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SUBMITTED CHICAGO TITLE INSURANCE - K

FILED SARPY CO. NE.
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2011 Nov 15 12:30:02 PM
Gregory J. Rowland
REGISTER OF DEEDS



(The above space for use of Register of Deeds.)

WHEN RECORDED TO BE RETURNED TO:

Eric M. Labbe
Goodwin Procter LLP
53 State Street
Boston, MA 02109

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
dated November 3, 2011 (the "Agreement"), between OMAHA STATE BANK, a
Nebraska state chartered bank, having an office at 12100 West Center Road, Omaha, NE 68144
("Bank") and COSENTRY.NET, LLC, a Nebraska limited liability company, having an address
of 9394 West Dodge Street, Suite 100, Omaha, NE 68114 ("Tenant").

BACKGROUND

A. As security for a loan made by Bank to Southroads Shopping Center Limited Liability Company ("**Landlord**"), Landlord gave to Bank the following Deeds of Trust and Assignments of Rents: (1) Deed of Trust executed December 26, 2006, recorded January 17, 2007, as Inst. No. 2007-01735 and Assignment of Rents, dated December 26, 2006, recorded January 17, 2007, as Inst. No. 2007-01736; (2) Construction Security Agreement Construction Deed of Trust, dated February 1, 2008, recorded February 20, 2008, as Inst. No. 2008-04529; re-filed March 10, 2008 to correct legal description as Inst. No. 2008-06336 and Assignment of Rents, dated February 1, 2008, recorded February 20, 2008, as Inst. No. 2008-04531; re-filed March 10, 2008 to correct legal description as Inst. No. 2008-06338; (3) Deed of Trust, dated November 12, 2008, recorded November 19, 2008, as Inst. No. 2008-31353 and Assignment of

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Rents, dated November 12, 2008, recorded November 19, 2008, as Inst. No. 2008-31354; (4) Deed of Trust, dated May 23, 2011, recorded May 24, 2011, as Inst. No. 2011-13065 and Assignment of Rents, dated May 23, 2011, recorded May 24, 2011, as Inst. No. 2011-13066; (5) Deed of Trust, dated May 23, 2011, recorded May 24, 2011, as Inst. No. 2011-13067 and Assignment of Rents, dated May 23, 2011, recorded May 24, 2011, as Inst. No. 2011-13068; (6) Deed of Trust, dated May 23, 2011, recorded May 25, 2011, as Inst. No. 2011-13092 and Assignment of Rents, dated May 23, 2011, recorded May 25, 2011, as Inst. No. 2011-13093 (collectively, the "**Security Instruments**"), constituting liens against the Property described on **Schedule "A"** attached hereto (the "**Property**").

B. Tenant has entered into the Lease dated as of January 1, 2007, as amended by that certain First Amendment to Commercial Property Lease, dated May 19, 2008, that certain Second Amendment to Commercial Property Lease, dated September 12, 2008, and that certain Landlord Waiver, Consent, Estoppel and Recognition Agreement, dated October 14, 2011 (as so amended, the "**Lease**") covering a portion of the Property (the "**Leased Premises**").

C. Bank has required that the Lease be subordinated to the Security Instruments and that Tenant agree to attorn to the purchaser of the Property at foreclosure of the Security Instruments in the event of such foreclosure, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under the Lease, and Tenant is willing to so attorn, if Bank will recognize Tenant's rights under the Lease, on the terms and conditions hereinafter provided.

AGREEMENT

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained, and intending to be legally bound, hereby agree as follows:

1. **SUBORDINATION OF LEASE**. The Lease is and shall be subject and subordinate to the provisions and lien of the Security Instruments and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as if the Lease had been executed and delivered after the execution, delivery and recording of the Security Instruments.

2. **ATTORNMEN**T. Tenant agrees that it will attorn to and recognize: (i) Bank, whether as mortgagee in possession or otherwise; (ii) any purchaser at a foreclosure sale under the Security Instruments; (iii) any transferee who acquires possession of or title to the Property, whether by deed in lieu of foreclosure or other means; and (iv) the successors and assigns of such purchasers and/or transferees (each of the foregoing parties, a "**Successor**"), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions as set forth in the Lease. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto; provided, however, that Tenant will, upon request by Bank or any Successor, execute a written agreement attorning to Bank or such Successor, affirming Tenant's obligations under the Lease, and agreeing to pay all rent and other sums due or to become due to Bank or such Successor.

3. **NON-DISTURBANCE.** So long as Tenant complies with Tenant's obligations under this Agreement and is not in default under any of the terms, covenants or conditions of the Lease beyond applicable notice and cure periods, Bank will not disturb Tenant's use, possession and enjoyment of the Leased Premises nor will the leasehold estate of Tenant be affected or Tenant's rights under the Lease be impaired or claims regarding the past failure by Landlord to perform in any foreclosure action, sale under a power of sale, transfer in lieu of the foregoing, or the exercise of any other remedy pursuant to the Security Instruments. Without limiting the foregoing, Bank hereby acknowledges that Tenant is granting a first mortgage lien on Tenant's leasehold interest in the Leased Premises in favor of Madison Capital Funding, LLC, as administrative and/or collateral agent (together with its successors and assigns, the "Agent"), for itself and certain other lenders and various other financial institutions from time to time, as may be assigned from time to time. If and to the extent the Agent acquires Tenant's interest under the Lease, Lender shall recognize the Agent or any successor to Agent as the tenant under the Lease, subject to the foregoing terms and conditions.

4. **ASSIGNMENT OF LEASES AND RENTS.** Tenant acknowledges that it has been advised that Landlord has assigned the Lease and the rents thereunder to Bank pursuant to the Security Instruments. Tenant agrees that if Bank, pursuant to the Security Instruments, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have cancelled such election, be similarly bound to Bank and shall similarly attorn to Bank and shall thereafter pay to Bank all rent and other sums payable under the Lease. Any such payment shall be made notwithstanding any right of setoff, defense or counterclaim which Tenant may have against Landlord, or any right to terminate the Lease.

5. **LIMITATION OF LIABILITY**

5.1 In the event that Bank succeeds to the interest of Landlord under the Lease, or title to the Property, then Bank and any Successor shall assume and be bound by the obligations of Landlord under the Lease which accrue from and after such party's succession to Landlord's interest in the Leased Premises, but Bank and such Successor shall not be: (i) liable for any act or omission of any prior landlord (including Landlord); (ii) liable for the retention, application or return of any security deposit to the extent not paid over to Bank; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); (v) bound by any amendment or modification of the Lease made without Bank's or such Successor's prior written consent; or (vi) obligated to cure any defaults of any prior landlord under the Lease which occurred prior to the date on which Bank or such Successor succeeded to Landlord's interest under the Lease. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

5.2 Tenant agrees that any person or entity which at any time hereafter becomes the landlord under the Lease, including without limitation, Bank or any Successor, shall be liable only for the performance of the obligations of the landlord under the Lease which arise during the period of its or their ownership of the Leased Premises and shall not be liable for any

obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of Bank or such Successor in the Property, and Tenant shall not be able to enforce any such liability against any other assets of Bank or such Successor.

6. **RIGHT TO CURE DEFAULTS.** Tenant agrees to give notice to Bank of any default by Landlord under the Lease exercising any right Tenant claims to terminate the Lease or to offset against rent otherwise payable under the Lease, specifying the nature of such default, and thereupon Bank shall have the right (but not the obligation) to cure such default, and (if Tenant is entitled to terminate the Lease or abate any rent payable thereunder by reason of such default) Tenant shall not terminate the Lease or abate the rent payable thereunder by reason of such default unless and until it has afforded Bank thirty (30) days after Bank's receipt of such notice to cure such default and a reasonable period of time in addition thereto (i) if the circumstances are such that said default cannot reasonably be cured within said thirty (30) day period and Bank has commenced and is diligently pursuing such cure, or (ii) during and after any litigation action including a foreclosure, bankruptcy, possessory action or a combination thereof. It is specifically agreed that Tenant shall not require Bank to cure any default which is not susceptible of cure by Bank.

7. **MISCELLANEOUS**

7.1 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Agreement shall in any way affect or impair the lien created by the Security Instruments, except as specifically set forth herein.

7.2 **Modifications.** This Agreement may not be supplemented, amended or modified unless set forth in writing and signed by the parties hereto.

7.3 **Notices.** All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid) to the addresses listed in this Agreement. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

7.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed and delivered this Subordination, Non-Disturbance and Attornment Agreement [under seal] as of the day and year first above written.

TENANT:

COSENTRY NET, LLC

By: 

Name: Joe Urzendowski

Title: CFO

BANK:

OMAHA STATE BANK

By: _____

Name:

Title:

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed and delivered this Subordination, Non-Disturbance and Attornment Agreement [under seal] as of the day and year first above written.

TENANT:

COSENTRY.NET, LLC

By _____

Name:

Title:

BANK:

OMAHA STATE BANK

By: Richard A Sturgeon

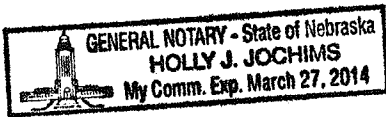
Name: Richard A Sturgeon

Title: VP

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2nd day of November, 2011, before me, a notary public in and for said county and state, personally appeared Richard A. Sturgeon, a Vice President of Omaha State Bank, a Nebraska state chartered bank, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of the Bank.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



Holly J. Jochims
Notary Public
Holly J. Jochims

STATE OF NEBRASKA)
) SS:
COUNTY OF *Douglas*)

On this 3rd day of November, 2011, before me appeared Joe Urzendowski, to me personally known, who, being by me duly sworn, did say that he is the Chief Financial Officer, Vice President, Treasurer and Secretary of CoSentry.net, LLC, a Nebraska limited liability company, and that said instrument was signed on behalf of said limited liability company by authority given by the members of said limited liability company, and said Joe Urzendowski acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.



Notary Public



STATE OF _____)
) ss.
CITY OF _____)

On this ____ day of _____, 20__, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of _____, _____, a _____, and that said instrument was signed on behalf of said _____ by authority of its _____, and said _____ acknowledged said instrument to be the free act and deed of said _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My term expires:

SCHEDULE A
DESCRIPTION OF PROPERTY

EXHIBIT A

Parcel A:

A Leasehold Estate created by and through that certain Lease (In Short Form), and the terms and provisions thereof, filed June 30, 1965, at book 35, page 637, of the Miscellaneous Records of Sarpy County, Nebraska, by and between Woodmen of the World Life Insurance Society, a Nebraska corporation, as Lessor and Alan Baer and J. D. Diesing, as Trustees of the E. John Brandeis Trust, as Lessee; and Assumption Agreement and Amendment of Ground Lease dated March 25, 1994, filed April 13, 1994, at Instrument No. 94-08340, of the Records of Sarpy County, Nebraska, by and between Southroads Shopping Center Limited Liability Company, a Delaware limited liability company and Woodmen of the World Life Insurance Society, a Nebraska corporation; and Assignment of Ground Lease dated March 25, 1994, filed April 13, 1994, at Instrument No. 94-08344, of the Records of Sarpy County, Nebraska, assigns Lessee's interest to Southroads Shopping Center Limited Liability Company, a Delaware limited liability company; in and to the following described premises:

A tract of land lying wholly within the Southwest Quarter of Section 14, Township 14 North, Range 13 East of the 6th P.M. in Sarpy County, Nebraska, containing the following parcels of land: All of Lots 2C1A, 2C1B, 2C2, 3, 4A2, 4A2B, 4C, 5A, 5A2, 5C, 6A1A1, 6A1A2, 6A1A3, 6B, 7A1, 7B, 8A, 8A1, 8A2, 8A3, 8C and 8D, of Clinton's Subdivision in said Section 14, all of Tax Lots F2B1B1, F2B1B2 and G4 in said Section 14, all of Lots 7 and 10 and part of Lots 11 and 12 in Lawndale, a subdivision in said Section 14, all of Lots 1 and 2 and part of Lots 3, 6 and 7, in Jull's Subdivision in said Section 14, also portions of vacated Prairie Avenue, all being more particularly described as follows: Beginning at the intersection of the East right of way line of State Highway 73-75, and the North right of way line of Childs Road; thence North 15°20'02" West (assumed bearing), along said East right of way line of State Highway 73-75, 488.69 feet; thence continuing along said East right of way line, along a curve to the left, with a radius of 2,914.90 feet and an arc length of 462.94 feet (chord bearing North 20°21'12" West, 462.45 feet; to the intersection of said East right of way line and the South right of way line of Brewster Road; thence North 73°25'50" East along said South right of way line, 654.09 feet; thence North 60°00'48" East, continuing along said South right of way line, 354.84 feet; thence North 74°31'17" East continuing along said South right of way line 20.55 feet; thence South 00°15'35" West, 134.81 feet; thence South 88°27'10" East, 107.52 feet; thence South 00°37'45" West, 3.50 feet; thence South 88°27'10" East, 3.00 feet; thence North 00°37'45" West, 3.50 feet; thence South 89°19'25" East 94.31 feet; thence South 00°09'16" West, 76.14 feet; thence North 87°15'31" East, 82.20 feet; thence South 00°54'27" West, 71.73 feet; thence North 89°11'48" West, 35.42 feet; thence South 00°15'43" West, 610.98 feet; thence North 89°45'33" West, 29.54 feet; thence South 55°03'43" West, 15.00 feet; thence South 34°56'17" East, 349.00 feet; thence South 10°19'57" East, 36.03 feet to a point on the North right of way line of Childs Road; thence South 89°57'58" West, along North right of way line of Childs Road, 1,099.18 feet, to the point of beginning.

Except that part thereof more particularly described as follows:

A tract of land located in Tax Lot L, in the Southwest Quarter of Section 14, Township 14 North, Range 13 East of the 6th P.M. in Sarpy County, Nebraska, more particularly described as follows: Beginning at the Southwest corner of said Tax Lot L, said point also being the intersection of the East right of way line of Nebraska Highway 73-75 and the North right of way line of Childs Road; thence North 15°20'02" West (assumed bearing), along the East right of way line of Nebraska Highway 73-75, a distance of 13.48 feet; thence North 89°57'58" East, along a line parallel to said North right of way line of Childs Road; a distance of 588.56 feet; thence South 00°02'02" East, 13.00 feet, to a point on the North right of way line of Childs Road; thence South 89°57'53" West along the North right of way line of Childs Road, a distance of 585.00 feet, to the point of beginning.

NOTE: The above premises is sometimes described as Lot L, Clinton's Subdivision, in said Section 14, Township 14 North, Range 13 East of the 6th P.M. in Sarpy County, Nebraska.

Legal Description Continued on Next Page

Parcel B:

A tract of land being all of Lots 4 and 5, and parts of Lots 3, 6 and 7, in Jull's Subdivision in Sarpy County, Nebraska, together with the Easterly 20.00 feet of vacated Prairie Avenue adjacent to said Lots 3, 4 and 5 on the West, all being more particularly described as follows: Commencing at the intersection of the South right of way line of Brewster Road and the East right of way line of State Highway 73-75; thence Easterly, along said South right of way line on the following four described courses: (1) North 73°25'50" East (assumed bearing), 654.09 feet; (2) thence North 69°00'48" East, 354.84 feet; (3) thence North 74°31'17" East, 20.55 feet; (4) thence North 75°21'07" East, 21.36 feet, to the Northwest corner of said Lot 5, and the point of beginning; thence North 72°56'34" East, 76.06 feet, along the North line of Lots 5 and 6; thence North 74°11'15" East, 50.36 feet, along the North line of Lot 6; thence North 72°56'54" East, 50.50 feet, along the North line of Lots 6 and 7; thence North 77°08'24" East, 14.99 feet, along the North line of Lot 7; thence South 00°09'36" West, 198.49 feet, thence North 89°19'25" West, 94.31 feet; thence South 00°37'45" West, 3.50 feet; thence North 88°27'10" West, 3.00 feet; thence North 00°37'45" East, 3.50 feet; thence North 88°27'10" West 107.52 feet; thence North 00°15'35" East, 134.81 feet; thence North 75°21'07" East, 21.36 feet, to the point of beginning.

NOTE: The above premises is sometimes described as Lot A, Jull's Subdivision in Section 14, Township 14 North, Range 13 East of the 6th P.M. in Sarpy County, Nebraska.