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10/22/2012 09:50:23.00



2012106653

Lease Subordination, Non-Disturbance and Attornment Agreement

**Return To:
First American Title
13924 Gold Circle
Omaha, NE 68144**

**LEASE SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“Agreement”) is made effective as of October 18, 2012 between **THE TILE SHOP, LLC**, a Delaware limited liability company (“**Tenant**”); **WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY**, a Nebraska corporation, (“**Lender**”), and **MONTLCAIR CENTER, LLC**, a Nebraska limited liability company (“**Borrower**”).

RECITALS:

A. Lender has agreed to make a loan (the “**Loan**”) to Borrower, the repayment of which is to be secured by a mortgage, deed of trust, deed to secure debt, or other security instrument (the “**Security Instrument**”) by borrower to or for the benefit of Lender, pertaining to the real property commonly known as Westwood Plaza, located in the City of Omaha, County of Douglas, and legally described on EXHIBIT “A” attached hereto and incorporated herein by this reference (the “**Property**”), which is to be or has been recorded in the official real estate records in the county and State of Nebraska.

B. Tenant is the current lessee of all or a certain portion (the “**Leased Premises**”) of the Property pursuant to the provisions of that certain Lease between Borrower, as landlord, and Tenant, as tenant dated August 12, 2010 (said instrument, as now or hereafter amended or modified is herein referred to as the “**Lease**”).

C. The interests of the landlord under the Lease have been or will be assigned to the Borrower.

D. Tenant has been informed that the receipt of this Agreement is a condition to the making of the Loan.

AGREEMENTS

1. **SUBORDINATION.** The rights of Tenant under the Lease are subject and subordinate to the rights of Lender under the Security Instrument and to any renewal, modification, consolidation, replacement, increase, or extension of the Security Instrument.

2. **NON-DISTURBANCE.** Neither Lender nor any trustee under the Security Instrument (for all purposes of this Agreement, the definition of “Lender” shall include all successors or assigns of the Security Instrument) nor Borrower may disturb Tenant’s possession of the Leased Premises or otherwise interfere with Tenant’s rights under the Lease, unless Tenant is in default under the Lease beyond any notice and cure period in the Lease, or unless the Lease provides otherwise.

3. **ATTORNMENT; LIABILITY OF LENDER.** If the Property is transferred by foreclosure, by similar judicial or non-judicial proceedings, or by sale in lieu of foreclosure (each a “**Foreclosure Event**”), neither Lender nor any trustee under the Security Instrument shall name Tenant in any foreclosure or similar proceeding, unless Lender or the trustee is required to do so under applicable rules of procedure or other law. In any Foreclosure Event, the Property shall be transferred subject to the Lease; and Tenant shall attorn to Lender or such transferee and promptly execute such instruments as may

be reasonable and appropriate to evidence such attornment; and effective as of the date of transfer, the Lease shall bind Lender or such transferee and Tenant to the same extent as though the transferee had been named lessor in the Lease and the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as Tenant thereunder, and the transferee, upon all of the same terms, covenants and provisions contained in the Lease, however, neither Lender nor such transferee shall be:

a. liable for any act or omission of the transferor before the transfer, except acts or omissions which continue subsequent to the time Lender or such transferee acquires ownership of the Property, and only to the extent of such continuation;

b. subject to any claims, offsets or defenses which Tenant had against the transferor (but Tenant is not obligated to pay to the transferee any offsets taken before the Property was transferred), unless Tenant has given Lender notice and opportunity to cure any default pursuant to the provisions of **Sections 6**, below;

c. bound by any rent, additional rent or other charges paid by Tenant more than 30 days in advance of the due date under the Lease;

d. bound by any Lease amendment after the effective date of this Agreement (or the earlier date of any estoppels certificate given by Tenant to Lender) terminating the Lease prior to expiration or termination as expressly provided in the Lease; changing the term of the Lease other than as expressly provided in the Lease (including existing options, if any); reducing the rent or charges payable by Tenant under the Lease or modify the allocation of the cost of insurance, taxes or other expenses of the operation of the Property; or otherwise materially reducing the benefits of the Lease to the holder of the lessor's interest in the Lease, which is made without Lender's written consent; or

e. responsible for any security deposit delivered under the Lease and not received by Lender. The liability of Lender, a trustee under the Security Instrument, or any other transferee in a Foreclosure Event or the liability of a subsequent owner designated as landlord under the Lease shall exist only for so long as Lender or such trustee or other transferee is the owner of the Leased Premises.

4. **INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** If Lender or any trustee under the Security Instrument may collect the proceeds of Borrower's property insurance or the award in eminent domain proceedings under the Security Instrument, unless Tenant is in default under the Lease, beyond any notice and cure period in the Lease, Lender and the trustee shall allow Borrower and Tenant to use those proceeds or that award to reconstruct the Property or for payment to Tenant, as may be required in the Lease. Lender may require that Borrower and Tenant comply with reasonable disbursement procedures reasonable under the circumstances to ensure that the proceeds are applied to complete the reconstruction of the Property or paid to Tenant, as required under the Lease.

5. **RENT DIRECTIVE.** Borrower has assigned to Lender the right to receive the rents payable under the Lease. If Lender gives written notice to Tenant that Lender has elected to have Tenant pay Lender directly the rental and other charges payable by Tenant under the Lease, Tenant shall, until Lender gives Tenant written notice that it cancels this election, pay the rent and other charges under the Lease to

Lender or at Lender's direction. Borrower hereby irrevocably directs and authorizes Tenant to comply with any direction so received by Tenant from Lender. Borrower, by its execution of this Agreement, agrees to hold Tenant harmless for the application of any payments so made.

6. **NOTICE AND OPPORTUNITY TO CURE BORROWER DEFAULTS.** So long as the Obligations secured under the Security Instrument have not been satisfied, Tenant shall notify Lender of any default by Borrower, of which Tenant becomes aware, of those obligations under the Lease which are of a nature as to give Tenant a right to terminate the Lease, reduce rent or other charges, or to credit or offset any amounts against future rents or other charges. Lender shall thereafter have the right, but not the obligation, to effect the cure of such default within the later of the expiration of Borrower's cure period, if any, under the Lease; or thirty (30) days after the giving of notice by Tenant to Lender; provided, that if such default cannot reasonably be cured by Lender within this thirty (30) day period, the period for cure by Lender shall be extended so long as Lender has expeditiously commenced to cure and is pursuing with due diligence to cure said defaults, but in no event in excess of ninety (90) days.

7. **TRADE FIXTURES.** The lien of the Security Instrument shall not encumber Tenant's trade fixtures, furniture or equipment at any time placed or installed in the Leased Premises.

8. **DEEMED CONSENT BY LENDER.** Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender would not otherwise be bound, if Lender fails to respond either by reasonably requesting additional information or by disapproving the request within thirty (30) days after Lender's receipt of such request from Borrower, provided such request shall make a specific reference to the provisions of this Section and shall expressly state, in solid capital letters on the first page thereof: "YOU ARE HEREBY REMINDED THAT YOUR FAILURE TO PROVIDE NOTIFICATION OF APPROVAL OR DISAPPROVAL OR REASONABLY REQUEST ADDITIONAL INFORMATION NOT LATER THAT THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED, PURSUANT TO SECTION 8 OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, TO CONSTITUTE YOUR APPROVAL THEREOF."

9. **RIGHT OF FIRST REFUSAL.** Any right of first offer or right of first refusal in favor of Tenant under the Lease, if any, shall not apply to Lender through a foreclosure, deed-in-lieu of foreclosure or any other enforcement action under the Security Instrument; provided, however, such right of first refusal shall apply to subsequent purchasers of the Leased Premises.

10. **OPTION TO PURCHASE.** Any option to purchase the Property in favor of Tenant under the Lease, if any, is by this Agreement expressly made subject and subordinate to the Security Instrument. Unless Tenant assumes the Loan pursuant to the provisions of the Security Instrument and the other Loan Documents (as defined in the Security Instrument), all proceeds from the sale of the Property to Tenant under the terms of the Lease shall be paid first to Lender until all Obligations of Borrower under the Loan Documents have been satisfied. Such Obligations shall include Prepayment Consideration, if any, specified under the Loan Documents, due to Lender upon the prepayment of the principal balance of the Loan. Lender shall not be required to release the Security Instrument as a lien upon the Property unless and until all Obligations of Borrower under the Loan Documents have been paid in full.

11. **NON-MERGER.** In the event that the interests of Borrower and Tenant shall, at any time, vest in any one person or entity, it is agreed that insofar as Lender is concerned, ownership of the fee title of the Property and the Tenant's leasehold estate created by the Lease shall not merge, but shall remain separate and distinct notwithstanding the union of such estates in Borrower, Tenant, or any third party by reason of purchase or otherwise.

12. **NOTICES.** All notices under this Agreement shall be properly given (a) upon delivery, if delivered in person with receipt acknowledged by recipient, (b) one (1) Business Day after deposit for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after deposit in any U.S. Postal Service mail depository and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant, Lender, or Borrower, as the case may be, at the addresses below or addressed as such party may from time to time designate by written notice to the other parties.

To Borrower: Montclair Center, LLC
c/o Seldin Company
16910 Frances St. Ste. 200
Omaha, NE 68130

To Tenant: The Tile Shop, LLC
14000 Carlson Parkway
Plymouth, MN 55441
Attn: Timothy C. Clayton

To Lender: Woodmen of the World Life Insurance Society and/or
Omaha Woodmen Life Insurance Society
Woodmen Tower
1700 Farnam Street
Omaha, NE 68102
Attn: Investment Division

Any party by written notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "**Business Day**" shall mean a day other than Saturday or Sunday and on which commercial banks are not authorized or required by law to close in the state where the Property is located.

13. **AUTHORITY.** The persons executing this Agreement on behalf of Tenant, Lender and Borrower each represent that he or she is authorized to execute such instruments on behalf of Tenant, Lender and Borrower, respectively.

14. **ATTORNEY'S FEES.** If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses.

15. **MISCELLANEOUS.** This Agreement contains the entire agreement between the parties concerning the

matters addressed herein. The parties may amend this Agreement only in writing. This Agreement benefits and binds the successors and assigns of each party and shall run with the land. This Agreement shall be governed in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America. This Agreement may be executed in counterparts and each counterpart shall be effective as an original when a counterpart has been signed by all parties.

WITNESS WHEREOF, this Agreement has been executed by the parties effective as of the day and year first above written.

TENANT

The Tile Shop, LLC,
a Delaware limited liability company

By: *Timothy C. Clayton*
Name: Timothy C. Clayton
Title: Senior Vice President & CFO

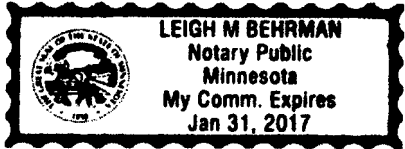
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 11 day of October, 2012, by Timothy C. Clayton as the Senior Vice President and Chief Financial Officer of The Tile Shop, a Delaware limited liability company, on behalf of such limited liability company.

I certify under PENALTY OF PERJURY under the laws of the State of Minnesota that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *LMB* (Seal)



[NO FURTHER TEXT ON THIS PAGE]

BORROWER:

Montclair Center, LLC, a Nebraska limited liability company

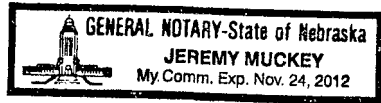
By: Mid Nebraska Management, Inc., Manager

Randall R. Lenhoff
Randall R. Lenhoff, President

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5 day of October, 2012, by Randall R. Lenhoff, President of Mid Nebraska Management, Inc., Manager of Montclair Center, LLC, a Nebraska limited liability company on behalf of the limited liability company.

Witness my hand and official seal.



[Seal]

Jeremy Muckey
Notary Public

My commission expires: Nov. 24, 2012

[NO FURTHER TEXT ON THIS PAGE]

LENDER:

**WOODMEN OF THE WORLD LIFE
INSURANCE SOCIETY AND/OR OMAHA
WOODMEN LIFE INSURANCE SOCIETY,**
a Nebraska corporation

By: [Signature]
Name: Robert T. Maher
Title: Vice President


By: [Signature]
Name: Dean R. Holdsworth
Title: Director - Mortgage & Real Estate

[NOTE: THE FOLLOWING FORM OF ACKNOWLEDGMENT IS FOR ILLUSTRATION
PURPOSES ONLY, BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF
THE TENANT IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE
LEASED PREMISES IS LOCATED]

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 16 day of October, 2012,
by Robert T. Maher and Dean R. Holdsworth as the
Vice President and Director respectively, of
WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation, on behalf of
the corporation.

Witness my hand and official seal.

[Seal] 

[Signature]
Notary Public

My commission expires: Aug 13, 2013

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT "A"

MONTCLAIR CENTER
Legal Description

LOT 1, BLOCK 1, in WESTWOOD HEIGHTS 15th Addition, an Addition to the City of Omaha, Douglas County, Nebraska, except that part described in Plat and Dedication filed July 10, 1969 in Book 478 at Page 265 of the Miscellaneous Records of Douglas County, Nebraska, together with those parts of vacated 132nd Street frontage road and vacated West Center Road frontage road adjacent to said Lot 1, all except those parcels described as follows:

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly along the Northerly right of way line of said Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence South 89°54'16" West on the Northerly right of way line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly right of way line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet to the True Point of Beginning; thence North 30°57'06" West for 46.77 feet; thence North 89°59'16" West for 166.18 feet to the East right of way line of the frontage road; thence South 00°00'44" West along said East right of way line for 15.30 feet; thence continuing on said East right of way line along a curve to the left (having a radius of 83.50 feet and long chord bearing South 16°48'55" East for 48.34 feet) an arc distance of 49.05 feet; thence continuing on said East right of way line along a curve to the right (having a radius of 116.50 feet and long chord bearing South 20°31'04" East for 52.91 feet) an arc distance of 53.37 feet; thence continuing on said East right of way line South 32°31'47" East for 20.09 feet to the Northerly right of way line of Augusta Avenue; thence Easterly on said Northerly right of way line along a curve to the left (having a radius of 190.00 feet and a long chord bearing North 61°45'39" East for 98.73 feet) an arc distance of 99.88 feet; thence continuing on said Northerly right of way line along a curve to the right (having a radius of 240.00 feet and long chord bearing North 55°24'50" East for 72.71 feet) an arc distance of 72.99 feet to the True Point of Beginning;

and except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right-of-way line of Augusta Avenue; thence Northwesterly on the Northerly right-of-way line of Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency; thence South 89°54'16" West on the Northerly right-of-way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right-of-way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North 30°57'06" West, 46.77 feet to the True Point of Beginning; thence continuing North 30°57'06" West, 4.64 feet; thence North 89°59'16" West, 163.76 feet to the East right-of-way line of the frontage road; thence South 00°00'44" West along said East right-of-way line for 3.98 feet; thence South 89°59'16" East for 166.18 feet to the Point of Beginning.

and further except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency; thence South 89°54'16" West on the Northerly right of way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North 30°57'06" West, 54.36 feet to the point of beginning; thence continuing North 30°57'06" West, 82.05 feet; thence North 89°59'16" West, 120.00 feet; thence South 0°0'44" West, 70.36 feet; thence South 89°59'16" East, 162.22 feet to the point of beginning.

and further except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly R.O.W. line of Augusta Avenue; thence Northwesterly along said Northerly R.O.W. line of Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence S 89°54'16" W on the Northerly R.O.W. line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly R.O.W. line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet; thence N 30°57'06" W for 51.41 feet to the true point of beginning; thence N 30°57'06" W for 2.95 feet; thence N 89°59'16" W for 162.22 feet to the East R.O.W. line of the frontage road; thence S 0°00'44" W along said East R.O.W. line for 2.25 feet; thence S 89°59'16" E for 163.76 feet to the true point of beginning.