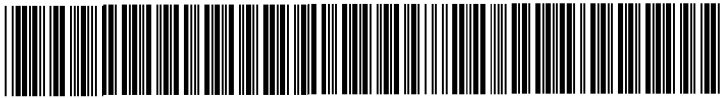




MISC 2016069794



AUG 26 2016 12:34 P 8

Fee amount: 52.00
FB: 61-11239
COMP: MJ

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
08/26/2016 12:34:39.00



2016069794

When Recorded Return To:

Ameritas Life Insurance Corp.
5900 "O" Street
Lincoln, NE 68510-2252
Attn: Mortgage Loans

NCS-810354

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

Property Address: 11010 Q Street
Omaha, Nebraska 68137

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), is made and entered into as of the 8th day of August, 2016, by and among TreeHouse Private Brands, Inc., a Missouri corporation ("Tenant"); VFD 110 Q, LLC, a Nebraska limited liability company ("Landlord") and Ameritas Life Insurance Corp., a Nebraska corporation ("Lender").

WHEREAS, Tenant is the current tenant under that certain Office Building Lease dated July 18, 2016 (the "Lease") with Landlord relating to certain premises (the "Demised Premises") located within a building located on the Property (defined below) and more specifically described in the Lease. The Lease including all amendments thereto, is described on **Exhibit A**;

WHEREAS, Landlord desires that Lender provide Landlord a loan, the repayment of which loan will be secured by, among other things, a Mortgage or Deed of Trust executed by Landlord in favor of Lender ("Security Instrument") and recorded against the real property and improvements described therein and on **Exhibit B** attached hereto and by this reference incorporated herein (the "Property");

WHEREAS, In connection with making of the aforescribed loan Lender requires that Tenant subordinate the Lease and its interest therein to the lien of the Security Instrument and Tenant desires to subordinate Lease upon the terms and conditions contained herein.

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

1. Definitions. The below terms have the following meanings for purposes of this Agreement:

(a) "Foreclosure Event" means (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including bankruptcy law) as holder of the Promissory Note and/or the Security Instrument, as a result of which Successor Landlord becomes owner of the Property; or (iii) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower's interest in the Property in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Property as the result of a Foreclosure Event.

(c) Initially capitalized terms used in this Agreement and not expressly defined herein have the meanings given them in the Security Instrument.

2. Subordination. Tenant agrees and does hereby subordinate the Lease and all of its rights and interests therein to the lien, security interest and terms of the Security Instrument, the indebtedness secured thereby, and all other documents relating to such indebtedness, and to all renewals, extensions or modifications thereof, including without limitation amendments which increase the amount of such indebtedness, subject to the terms and conditions set forth in this Agreement.

3. No Exercise of Security Interest Remedies Against Tenant. So long as the Lease is in full force and effect and Tenant is not then in material default under the Lease after the expiration of any applicable notice and cure periods, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Security Instrument unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

4. Nondisturbance. If the Lease is in full force and effect and Tenant is not in material default under the Lease after the expiration of any applicable notice and cure periods at the time, if ever, that a Successor Landlord acquires title to the Property, such Successor Landlord shall not terminate Tenant's rights and interests in and to the Lease nor terminate or disturb Tenant's use, possession or enjoyment of the Demised Premises, except in accordance with the terms of the Lease.

5. Attornment. If the Lease is in full force and effect and Tenant is not in material default under the Lease after the expiration of any applicable notice and cure periods at the time, if ever, that a Successor Landlord acquires title to the Property, Tenant shall recognize and attorn to such Successor Landlord, and Successor Landlord shall recognize Tenant and be bound to Tenant under and upon all the terms, covenants and conditions of the Lease for the balance of the term thereof (including extensions), with the same force and effect as if Successor Landlord were Original Landlord under the Lease, except as otherwise expressly provided in this Agreement. This attornment is to be effective and self-operative, without the execution of any further instruments; provided that Tenant shall promptly execute and deliver any instrument reasonably acceptable to Tenant that Lender or Successor Landlord shall reasonably request to

evidence such attornment. Notwithstanding the foregoing or anything to the contrary contained elsewhere herein, in no event shall Lender or Successor Landlord be (a) liable for any damages for defaults of Landlord under this Agreement or under the Lease, (b) bound by any payment of any rent or additional rent which Tenant might have paid to Landlord more than thirty (30) days in advance, except in the form of security or impounds as required under the Lease but only to the extent the same are actually received by Lender or Successor Landlord, or (c) except for any amendment or modification expressly contemplated pursuant to the Lease, bound by any amendment or modification of any term of the Lease made without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6. No Representations. Tenant acknowledges that Landlord has not made any representations to Tenant regarding the condition of the Premises other than those set out in the Lease.

7. Direct Payment of Rents. Tenant acknowledges that Landlord has assigned the Lease to Lender and agrees that pursuant to such assignment, Tenant will, upon receipt of written notice from Lender (the "Rent Payment Notice"), pay all rents and other charges due and payable under said Lease directly to Lender or Lender's agent pursuant to the Rent Payment Notice. Landlord hereby expressly and irrevocably directs and authorizes Tenant to comply with any Rent Payment Notice, notwithstanding any contrary instruction, direction or assertion of Landlord, and Landlord releases Tenant from all claims, damages, losses, liabilities, obligations, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses in connection with Tenant's compliance with any Rent Payment Notice. Until such notice is given by Lender to Tenant, Tenant shall pay all rent and installments of rents to Landlord in accordance with the provisions of the Lease.

8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns and any Successor Landlord, and its successors and assigns, their respective heirs, personal representatives, nominees, successors and assigns.

9. Notice of Default & Right to Cure. Tenant hereby agrees to provide to Lender or Lender's representative at the following address a copy of the any notice of default or breach of the Lease by the Landlord (the "Landlord Default Notice"):

Ameritas Life Insurance Corp.
5900 "O" Street
Lincoln, NE 68510-2252
Attn: Mortgage Loans

Tenant further agrees that Lender shall have the right, but not the obligation, to cure any such default or breach for a thirty (30) day period following Lender's receipt of the Landlord Default Notice before Tenant can terminate the Lease based on such default.

10. Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the parties hereto.

11. Counterparts. This Agreement may be executed in multiple counterparts, and any set collectively bearing the original signatures of all parties shall constitute a single document.

"Tenant"

TreeHouse Private Brands, Inc.,
a Missouri corporation

By: *Thomas E. O'Neill*
Name: Thomas E. O'Neill
Its: Executive Vice President

STATE OF Illinois)
COUNTY OF DuPage)

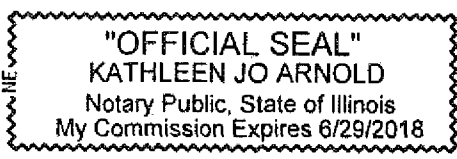
ss:

The instrument was acknowledged before me this 2 day of August, 2016, by Thomas E. O'Neill, the Executive Vice President of TreeHouse Private Brands, Inc., a Missouri corporation.

WITNESS my hand and official seal.

Kathleen Jo Arnold
Notary Public

My Commission Expires: 6-29-18



"Landlord"

VFD 110 Q, LLC

a

By: 

Name: Alfred J. Vacanti, Jr.
Its Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

The instrument was acknowledged before me this 1st day of Aug, 2016, by Alfred J. Vacanti, Jr., the Manager of VFD 110 Q, LLC, a Nebraska limited liability company.

WITNESS my hand and official seal.



Notary Public

My Commission Expires: June 9, 2019



EXHIBIT A

To Subordination, Nondisturbance and Attornment Agreement

Description of Lease, Including All Amendments and Effective Dates

Office Building Lease dated July 18, 2016 between VFD 110 Q LLC, a Nebraska limited liability company (Landlord) and TreeHouse Private Brands, Inc., a Missouri corporation (Tenant)

EXHIBIT B

To Subordination, Nondisturbance and Attornment Agreement

Legal Description of Property

Lots 66 and 67, in EMPIRE PARK REPLAT II, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska EXCEPT a triangular parcel more particularly described as follows: Commencing at the Southwest corner of said Lot 67, thence North along the West boundary line of said Lot for a distance of 15.00 feet; thence Southeasterly along a straight line for a distance of 16.55 feet to a point on the South boundary line of Lot 67, said point being 7.00 feet East of the Southwest corner of said Lot; thence West along the South boundary line a distance of 7.00 feet to the point of beginning.

Together with a beneficial easement for storm sewer filed December 28, 1990 in Book 948 at Page 721 of the Miscellaneous Records of Douglas County, Nebraska.

**THIS INSTRUMENT FILED FOR RECORD BY FIRST AMERICAN
TITLE INSURANCE CO. AS AN ACCOMMODATION ONLY.
IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION
OR AS TO ITS EFFECT UPON TITLE.**