Mortgage and before any of the Landlord's rights thereunder or in connection therewith are forfeited or adversely affected because of any default by Landlord thereunder, Lender shall give written notice of such default to Tenant, and within the longer of (i) twenty (20) business days after the Tenant's receipt of such notice and (ii) any period permitted the Landlord for curing any such default under the provisions of the Mortgage, Tenant shall have the right, but not the obligation, to cure such default, including, without limitation, to pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of Landlord by the provisions of the Mortgage, and all payments so made, and all things so done and performed by the Tenant shall be as effective to prevent Landlord's rights from being forfeited or adversely affected because of such default as if such acts had been done and performed by Landlord.

**Section 4. Notices.** All notices, approvals or requests in connection with this Non-Disturbance Agreement shall be sent by registered or certified mail, return receipt requested,

facsimile transmittal or by reputable overnight courier service; provided, that all notices sent by facsimile transmittal shall also be sent by reputable overnight service within one business day of such facsimile transmission. Notices to Lender shall be addressed to: First Bank and Trust Company of Illinois, 300 E. Northwest Highway, Palatine, Illinois, 60067. Notices to Tenant shall be addressed to City of Prospect Heights, 14 East Camp McDonald Road, Prospect Heights, Illinois 60070, Attention: City Clerk. All notices shall be deemed effective when received by each of the parties to whom such notice is required to be sent.

**Section 5. General.**

**5.1 Applicable Law.** This Non-Disturbance Agreement shall be given effect and construed by application of the law of the State of Illinois.

**5.2 Headings.** Paragraph headings in this Non-Disturbance Agreement have been included solely for convenience, are not to be considered part of this Non-Disturbance Agreement, and are not intended to modify, explain, or be a full or accurate description of the content thereof.


**5.3 Binding Effect.** This Non-Disturbance Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Non-Disturbance Agreement may not be modified orally or in any other manner than by an Non-Disturbance Agreement in writing signed by the parties hereto or their respective successors in interest.

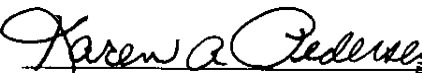
**IN WITNESS WHEREOF,** each party hereto has executed and sealed this Non-Disturbance Agreement or caused it to be executed and sealed on its behalf by its duly authorized representatives, on the day and year first above written.

TENANT:  
CITY OF PROSPECT HEIGHTS,  
an Illinois municipal corporation

LENDER:  
FIRST BANK AND TRUST COMPANY OF  
OF ILLINOIS, an Illinois Banking corporation

By:   
Edward P. Rotchford, Mayor

By:   
PRESIDENT

Attest:   
Karen A. Pedersen, City Clerk



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STATE OF ILLINOIS )

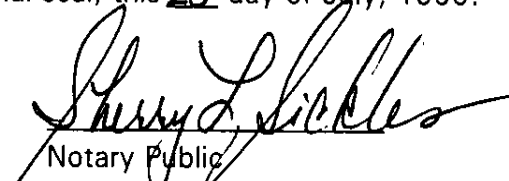
) SS.

COUNTY OF COOK )

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I, SHERRY SICKLES, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that MICHAEL WINTER the President of FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as such President, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 23 day of July, 1999.

  
Notary Public



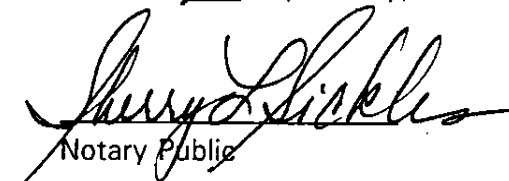
STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

I, SHERRY SICKLES, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Edward P. Rotenford, Mayor, and Karen A. Pedersen, City Clerk of the CITY OF PROSPECT HEIGHTS, ILLINOIS, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as such Mayor and City Clerk, respectively, and as the free and voluntary act of said municipal corporation for the uses and purpose, therein set forth.

Given under my hand and notarial seal, this 23 day of July, 1999.

  
Notary Public

