

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

96083614

DEC 20 AM 9:24  
NONDISTURBANCE, ATTORNMENT, ESTOPPEL  
AND SUBORDINATION AGREEMENT  
MARGARETTE CLEVELAND  
RECORDED

1. DBL Tree Lake Estates, L.P. ("Landlord") and the undersigned as a Tenant (hereafter "Tenant") have entered into a Lease dated January 29, 1996 on real estate ("Premises") located in Lake County, Indiana, the legal description of which is attached hereto and incorporated by reference herein, which is part of real estate that is or will be mortgaged to National City Bank, Indiana ("Lender") pursuant to a mortgage ("Mortgage") as security for a loan ("Loan") that Lender has agreed to make to the Landlord. As a condition to making the Loan, Lender requires a that Tenant execute and deliver this agreement to the Lender and Tenant has agreed to do so. Accordingly, Tenant and Lender agree that:

2. **Estoppel.** Tenant certifies to Lender that the Lease is in effect and unmodified, no rent under the Lease has been paid more than thirty (30) days in advance of its due date, Lender will have no liability or responsibility with respect to Tenant's security deposit unless Lender has actual possession of same and Lender shall be sent a copy of all notices of default regarding the Lease by the party sending such notice.

3. **Subordination.** The Lease and the rights of Tenant thereunder are and shall be subject and subordinate to the lien of the Mortgage to the full extent of the principal sum and interest thereon, as the Mortgage may be renewed or extended.

4. **Attornment.** Subject to the terms in this agreement, if Lender takes possession of the Real Estate, whether it be pursuant to the exercise of any remedy provided for in the Mortgage or by reason of acceptance of a deed in lieu of foreclosure or otherwise, Lender shall give written notice of this to the Tenant within fifteen (15) days thereafter and has the right to request that the Tenant provide a certification of the status of the Lease within fifteen (15) days from the Lender's notice. Lender shall have fifteen (15) days from receipt of the Tenant certification to accept the Lease in writing. If the Lender accepts the Lease in writing, Tenant will be bound to Lender according to the Lease for the balance of the term of the Lease and any extension of the Lease as if Lender were the Landlord under the Lease, and Tenant will attorn to Lender as its Landlord, and the rights and obligations of Tenant and Lender will be the same as they would have been if Lender had been Landlord under the Lease, except that in no event shall Lender be liable for any act or omission of Landlord or any predecessor of Landlord (including Landlord); subject to any offsets or defenses that Tenant may have against Landlord or any predecessor of Landlord, except as such right of offset is set forth in the Lease regarding Landlord's default with respect to its obligations of maintenance, repair and replacement (which may serve as such an offset to Tenant's payment obligations under the Lease but for which the Lender shall not be personally liable); bound by any rent or additional rent or advance rent that Tenant may have paid for more than the current month to any prior Landlord (including Landlord) and all such rent will remain due and owing without regard to such advance payment; bound by an amendment or modification of the Lease made without Lender's consent and written approval, which consent and written approval shall not be unreasonably withheld, conditioned or delayed; required to complete the building of which the Premises are a part; bound by any promise by Landlord or any predecessor of Landlord not to compete with Tenant as to real property or businesses acquired by Lender through exercise of its rights under foreclosure, deed in lieu of foreclosure or otherwise as collateral for borrowed money; or responsible to return Tenant's security deposit pursuant to the Lease unless Lender has actual possession thereof.

5. **Nondisturbance.** Upon Lender acceptance of the Lease as set forth above, so long as no event of default under the Lease exists that has not been cured within any applicable grace period, and subject to paragraph 6 below (a) Lender will not disturb or affect Tenant's possession of the Premises, or Tenant's rights under the Lease, and (b) all of Tenant's rights under the Lease shall remain in effect. If Lender does not accept the Lease in writing, then Lender shall have been deemed to have rejected the Lease and the rights of the Tenant under the Lease shall cease sixty (60) days after the Lender takes possession of the Real Estate.

6. **Insurance Proceeds.** If there is damage to the Premises or any part of the Real Estate due to a fire or other casualty or condemnations, (the "Damage Event"), all insurance or condemnation proceeds paid or payable with respect to the Premises or Real Estate ("Proceeds") as to be received by Lender and shall be applied and paid in the manner set forth in the Mortgage.

7. **Assignment of Rents.** Landlord has assigned its interest in the rents and payments due under the Lease to Lender as security for repayment of the Loan provided that all rents and other payments due under the Lease shall be paid to Landlord so long as Landlord is not in default under the terms of the Mortgage. Upon a Landlord default under the Mortgage, and written notice of such from the Lender, Tenant agrees to pay any payments due under the terms of the Lease to Lender. The assignment of rents does not diminish any obligations of the Landlord under the Lease nor impose any obligations on the Lender, except as set forth in this agreement.

8. **Limitation on Tenant's Rights.** In the absence of Lender's prior written consent, Tenant will not prepay the rent under the Lease for more than one (1) month, or enter into any agreement with Landlord to amend or modify the Lease (Lender agrees not to unreasonably withhold, condition or delay giving consent to any proposed amendment or modification), voluntarily surrender the Premises or terminate the Lease except as provided in the Lease.

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9. **Curing Defaults; Landlord's Termination.** If Landlord fails to perform any of its obligations under the Lease, prior to taking any action against Tenant, Tenant will give written notice of the failure to Lender, and Lender will have the right (but not obligation) to cure such failure. Tenant will not take any action with regarding such failure under the Lease, including without limitation any action to terminate, rescind, or avoid the Lease or to withhold any rent under the Lease, for a period of thirty (30) days after receipt of such written notice by Lender. However, in the case of any default which cannot with diligence be cured within said thirty-day period, if Lender commences to cure within said thirty-day period and prosecutes the curing of such failure with diligence and continuity, the time within which such failure may be cured will be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity.

10. **Amendments and Binding Effect.** This agreement may be modified only by an agreement in writing signed by Landlord, Tenant, and Lender. This agreement will inure to the benefit of and will be binding upon Landlord, Tenant and Lender, their successors and assigns.

11. **Notices.** All notices under this agreement will be in writing and will be considered properly given if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, or if personally delivered to the intended addressee, or by prepaid telegram. Notice by mail will be effective two (2) days after deposit in the United States mail. Notice given in any other manner will be effective when received by the addressee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

TENANT  
DOUGLAS JOSIAI  
By: \_\_\_\_\_  
Name: DOUGLAS JOSIAI  
Title: Pres.  
Address: 10751 Randolph

State of Indiana )  
County of Lake ) SS:

Before me, the undersigned, a Notary Public, in and for said County and State, this 14<sup>th</sup> day of October, 1996, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged the execution of this Nondisturbance, Attornment, Estoppel and Subordination Agreement to be his/her voluntary act and deed on behalf of said \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My commission expires: 12/14/97  
Residing in said county: Lake

State of Indiana )  
County of Marion ) SS:

Before me, the undersigned, a Notary Public, in and for said County and State, this 25<sup>th</sup> day of November, 1996, personally appeared John Thullen as Vice President of National City Bank, Indiana, and acknowledged the execution of this Nondisturbance, Attornment, Estoppel and Subordination Agreement to be his/her voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My commission expires: 9/25/2000  
Residing in said county: Marion

Janis L. Levi  
Notary Public  
Janis L. Levi  
Printed Name:

THIS INSTRUMENT WAS PREPARED BY: BRANDT N. HARDY, ATTORNEY AT LAW. and after recording return to the public at 200E West Washington Street, Indianapolis, In. 46255  
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