

8

RE 005737

CROSS REF: 2007-56576

WHEN RECORDED RETURN TO:
LANDAMERICA COMMERCIAL SERVICES
140 EAST WASHINGTON ST.
INDIANAPOLIS, IN. 46204
CASE NO. 07-002513

Bear Stearns Commercial Mortgage, Inc.

and

United Retail Incorporated d/b/a Avenue (Store No. 637)
(Tenant)

SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN AGREEMENT

NOT OFFICIAL!

This Document is the property of
the Lake County Recorder!

Dated: July 2, 2007
Location: Merrillville Plaza,
East 80th Street, Hobart, Indiana

STOP



UPON RECORDATION
RETURN TO:

Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.

2007 060965

2007 JUL 26 AM 10:16

MICHAEL A. BROWN
RECORDER

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

NY01/DILLJO/1178073.2

27-56
MT-DG

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 2nd day of July, 2007 by and between BEAR STEARNS COMMERCIAL MORTGAGE, INC., having an address at 383 Madison Avenue, New York, New York 10179 ("Lender") and UNITED RETAIL INCORPORATED d/b/a AVENUE, having an address at 365 West Passaic Street, Rochelle Park, New Jersey 07662 ("Tenant").

RECITALS:

A. Tenant is the holder of a leasehold estate in a portion of the property known as Merrillville Plaza, located at East 80th Street, Hobart, Indiana, as more particularly described on Exhibit A (the "Property") under and pursuant to the provisions of a certain lease dated June 6, 2002 between Acadia Merrillville Realty, L.P., as landlord (or landlord's successor-in-interest) ("Landlord") and Tenant or its predecessor in interest, as tenant (as amended through the date hereof, the "Lease");

B. The Property is or is to be encumbered by one or more mortgages, deeds of trust, deeds to secure debt or similar security agreements (collectively, the "Security Instrument") from Landlord, or its successor in interest, in favor of Lender; and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. The Lease shall be subject and subordinate in all respects to the lien and terms of the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
2. Non-disturbance. So long as Tenant pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said premises may be expanded as specified in the Lease, by reason of a foreclosure. For purposes of this agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. No Liability. Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property); provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; or

(b) except as set forth in (a), above, liable for any failure of any prior landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord, unless of a continuing nature, having been previously declared to such prior landlord; or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property.

(f) liable or responsible for or with respect to the retention, application and or/return to the Tenant of any security deposit paid to Borrower or any prior Landlord, unless and until Lender or such Acquiring Party has actually received for its own account as landlord the full amount of such security deposit.

Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

5. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.

6. Lender to Receive Notices. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (ii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

if to Tenant, to
the attention of: Attention: Lease Administration #637
United Retail Incorporated
365 West Passaic Street
Rochelle Park, New Jersey 07662; and

if to Lender:
to the attention of: Bear Stearns Commercial Mortgage, Inc.
its successors and/or assigns
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 7, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.

9. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

10. The beneficiary of this document may not rely on anything it knows to be incorrect.

11. Except as specifically provided herein, in the event of a discrepancy between this document and the Lease, the Lease shall govern. Furthermore, the Lease, and any amendments thereto, shall govern all agreements, responsibilities, obligations and liabilities of Landlord and Tenant, or Lender and Tenant should Lender succeed to Landlord's interest.

12. This agreement will be considered null and void if Tenant does not receive a fully executed original within sixty (60) days from the date Tenant delivered this agreement to Landlord.

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: 

Name: **Adam Ansaldi**
Authorized Signatory **Managing Director/Principal**

TENANT:

UNITED RETAIL INCORPORATED

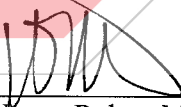
By: 

Name: **John J. O'Connell, III**
Title: **Vice-President, Finance**

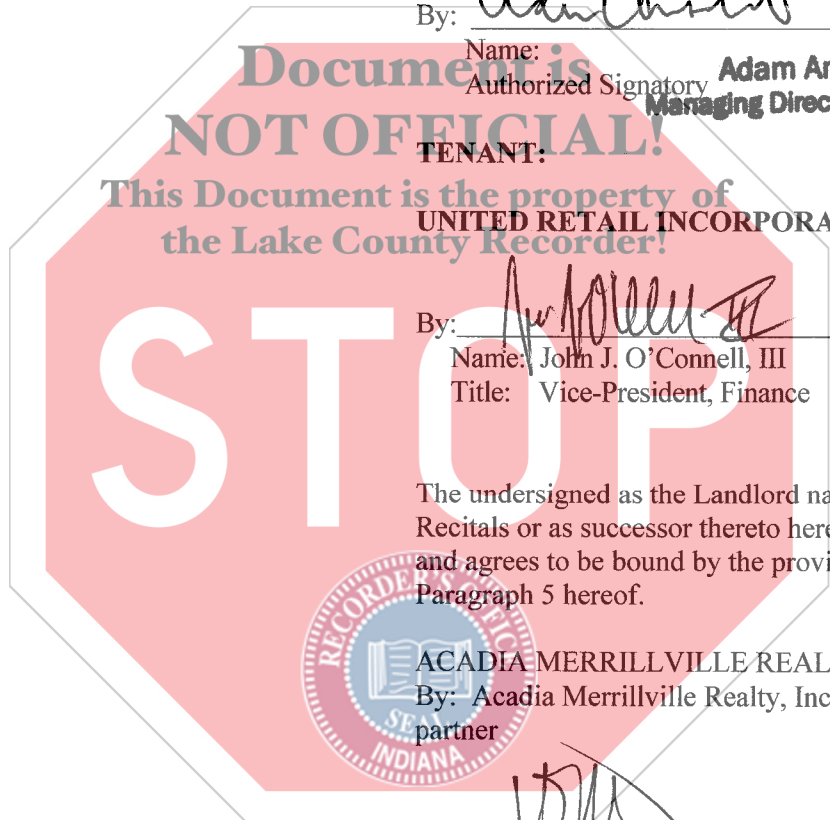
The undersigned as the Landlord named in the Recitals or as successor thereto hereby accepts and agrees to be bound by the provisions of Paragraph 5 hereof.

ACADIA MERRILLVILLE REALTY, L.P.,
By: **Acadia Merrillville Realty, Inc.**, its general partner



By: 

Name: **Robert Masters**
Title: **Senior Vice President**



STATE OF)
) ss.:
COUNTY OF)

On the ___ day of _____ in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

On the 23rd day of May in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John J. O'Connell, III, Vice-President, Finance, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOT OFFICIAL!
This Document is the property of
the Lake County Clerk!
Janice Talmadge

Janice Talmadge
Notary Public of New Jersey
Comm. Exp. 7/13/11

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ___ day of _____ in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT MASTERS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

STOP
RECORDS & CLERK
SEAL
INDIANA

Notary Public

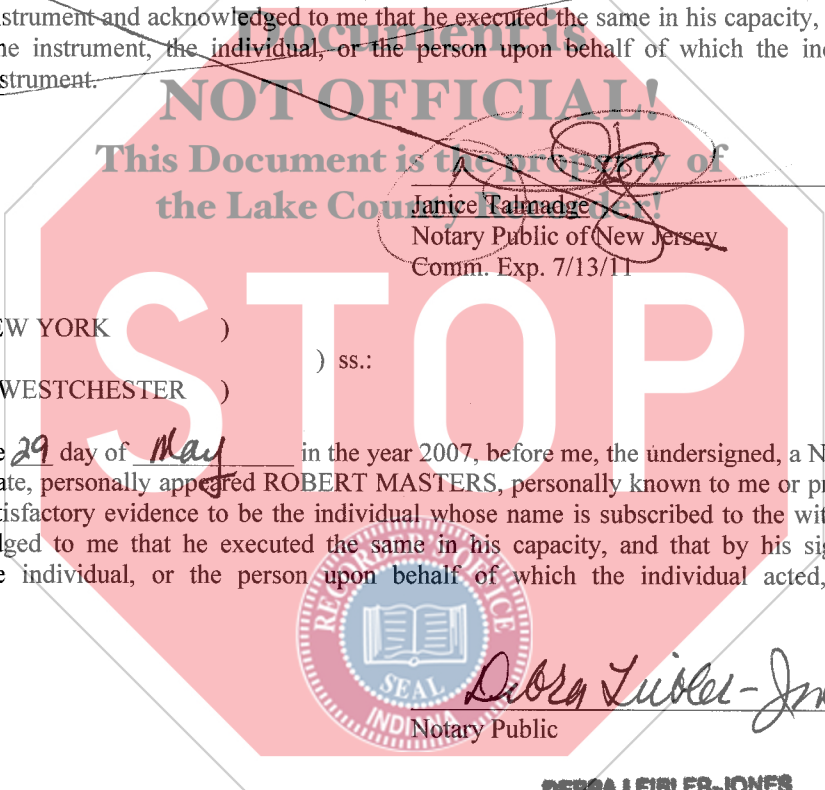
STATE OF New York)
) ss.:
COUNTY OF New York)

On the 27th day of JULY in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Adam Ansaldi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Nadine A. Schwartz
Notary Public **NADINE A. SCHWARTZ**
Notary Public, State of New York
No. 01SC6039798
Qualified in New York County
Certificate filed in New York County
Commission Expires April 10, 2010

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

~~On the 23rd day of May in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John J. O'Connell, III, Vice-President, Finance, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.~~



STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 29 day of May in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT MASTERS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Debra Leibler-Jones
Notary Public

DEBRA LEIBLER-JONES
NOTARY PUBLIC, ST. OF NY
DUTCHESS CTY. CLK #01JO6005996
COMMISSION EXPIRES 4/20/10

EXHIBIT A
The Property

PARCEL 1: Part of the North half of Section 23, Township 35 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, lying Southwesterly of the 100 foot right of way of the Chesapeake and Ohio Railroad and North of the 200 foot right of way of U.S. Highway 30, more particularly described as follows: Commencing at the Northwest corner of said Section 23; thence South 02 degrees 42 minutes 00 seconds East along the West line of said Section 23, a distance of 1,258.66 feet to the point of beginning of this described parcel; thence North 87 degrees 18 minutes 00 seconds East, 721.33 feet, more or less, to the South line of said 100 foot wide Chesapeake and Ohio Railroad right of way; thence South 62 degrees 42 minutes 00 seconds East along said South right of way, 819.41 feet to a point 1,652.33 feet, South 62 degrees 42 minutes 00 seconds East, from the West line of said Section 23 and measured along the South line of said railroad right of way; thence South 27 degrees 18 minutes 00 seconds West, 354.33 feet; thence North 62 degrees 42 minutes 00 seconds West, 36.92 feet; thence South 27 degrees 18 minutes 00 seconds West, 614.54 feet, more or less, to the Northerly right of way line of U.S. Highway 30; thence Westerly along the Northerly line of said highway, 44.97 feet; thence North 01 degrees 35 minutes 00 seconds West, 43.06 feet; thence North 88 degrees 25 minutes 00 seconds East, 17.0 feet; thence North 01 degrees 35 minutes 00 seconds West, 150 feet; thence South 88 degrees 25 minutes 00 seconds West, 326.65 feet; thence South 01 degrees 35 minutes 00 seconds East, 193.56 feet to the Northerly right of way of U.S. Highway 30; thence Westerly, along the Northerly line of said highway, 210 feet to the East line of the American Oil property described in deed recorded on April 12, 1965, in Deed Record 1288, page 199; thence North 02 degrees 42 minutes 00 seconds West, 191.812 feet along said East line; thence South 87 degrees 18 minutes 00 seconds West, 350 feet to a point on the West line of said Section 23, that is 2,387.90 feet South of the Northwest corner of said Section 23; thence North 02 degrees 42 minutes 00 seconds West, 1,029.24 feet to the point of beginning, EXCEPTING THEREFROM Warranty Deed recorded December 14, 1994, as Document No. 94083963, in the Office of the Recorder of Lake County, Indiana, to the State of Indiana, EXCEPTING FROM PARCEL 1 THE FOLLOWING: A part of the North ½ of Section 23, Township 35 North, Range B West, Lake County, Indiana, described as follows: Commencing at the Northwest corner of said section; thence South 00 degrees 41 minutes 26 seconds East, 1,258.64 feet (1,258.66 feet by Instrument No. 94013477) along the West line of said Section to the Northwest corner of the Grantor's land; thence North 89 degrees 18 minutes 34 seconds East, 40.00 feet along the North line of the Grantor's land to the East boundary of Mississippi Street and the point of beginning of this description; thence continuing North 89 degrees 18 minutes 34 seconds East, 15.00 feet along said North line; thence South 00 degrees 41 minutes 26 seconds East, 501.05 feet; thence South 89 degrees 18 minutes 34 seconds West, 5.00 feet; thence South 00 degrees 41 minutes 26 seconds East, 210.12 feet to the Eastern Boundary of said Mississippi Street; thence North 10 degrees 09 minutes 11 seconds West, 60.83 feet along the boundary of said Mississippi Street; thence North 00 degrees 41 minutes 26 seconds West, 651.17 feet along said boundary to the point of beginning.

PARCEL 2: Non-exclusive right to use for ingress and egress the existing access along and adjacent to the Southeast corner of Parcel 1 above, to and from U.S. Highway 30, as created in the Declaration of Easements, Covenants and Conditions recorded January 30, 1979, as Document No. 513561, upon the terms and provisions therein provided and the amendments and agreements thereto.