

95066763

LAKE COUNTY
FILED FOR RECORD

95 NOV -2 AM 8:57

MARGARETTE CLEVELAND
RECORDER**SUBORDINATION, NONDISTURBANCE AND
ATTORNMENT AGREEMENT**

This SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is dated the 29th day of September, 1995, by and between BANK ONE, MERRILLVILLE, NA, a national banking association, having a mailing address of 1000 E. 80th Place, Merrillville, Indiana 46410 ("Lender") and Commonwealth Business College Education Corporation, a Delaware corporation, having a mailing address c/o Commonwealth Business College Education Centers, 309 Buttermilk Pike, Ft. Mitchell, KY 41017 Attn: Dr. G. Stephen Coppock ("Tenant").

Document is**BACKGROUND****NOT OFFICIAL!**

A. Commonwealth Business College, Inc., an Indiana corporation (the "Landlord") is the landlord under a certain lease (the "Lease") dated Sept. 29, 1995, with respect to the real property located in Merrillville, Lake County, Indiana, with a street address of 4200 West Lincoln Highway together with all buildings and improvements located thereon, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Demised Premises").

B. To secure an indebtedness payable to Lender by Landlord, Landlord has executed and delivered to Lender, a first priority mortgage, dated as of April 6, 1987, and recorded with the Recorder of Lake County, Indiana on April 14, 1987, as Document No. 911655, and further secured by a Conditional Assignment of Rentals dated April 6, 1987, and recorded with the Recorder of Lake County, Indiana on April 14, 1987 as Document No. 911656, and further secured by a junior mortgage dated April 21, 1988, and recorded with the Recorder of Lake County, Indiana on May 3, 1988 as Document No. 975418, and further secured by a junior Conditional Assignment of Rentals dated April 21, 1988, and recorded with the Recorder of Lake County, Indiana on May 3, 1988 as Document No. 975419, on the fee interest and estate of Landlord in and to the Demised Premises (such mortgage and any increases, supplements, renewals, modifications, replacements, consolidations, substitutions or extensions thereof being collectively called the "Mortgage").

C. Tenant has requested that Lender execute this Agreement to provide certain assurances to Tenant with respect to the Mortgage, and to confirm the understanding with respect to the Lease and the rights of Tenant thereunder.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and intending to be legally bound, Lender and Tenant hereby covenant and agree as follows:

C# 258228, 258607

33.00
vac

1. Subordination. The Lease, including any further amendments and all renewals and extensions thereof, and all rights of Tenant thereunder, is and shall remain subject and subordinate in all respects to the Mortgage.

2. Covenants of Lender. Lender covenants and agrees that if the Lease shall be in full force and effect and an default (after the expiration of all applicable notice and grace periods) shall not have occurred and be continuing at the time as of which Lender commences a foreclosure action or other procedure to enforce the Mortgage:

(a) Neither Tenant nor any person claiming through or under Tenant shall be named or joined as a party defendant in any action, suit or proceeding which may be instituted or taken by Lender for the purpose of foreclosure of the Mortgage upon the interest and estate of Landlord or of taking possession of the estate of the Landlord by reason of a default or event of default under the Mortgage unless Tenant or any person claiming through or under Tenant is deemed a necessary party by the court, in which event such party may be so named or joined but such naming or joinder shall not otherwise be in derogation of the rights of Tenant set forth in this Agreement.

(b) Neither Tenant, nor any person claiming through or under Tenant, shall be evicted from the Demised Premises, nor shall the leasehold estate or possession of Tenant or any person claiming through or under Tenant be terminated by reason of a default or event of default under the Mortgage.

3. Attornment.

(a) If, at any time, Lender shall succeed to the rights of Landlord under the Lease as a result of a default or event of default under the Mortgage (whether voluntary, involuntary or by operation of law) prior to the expiration date of the Lease, and if (i) the Lease shall be in full force and effect and an default (after the expiration of all applicable notice and grace periods) shall not have occurred and be continuing, or (ii) if the provisions of Section 3(a)(i) hereof are not satisfied and Lender otherwise so elects at its option to accept such attornment, then (X) the Lease shall not terminate as a result of Lender's actions, (Y) Tenant shall attorn to and recognize Lender as Tenant's landlord under the Lease, and (Z) Lender shall accept such attornment and recognize Tenant as Lender's tenant under the Lease.

(b) Upon such attornment and recognition as provided in Section 3(a) above, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Lender and Tenant upon and subject to all of the then terms, conditions

and covenants as are set forth in the Lease and that shall be applicable after such attornment and recognition.

4. Lien. Nothing contained in this Agreement shall in any way impair or effect the lien created by the Mortgage, except as specifically set forth herein.

5. Binding Effect. This Agreement shall inure to the benefit of the parties hereto, their respective successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all future obligations and liabilities of Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred, which assignee shall be deemed to have assumed Lender's obligations and liabilities hereunder from and after the date of such assignment or transfer.

6. Assignment of Rents. Tenant acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been collaterally assigned by Landlord to Lender as part of the security for the note secured by the Mortgage. If Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay rent and all other sums due under the Lease directly to Lender. Landlord has joined in and consented to this Agreement to confirm that it directs Tenant to honor any such demand to Lender; and that Tenant shall be fully protected if it honors such demand and shall receive credit for all amounts paid pursuant thereto, even if it later be determined, as between Lender and Landlord, that Lender were not entitled to make such demand and receive such payments.

7. Notices. All notices and other communications hereunder shall be in writing and shall be delivered by certified mail, return receipt requested, postage pre-paid or reputable overnight delivery service, postage pre-paid, addressed: (a) if to Lender, to Lender's address listed in the preamble to this Agreement, or at such other address for Lender as Lender shall have furnished to Tenant in writing, or (b) if to Tenant, at the Tenant's address listed in the preamble to this Agreement, or such other address as Tenant shall have furnished to Lender in writing.

8. No Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by the party against whom enforcement or any waiver, change, modification or discharge is sought.

9. Self-Operative. The provisions of this Agreement shall be self-operative and no further instrument shall be necessary to effect the aforementioned

subordination, attornment and non-disturbance agreements. Nevertheless, in confirmation thereof, Lender or Tenant shall execute and deliver an appropriate certificate to confirm such subordination, attornment and/or non-disturbance agreements promptly upon request of the other.

10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instruments.



IN WITNESS WHEREOF, the parties have duly executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

ATTEST:

TENANT:

[Corporate Seal]

COMMONWEALTH BUSINESS COLLEGE EDUCATION CORPORATION, a Delaware corporation

Eben V Hall
(Assistant) Secretary
Eben V Hall

G. Stephen Corrock
Name: G. STEPHEN CORROCK
Title: PRESIDENT



ATTEST:

LENDER:

[Corporate Seal]

Bank One, Merrillville, NA, a national banking association

By: Sherril Tokarski,
Vice President

By: David K. Stephenson
Title: Vice President

Prepared By:

Carla J. Hell, Esquire
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-2782



IN WITNESS WHEREOF, the parties have duly executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

ATTEST:

TENANT:

[Corporate Seal]

COMMONWEALTH BUSINESS
COLLEGE EDUCATION
CORPORATION, a Delaware
corporation

Document is NOT OFFICIAL

This Document is the property of
the Lake County Recorder!

(Assistant) Secretary

By: _____

Name: _____

Title: _____

ATTEST:

LENDER:

[Corporate Seal]

Bank One, Merrillville, NA,
a national banking association

By: _____

Sherril J. Tokarski
Sherril J. Tokarski
Vice President



By: _____

David K. Stephenson
Name: David K. Stephenson
Title: Vice President

Prepared By:

Carla J. Heil, Esquire
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-2782

CONSENT AND JOINDER

Landlord hereby joins in the execution of this Subordination, Nondisturbance and Attornment Agreement in order to show its consent to and agreement with all of the terms and provisions hereof.

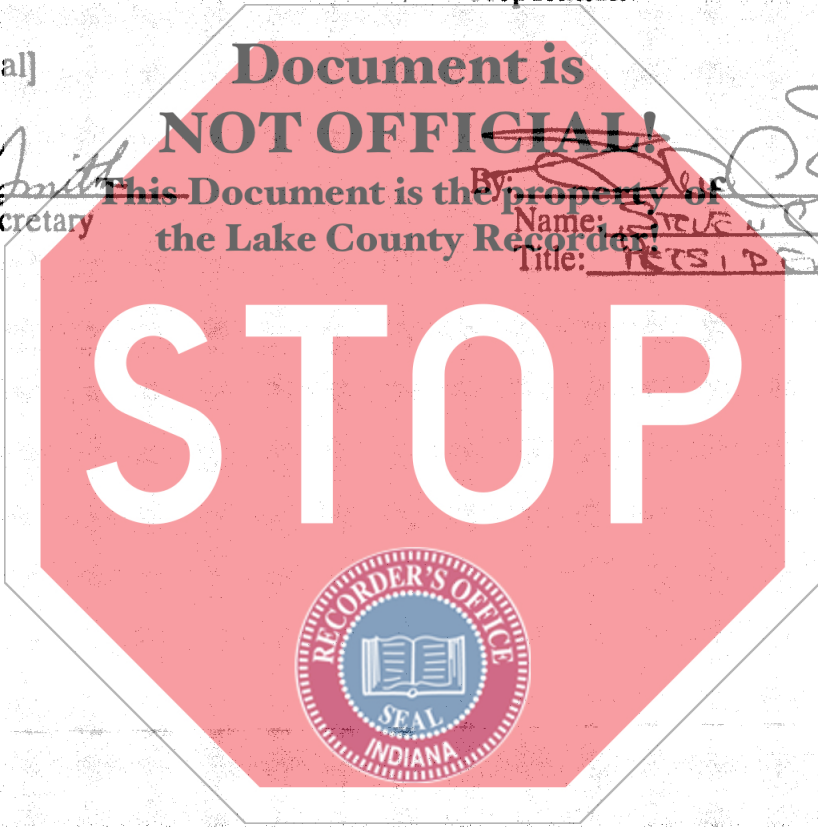
ATTEST:

COMMONWEALTH BUSINESS COLLEGE, INC., an Indiana corporation

[Corporate Seal]

Alan E. Smith
(Assistant) Secretary

By: *[Signature]*
Name: STEVEN S. SMITH
Title: RECIPIENT



STATE OF Ohio

COUNTY OF Butler

:
:
: SS.

On this 28 day of September, 1995, before me, the undersigned notary public, personally appeared G. Stephen Cooper, the President of COMMONWEALTH BUSINESS COLLEGE EDUCATION CORPORATION, a Delaware corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same, as President of Commonwealth for the purposes therein contained.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

[Notarial Seal]

NOT OFFICIAL!
This Document is the property of
the Lake County Recorder!

Diane Cornett
Notary Public

My Commission Expires: 7-31-98

Resident:

Butler County

DIANE M. CORNETT, NOTARY PUBLIC
in and For the State of Ohio
My Commission Expires July 31, 1998



STATE OF INDIANA

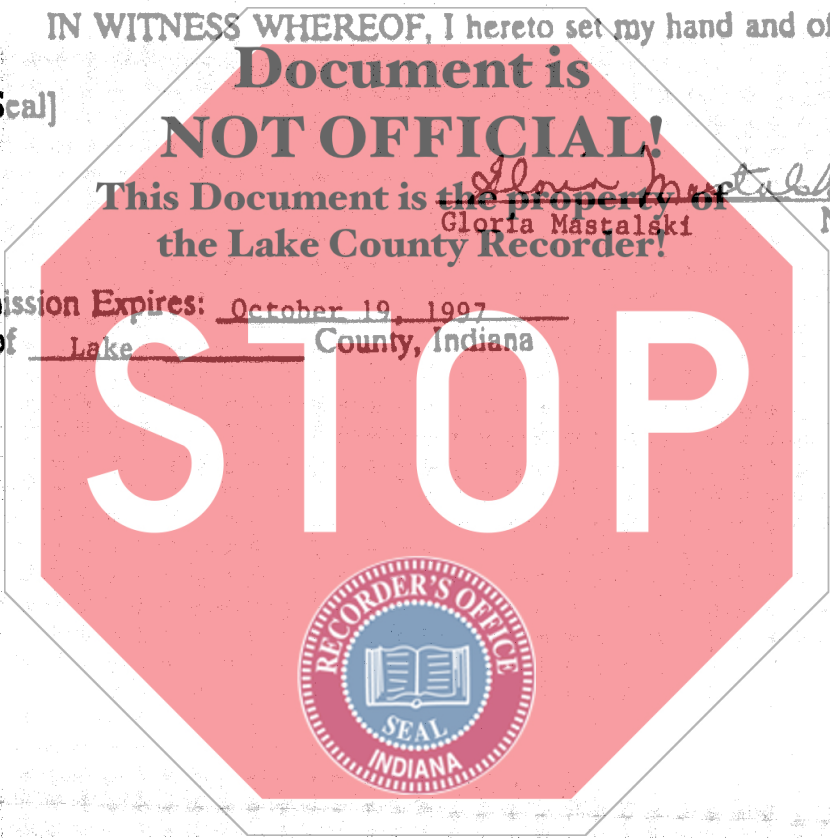
COUNTY OF LAKE

:
:
: SS.

On this 29th day of September, 1995, before me, the undersigned notary public, personally appeared David K. Stephenson, as Vice President, and Sherril J. Tokarski, as Vice President, respectively of Bank One, Merrillville, NA, a national banking association, known to me (or satisfactorily proven) to be the person(s) whose names are subscribed to the within instrument, and acknowledged that they executed the same as officers of Bank One, Merrillville, NA, for the purposes therein contained.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

[Notarial Seal]



Document is

NOT OFFICIAL!

This Document is the property of
Gloria Mastalski
the Lake County Recorder!

Gloria Mastalski
Gloria Mastalski

Notary Public

My Commission Expires: October 19, 1997
Resident of Lake County, Indiana

STATE OF Indiana
COUNTY OF Lake

:
:
: SS.

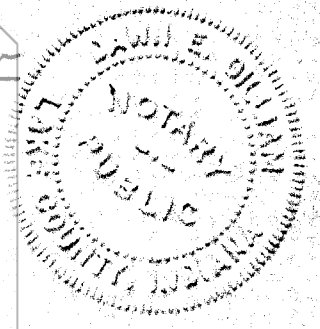
On this 29th day of September, 1995, before me, the undersigned notary public, personally appeared Steven C. Smith, the President of COMMONWEALTH BUSINESS COLLEGE, INC., an Indiana corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same as president of Commonwealth Business College for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

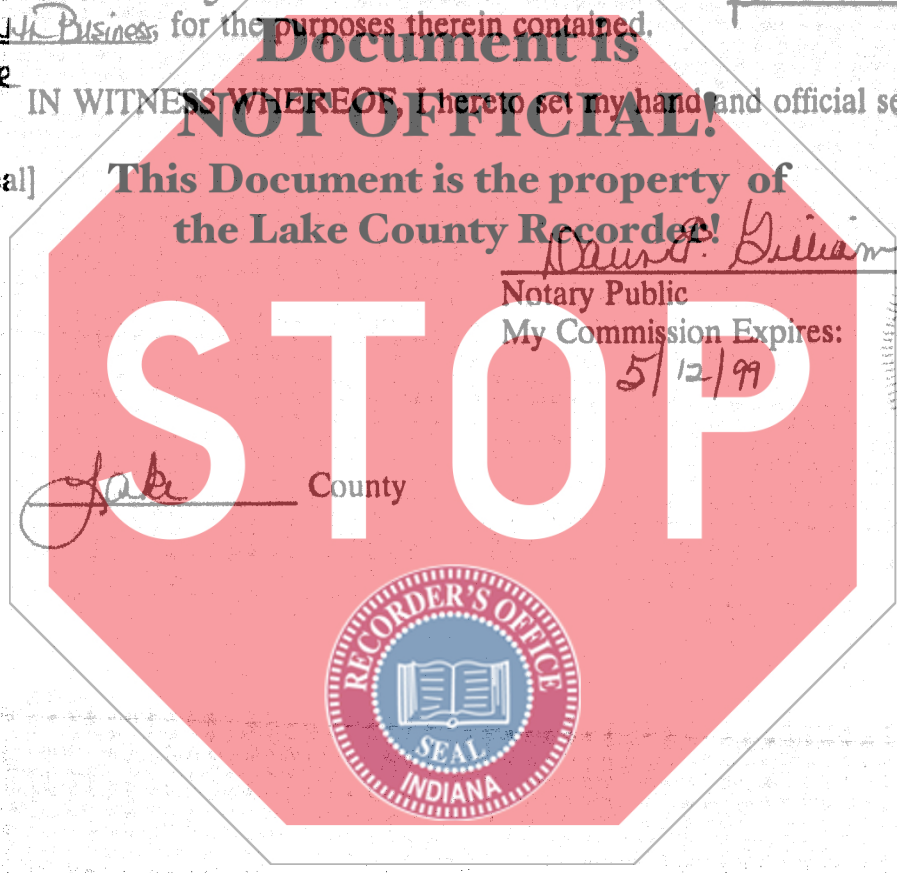
[Notarial Seal]

This Document is the property of the Lake County Recorder!

Maureen P. Sullivan
Notary Public
My Commission Expires: 5/12/99



Resident: Jake County



17

Exhibit A

Description of the Demised Premises

Parcel 1: That part of Lot 1, Broadmore Mini-Mall, as shown in Plat Book 48, page 74, in Lake County, Indiana, described as follows:

A part of the Northwest Quarter of Section 19, Township 35 North, Range 8 West of the 2nd P.M., Lake County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Northwest Quarter, thence Due South along the East line of said Northwest Quarter a distance of 1702.30 feet; thence Due West a distance of 376.79 feet; thence South 49 degrees 25 minutes 02 seconds West a distance of 307.43 feet to the point of beginning of this description. Said point also being the Northwest Corner of Lincolnway Plaza, an addition to Lake County, as recorded in Book 41, Page 16, in the Office of the Recorder, Lake County, Indiana; thence South 19 degrees 40 minutes 00 seconds West along the Westerly line of said Lincolnway Plaza a distance of 513.66 feet to the existing North right of way of Lincoln Highway (U.S. 30); thence North 77 degrees 16 minutes 00 seconds

West along said North right of way a distance of 387.75 feet; thence North 18 degrees 34 minutes 15 seconds East a distance of 307.50 feet; thence North 49 degrees 25 minutes 02 seconds East a distance of 164.08 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 328.54 feet to the point of Beginning, excepting therefrom the Southerly 225 feet of the Westerly 300 feet.

Parcel 2: Non-exclusive easement for ingress and egress as granted in Declaration of Rights and Easements dated June 29, 1973 and recorded July 24, 1973, as Document No. 212635, made by The Broadmoor corporation, to Broadmoor - Oxford Associates, an Indiana limited partnership, over and upon the following property:

A part of the Northwest Quarter of Section 19, Township 35 North, Range 8 West of the 2nd P.M., described as follows: Commencing at the Northeast Corner of said Northwest Quarter, thence Due South along the East line of said Northwest Quarter a distance of 1702.30 feet to the Northeast Corner of Lincolnway Plaza; thence Due West along the North line of said Lincolnway Plaza a distance of 610.28 feet to the Northwest Corner of Lincolnway Plaza; thence South 19 degrees 40 minutes West along the Westerly line of said Lincolnway Plaza a distance of 513.66 feet to the existing North right of way of Lincoln Highway (U.S. 30); thence North 77 degrees 16 minutes West along said North right of way of Lincoln Highway (U.S. 30), a distance of 387.75 feet to the POINT OF BEGINNING; thence continuing along the said North right-of-way line a distance of 30.00 feet; thence North 18 degrees 34 minutes 15 seconds East a distance of 40.21 feet; thence South 77 degrees 16 minutes East parallel to the said North right-of-way line a distance of 30.00 feet; thence South 18 degrees 34 minutes 15 seconds West a distance of 40.21 feet to the POINT OF BEGINNING.