

FILED SАРY CO. NE.
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2004-37748 ORIGINAL

Prepared by:

Hunter, Maclean, Exley & Dunn, P.C.
Post Office Box 9848
Savannah, Georgia 31412

2004 SEP 29 P 12: 52 PM

Stacy J. Dowling
REGISTER OF DEEDS

COUNTY SN C.E. AW
VERIFY SN D.E. AW
FEE 51.50
CHECK # 6852
CASH _____
REFUND _____ CREDIT 9.50
SHORT _____ NCR NTCo

Recording requested by,
and after recording, return to:

GE Capital Franchise Finance Corporation
17207 N. Perimeter Drive
Scottsdale, Arizona 85255
Attention: General Counsel

**SUBORDINATION, ATTORNMENT
AND LESSEE-LESSOR ESTOPPEL AGREEMENT**

(7222 South 84th Street, La Vista, Sarpy County, Nebraska)

THIS SUBORDINATION, ATTORNMENT AND LESSEE-LESSOR ESTOPPEL AGREEMENT ("Agreement") is entered into as of September 24, 2004, by and among CUTCHALL PROPERTY MANAGEMENT, L.L.C., a Nebraska limited liability company ("Lessor"), whose address is 14353 Q Street, Omaha, Nebraska 68137, Cutch, Inc., a Nebraska corporation ("Lessee"), whose address is 14353 Q Street, Omaha, Nebraska 68137, and GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation ("Lender"), whose address is 17207 N. Perimeter Drive, Scottsdale, Arizona, 85255.

NT-com

RECITALS:

A. Lessee is the present lessee, and Lessor is the current lessor, under a certain lease agreement (the "Lease") dated January 1, 2002 between lessor, and lessee, amended _____, demising all or a portion of the premises in La Vista, Sarpy County, Nebraska, commonly known as 7222 South 84th Street, and more particularly described on Exhibit A (the "Leased Premises").

B. Lessee has been advised that the Lease has been or will be assigned by Lessor to Lender as security for a loan (the "Loan") with an original principal balance of \$350,000.00 (the "Loan") secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Security Instrument") to be recorded contemporaneously herewith covering the Leased Premises.

C. A condition precedent to Lender's disbursement of Loan proceeds is that Lessor obtain this Agreement from Lessee in order to confirm certain matters and to subordinate the Lease and Lessee's interest in the Leased Premises to the lien of the Security Instrument.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Lessee represents and warrants to Lender as follows:

GE Contract No. 25829
Property No. 8002-8888
7222 South 84th Street
La Vista, Sarpy County, Nebraska

6015249

Nebraska Title
4257 S. 14th St.
Omaha, NE 68137
#181.50

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- (a) Lessee has accepted possession and is in occupancy of the Leased Premises pursuant to the terms of the Lease, and the Lease is in full force and effect.
- (b) The improvements and space required to be furnished according to the Lease have been completed in all respects, all amounts owing from Lessor to Lessee in connection with delivery and construction of the Leased Premises (including, without limitation, tenant improvement costs, liquidated damages, and charges for construction delays) have been paid, and Lessee hereby waives any and all rights and remedies which Lessee may have against Lessor (including, without limitation, any right to terminate the Lease) as a result of any breach by Lessor of any of its obligations under the Lease relating to the delivery, construction or condition of the Leased Premises.
- (c) Lessor has done everything that it promised to do in order to induce Lessee to enter into the Lease. All conditions to the commencement of the Lease have been satisfied. There are no concessions or inducements which have been promised by Lessor or any other party to Lessee other than as set forth in the Lease.
- (d) The Lease as described above has not been further modified, altered or amended, except as follows: None.
- (e) There are no offsets or credits against rentals, nor have rentals been prepaid except as provided by the Lease terms, except as follows: None.
- (f) Rental commenced to accrue on January 1, 2002, current monthly rent is the greater of \$4,950.00 or 7.5% of the gross sales, resulting from the operation of Lessee's business on the Property during the preceding calendar month, and there is currently no outstanding unpaid rent. The primary Lease term commenced on January 1, 2002, and expires on January 31, 2022.
- (g) Lessee has no notice of a currently effective assignment, hypothecation or pledge of rents on the Lease to any party other than Lender and the lender (if any) whose loan is being repaid upon the closing of the Loan.
- (h) The Lease does not contain, and Lessee does not have, an outstanding option to extend or renew the term of the Lease except as follows: None
- (i) Lessee has no claim to or interest in the Leased Premises, legal or equitable, or any contract or option therefor other than as a lessee under the Lease. The Lease does not contain, and Lessee does not otherwise have, an outstanding option to purchase the Leased Premises, except as follows: None.
- (j) Sufficient parking facilities for Lessee's purposes under the Lease are located on the Leased Premises.
- (k) Lessor is not in default of any of its obligations under the Lease, and, to the best of Lessee's knowledge, no event has occurred which, with notice, the passage of time or both, would constitute a default in any of Lessor's obligations under the Lease.
- (l) Lessee has paid Lessor \$N/A as a security or similar type deposit.

2. Lessee shall promptly provide Lender at its address first shown above with a written notice of any default on the part of the Lessor under the Lease. Lender shall have the option to cure such default within the time allotted to Lessor under the Lease plus ten (10) business days in the case of a monetary default and forty-five (45) business days in the case of a non-monetary default. Lessee shall not invoke any of its remedies under this Lease or any other remedies available to Lessee at law or in equity during any period that Lender is proceeding to cure any such default with due diligence or (if possession of the Leased Premises is necessary for such cure to be effectuated) during any period that Lender is taking steps with due diligence to obtain the legal right to enter the Leased Premises and cure any such default.

3. Without the prior written consent of Lender, Lessee shall not (a) modify, extend or in any manner alter the terms of the Lease; (b) pay the rent or any other sums becoming due under the terms of the Lease more than one month in advance; (c) accept Lessor's waiver of or release from the performance of any obligation under the Lease; (d) assign the Lease or sublet the Leased Premises; or (e) assign the Lease as collateral security or mortgage or otherwise encumber its leasehold interest; (f) make any structural changes to the Leased Premises; or (g) agree with Lessor to terminate the Lease.

4. In the event Lender notifies Lessee in writing that Lessor is in default under the Security Instrument and demands that payment of all future rentals be made directly to Lender, Lessee shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender or as otherwise instructed by Lender pursuant to such notice, beginning with the payment next due after such notice of default. Lessor hereby consents to such payment and agrees that Lessee shall not be liable to Lessor for any rental payments actually paid to Lender pursuant to this Section 4.

5. The Lease and all right, title and interest of Lessee in, to and under the Lease (including, without limitation, all options or rights of first refusal to purchase the Leased Premises) are now, and shall at all times continue to be, unconditionally subject and subordinate in each and every respect, to the Security Instrument and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Instrument.

6. No provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and permitted assigns. Upon recorded satisfaction of the Security Instrument, this Agreement shall become null and void and be of no further effect.

7. To the extent that the Lease shall entitle Lessee to notice of any mortgage, this Agreement shall constitute such notice to Lessee with respect to the Security Instrument, and Lessee hereby waives notice of any and all renewals, modifications, extensions, substitutions, replacements, and/or consolidations of the Security Instrument. The terms "mortgage", as used in the Lease shall be deemed to include Lender, its successors and assigns, including anyone who shall have succeeded to Lessor's interest by, through or under foreclosure of the Security Instrument or deed in lieu of such foreclosure. The term "mortgage" or any similar term, shall be deemed to include the Security Instrument to be recorded contemporaneously herewith.

8. This Agreement shall be construed under the laws of the State of Arizona applicable to contracts made and to be performed therein (excluding its choice-of-law principles).

9. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

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10. To the extent of any conflict between the provisions of the Security Instrument and the Lease which govern the application and disbursement of insurance and condemnation proceeds, the provisions of the Security Instrument shall control. Notwithstanding anything in the Lease to the contrary, Lessee may not terminate the Lease because of damage to or condemnation of the Leased Premises unless (a) Lessee's use and operation of the Leased Premises is materially impaired by the damage to or condemnation of the Leased Premises, and (b) at least twenty-five percent (25%) of the net rentable area of the Leased Premises (or such larger percentage as may be specified in the Lease) is damaged or condemned. Notwithstanding anything in the Lease to the contrary, Lessee may not terminate the Lease because of any delay in repairing or rebuilding the Leased Premises unless the Leased Premises are not repaired or rebuilt within one hundred eighty (180) days after the date of damage or condemnation.

11. In the event suit or action is instituted to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all expenses reasonably incurred at, before or after trial and on appeal, whether or not taxable as costs, or in any bankruptcy proceeding, including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses.

12. Upon the request of Lender from time to time, Lessee shall furnish to Lender a copy of Lessee's balance sheet and profit and loss statement, which shall be prepared in accordance with generally accepted accounting principles and practices consistently applied, or, if Lessee shall be a publicly reporting company under the Securities & Exchange Act of 1933, as amended, as being a publicly reporting company, Lessee may instead furnish its most recent annual report to shareholders and Form 10-K or Form 10Q filed with the Securities Exchange Commission.

13. Lessee shall not use, produce, store, release, dispose of or bring into the Leased Premises any hazardous waste or materials or allow any other entity or person to do so except as incidentally related to the operation and maintenance of the Leased Premises and equipment located therein, such as small amounts of ordinary office supplies, pesticides, insecticides or cleaning supplies used in Lessee's operation of the Leased Premises, which substances shall be stored and used in accordance with applicable laws and regulations and used in a prudent manner. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or danger (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect including, without limitation, petroleum products and by-products, asbestos, polychlorinated biphenyls, chlorinated solvents, and urea formaldehyde. Lessee shall indemnify and hold harmless Lessor and Lender against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Lessor and/or Lender directly or indirectly arising from or attributable to any misrepresentation or breach of any warranty, covenant or agreement by Lessee under this section. The provisions of this section shall survive expiration or termination of the Lease.

14. Lessee hereby agrees that if Lender elects at any time to have the Lease superior to its Security Instrument and gives notice of its election to Lessee, then the Lease shall be superior to the lien of any such and all renewals, modifications, extensions, substitutions, replacements and/or consolidations thereof, whether the Lease is dated or recorded before or after the Security Instrument. If Lender shall become the owner of the Leased Premises, or if the Leased Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument, or if the Leased Premises shall be transferred by deed in lieu of foreclosure, then at Lender's sole option (i) the Lease shall continue in full force and effect as a direct lease agreement between Lessee and the then owner of the Leased Premises (including Lender or the grantee under any deed given as a result of any foreclosure or in lieu of foreclosure), upon and subject to all of 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, and (ii) Lessee shall attorn to Lender or

GE Contract No. 25829
Property No. 8002-8888
7222 South 84th Street
La Vista, Sarpy County, Nebraska

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any other such owner as its Lessor, said attornment to be effective and self-operative without the execution of any further instruments. From and after Lender's or other such owner's succession to the interest of Lessor under the Lease, Lessee shall have the same remedies against Lender or such other owner for the breach of any covenant contained in the Lease that Lessee might have had under the Lease against Lessor, except that neither Lender nor any other such owner shall be:

- (a) liable for any act or omission of, or for the performance of any obligation of, any prior lessor (including Lessor), including without limitation any obligation to repair, restore or expand any part of the Leased Premises; or
- (b) subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor); or
- (c) bound by any prepayment of rent or additional rent which Lessee might have paid for more than the current month or by payment of any security deposits to any prior lessor (including Lessor), except such security deposits as have actually been received by Lender; or
- (d) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior lessor (including Lessor) made or given without the written consent of Lender or any subsequent holder of the Security Instrument; or
- (e) bound by any representations or warranties of Lessor under the Lease.

15. Lender shall not be bound by any nondisturbance provisions of the Lease. Lender or such other owner shall not be required to recognize the rights of Lessee under the Lease, and the rights of Lessee thereunder (including any options thereunder) shall at the sole election of and upon notice by Lender or such other owner cease and terminate upon acquisition of title to or upon possession of the Leased Premises by Lender, or such owner or their respective successors and assigns, including any purchaser at a foreclosure sale.

16. Lessee hereby waives any rights it may have to an award for a taking by eminent domain, except to the extent that the award (a) compensates Lessee for moving expenses, business interruption, or taking of the personal property of Lessee (other than Lessee's leasehold interest), (b) is awarded separately in the eminent domain proceeding, and (c) does not reduce the amount of Lessor's award in the eminent domain proceeding.

17. Any option or right of first refusal that Lessee may have to purchase the Leased Premises shall not apply to a sale by foreclosure or a deed in lieu of foreclosure and shall automatically be void and of no further force and effect following such sale by foreclosure or a deed in lieu of foreclosure. Lessee shall execute promptly whatever documents Lender may request from time to time in order to confirm the foregoing.

18. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19. Any and all notices, elections, demands, or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the

GE Contract No. 25829
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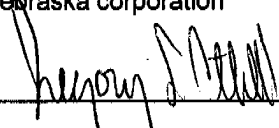
United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE, AMONG OTHER THINGS, IT AFFECTS THE PRIORITY OF YOUR LEASE AND BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN AGREEMENT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF the undersigned parties have executed this Agreement under seal as of the day and year first above written.

LESSEE:

CUTCH, INC.,
a Nebraska corporation

By:  _____

Printed Name: Gregory S. Cutchall

Title: Manager

LENDER:

GE CAPITAL FRANCHISE FINANCE CORPORATION,
a Delaware corporation

By: _____

Printed Name: _____

Title: _____

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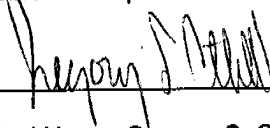
United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

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IN WITNESS WHEREOF the undersigned parties have executed this Agreement under seal as of the day and year first above written.

LESSEE:

CUTCH, INC.,
a Nebraska corporation

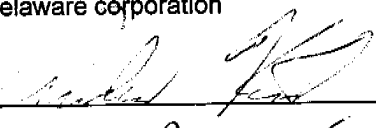
By: 

Printed Name: Gregory S. Cutchall

Title: Manager

LENDER:

GE CAPITAL FRANCHISE FINANCE CORPORATION,
a Delaware corporation

By: 

Printed Name: ANDREW G. KENT

Title: Sr. Vice President, Assoc. General Counsel,
and Assistant Secretary.

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Lessor joins in the execution of this document for the purpose of acknowledging and confirming the matters herein set forth.

LESSOR:

CUTCHALL PROPERTY MANAGEMENT, L.L.C.,
a Nebraska limited liability company

By: *Gregory S. Cutchall*
Gregory S. Cutchall, Manager

Exhibits:

Exhibit A - Leased Premises

STATE OF NEBRASKA)
COUNTY OF Douglas) SS.

The foregoing instrument was acknowledged before me on September 20, 2004 by Gregory S. Cutchall, Manager of Cutchall Property Management, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

Diane Thomsen
Notary Public

My Commission Expires:
Oct. 17, 2007

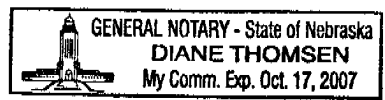


STATE OF Nebraska)
COUNTY OF Douglas) SS.

The foregoing instrument was acknowledged before me on September 20, 2004 by Gregory S. Cutchall, Manager of Cutch, Inc., a Nebraska corporation, on behalf of the corporation.

Diane Thomsen
Notary Public

My Commission Expires:
Oct. 17, 2007



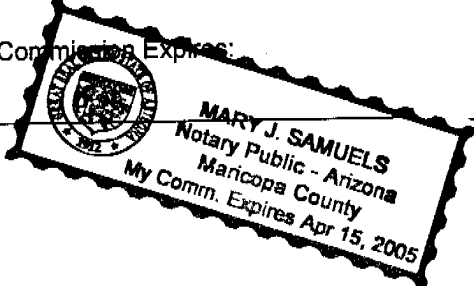
GE Contract No. 25829
Property No. 8002-8888
7222 South 84th Street
La Vista, Sarpy County, Nebraska

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STATE OF ARIZONA)
COUNTY OF MARICOPA) SS.

The foregoing instrument was acknowledged before me on September 22, 2004 by Andrew G. Kent, Sr VP, Associated GE Capital Franchise Finance Corporation, a Delaware corporation, on behalf of the corporation. Counsel, Asst Secretary

Mary J. Samuels
Notary Public

My Commission Expires:


2004-37748 I

EXHIBIT A

(7222 South 84th Street, La Vista, Sarpy County, Nebraska)

Legal Description:

Part of Lots One Hundred Forty Three (143), Fifty Seven (57) and One Hundred Fifty Nine (159), in Park View Heights, an Addition to the City of La Vista, as surveyed, platted and recorded, Sarpy County, Nebraska, more particularly described as follows:

Beginning at a point on the Northerly right of way line of Park View Boulevard, said point being 5.14 feet Easterly of the West corner of said Lot One Hundred Forty-Three (143) and 176.36 feet Westerly of the center line of 84th Street, thence South 89 degrees 51 minutes 46 seconds West (assumed bearing) along the Northerly right of way line of Park View Boulevard, a distance of 92.88 feet; thence South 84 degrees 09 minutes 08 seconds West, a distance of 50.25 feet; thence South 89 degrees 51 minutes 46 seconds West, a distance of 7.12 feet; thence North 00 degrees 01 minutes 50 seconds West along a line 190 feet Westerly of and parallel to the future state right of way of 84th Street, a distance of 155 feet; thence North 89 degrees 51 minutes 46 seconds East, a distance of 150 feet; thence South 00 degrees 01 minutes 50 seconds East along a line 40 feet Westerly of and parallel to the future state highway right of way line of 84th Street, a distance of 150 feet to the point of beginning.

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