

14

Execution

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated as of: February 11, 2011

DB PRIVATE WEALTH MORTGAGE LTD.
(the "Mortgagee")

AND

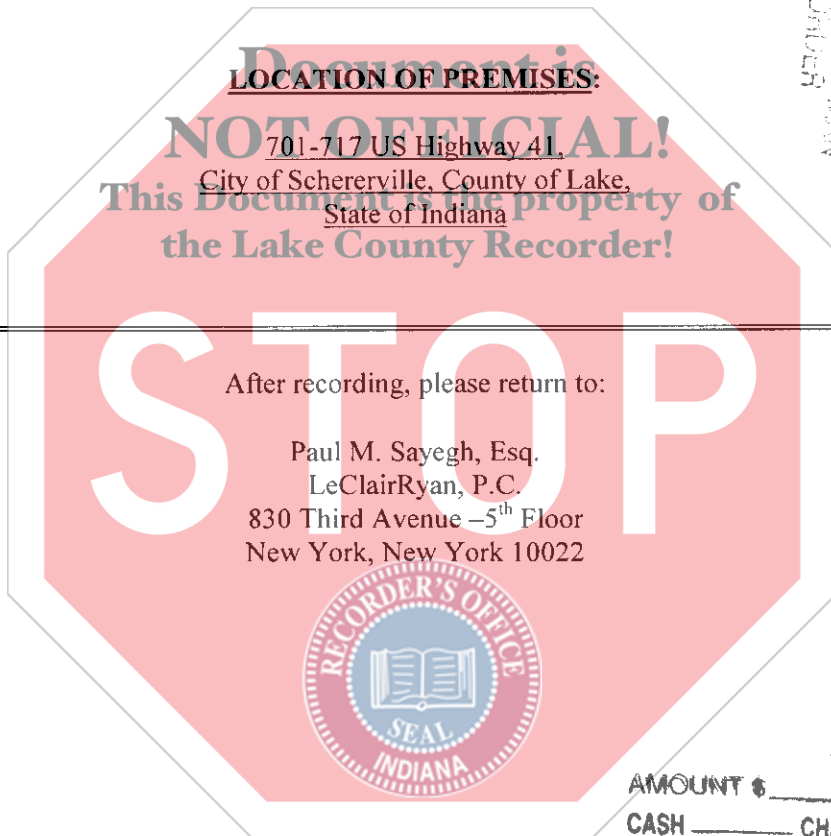
SUPERCUTS CORPORATE SHOPS, INC.
(the "Tenant")

AND

THE SHOPPES AT SCHERERVILLE, L.L.C.
(the "Landlord")

2011 012776

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
2011 MAR -7 AM 10:07
MIC. RECORDER



STOP

AMOUNT \$ 38⁰⁰
CASH _____ CHARGE _____
CHECK # 1077001881
OVERAGE _____
COPY _____
NON - COM
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SUPERCUTS

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), made as of February 11, 2011, by and among **DB PRIVATE WEALTH MORTGAGE LTD.**, having an address at 345 Park Avenue, 14th Floor, New York, New York 10154, Attention: David C. Williams, Director (hereinafter referred to as the "Mortgagee");

and

SUPERCUTS CORPORATE SHOPS, INC., a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, having an address at 7201 Metro Boulevard, Minneapolis, MN 55439-2103 (hereinafter referred to as the "Tenant");

and

THE SHOPPES AT SCHERERVILLE, L.L.C., a Missouri limited liability company, having an address at c/o Maly Commercial Realty, 213 N. Stadium Blvd., Suite 203, Columbia, MO 65203, Attention: Property Management (hereinafter referred to as the "Landlord").

W I T N E S S E T H:

WHEREAS, the Tenant has entered into a certain Lease, dated September 27, 2004, commencing September 15, 2005 (the "Commencement Date"), as amended (hereinafter referred to as the "Lease"), with the Landlord covering all or a portion of those premises located at 713D U.S. Hwy. 41, City of Schererville, County of Lake, State of Indiana, all as more particularly described in **Schedule A** attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

WHEREAS, the Landlord is the owner in fee simple of the real property of the Premises and the successor-landlord under the Lease; and

WHEREAS, the Mortgagee intends to (i) make a commercial term loan in the maximum principal amount of approximately \$10,500,000.00 to the Landlord (hereinafter referred to as the "Term Loan") and (ii) extend a revolving line of credit in the principal amount of up to \$1,000,000.00 to the Landlord (hereinafter referred to as the "Line of Credit", together with the Term Loan, the "Loans"), pursuant to that certain Term Loan and Revolving Line of Credit Agreement, dated as of the date hereof, by and between the Landlord and the Mortgagee (hereinafter referred to as the "Loan Agreement", which Loans are evidenced, respectively by (i) a Tranche A Note, (ii) a Tranche B Note and (iii) a Tranche C Note, which Tranche A Note is to be secured by that certain Security Instrument (as defined in the Loan Agreement), to be dated on or about February 11, 2011, and to be recorded in the proper recording office, granted by Landlord to the Mortgagee upon the Premises; and

WHEREAS, the execution and delivery of this Agreement is a condition to the making of the Loan;

NOW, THEREFORE, in consideration of these presents and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, their receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Subordination, etc. The Lease is and shall be subject and subordinate to the Security Instrument and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as though the Security Instrument had been executed, acknowledged, delivered, recorded and properly indexed prior to the execution and delivery of the Lease.

2. Attornment by Tenant. The Tenant agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Security Instrument, any transferee who acquires possession or title to the Premises by deed in lieu of foreclosure or other means, and the successors and assigns of such purchasers and/or transferees, as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease.

3. Non-Disturbance; No Liability. (a) So long as the Lease remains in full force and effect and has not been terminated by reason of any default or breach by Tenant thereunder, Tenant's leasehold estate and its use, possession, tenancy and occupation under the Lease shall remain undisturbed and any subsequent holder of the Security Instrument and/or owner of the Premises shall hold such Security Instrument and/or own the Premises subject to the Lease; provided, however that the Lease shall, at all times, remain subordinate to the Security Instrument as provided herein.

(b) In the event that the Mortgagee (or its designee or nominee), as the case may be, shall succeed to the interest of the Landlord under the Lease, and/or to title to the Premises, the Mortgagee and the Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; provided, however, that the Mortgagee shall not be:

- (i) liable for any act or omission of any prior landlord (including the Landlord), except for those of a continuing nature which arose after Mortgagee succeeded to the interest of the Landlord under the Lease, and/or to title in the Premises; or
- (ii) intentionally omitted; or
- (iii) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord); or
- (iv) bound by any rent or additional rent which the Tenant might have paid more than thirty (30) days in advance of the due date to any prior landlord (including the Landlord) to the extent not paid over to the Mortgagee; or
- (v) intentionally omitted; or
- (vi) obligated to complete any construction work required to be done by the Landlord pursuant to the provisions of the Lease or to reimburse the Tenant for any construction work done by the Tenant;

In addition, should the Mortgagee take title to the Premises (whether directly or through an assignee or nominee), the Mortgagee shall not have any liability under the Lease for the actions of any landlord that

occur from and after the date that the Mortgagee (or its nominee or designee) transfers title and is no longer the landlord under the Lease.

4. Payment of Rent. The Tenant agrees, until any such attornment, not to pay rent or additional rent under the Lease for more than one (1) month in advance without the prior express written consent of the Mortgagee.

5. Consent to Security Instrument. The Tenant acknowledges notice of the Security Instrument and agrees with the Mortgagee and the Landlord that, in the event the Mortgagee becomes a mortgagee-in-possession of the Premises, or otherwise takes title to the Premises (whether directly or through a nominee or designee) upon demand or notice as provided in the Security Instrument, the Tenant shall make payment of all monies due and to become due under the Lease directly to the Mortgagee (at anytime that the Mortgagee is acting as a mortgagee-in-possession or has otherwise taken title to the Premises, whether directly or through a nominee or designee), and that any such payment shall be made notwithstanding any right of setoff, or defense by way of counterclaim or otherwise which the Tenant may have against the Landlord, and any such payment shall be final as against the Mortgagee (but not as against the Landlord) and the Tenant will not seek to recover from the Mortgagee for any reason whatsoever any monies paid by the Tenant to the Mortgagee (while the Mortgagee is acting as a mortgagee-in-possession or after the Mortgagee has otherwise taken title to the Premises, whether directly or through a nominee or designee) by virtue of the Security Instrument, and this Agreement.

6. Delivery of Certificate. The Tenant shall deliver to the Mortgagee within twenty (20) days of its reasonable request from time to time, certificates as to the continuance of the Lease in effect, payment of rents thereunder and as to related matters.

7. Notice of Default. The Tenant shall promptly notify the Mortgagee by registered or certified mail, return receipt requested, or overnight courier, at its address set forth above, of the occurrence of any default or event of default by the Landlord. If the Landlord shall have failed to cure the event of default within thirty (30) days, then the Mortgagee shall have an additional sixty (60) days within which to cure the event of default or if it cannot be cured within that time, such additional time as may be necessary to effect the cure if within said sixty (60) day period the Mortgagee has commenced and is diligently pursuing the remedies necessary to cure the event of default (including, without limitation, the commencement of foreclosure proceedings, if necessary to effect the cure), in which event the Lease shall not be terminated.

8. Possession by Tenant. The Tenant represents and warrants that from and after the Commencement Date it shall be the sole owner of the leasehold estate created by the Lease and it shall not hereafter assign the Lease, except as permitted by the terms thereof

9. No Amendment; Other Covenant. This Agreement may not be amended without the prior express written consent of the Mortgagee. The Tenant shall not voluntarily surrender the premises demised under the Lease or terminate the Lease without cause. Any such amendment, surrender or termination done without the consent of the Mortgagee shall not be binding on the Mortgagee.

10. Successors and Assigns. This Agreement shall be binding on the Mortgagee, the Landlord and the Tenant and their respective successors, assigns, heirs, legal representatives, executors and administrators.

11. Counterparts. This Agreement may be executed in separate counterparts, all of which shall constitute a single instrument.

12. Full Force and Effect. The tenant represents and warrants to the Mortgagee that the lease is in full force and effect and that there exists no breach or default thereunder by any party thereto.

**[Remainder of Page Intentionally Blank.
Signature Page Follows.]**




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their proper authorized corporate officers, all as of the day and year first above written.

MORTGAGEE:

DB PRIVATE WEALTH MORTGAGE LTD., as Mortgagee

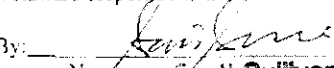
~~DIRECTOR: DAVID C. WILLIAMS~~
COMPANY AMERICAS

By: 
Name: **David C. Williams**
Title: **Director**

By: 
Name: **Jie Chen**
Title: **Director**

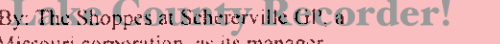
TENANT:

SUPERCUTS CORPORATE SHOPS, INC., a Delaware corporation, as Tenant

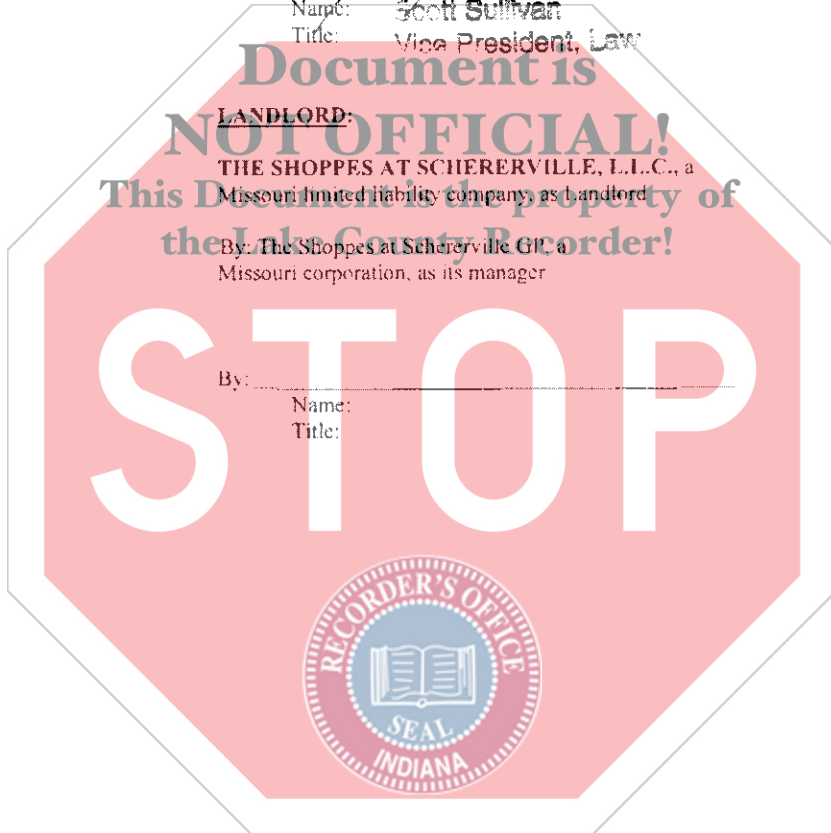
By: 
Name: **Scott Sullivan**
Title: **Vice President, Law**

LANDLORD:

THE SHOPPES AT SCHERERVILLE, L.L.C., a Missouri limited liability company, as landlord

By: 
Name: **The Shoppes at Schererville, LLC**
Title: **Missouri corporation, as its manager**

By: _____
Name: _____
Title: _____



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their proper authorized corporate officers, all as of the day and year first above written.

MORTGAGEE:

DB PRIVATE WEALTH MORTGAGE LTD., as Mortgagee

By: _____

Name:

Title:

By: _____

Name:

Title:

TENANT:

SUPERCUTS CORPORATE SHOPS, INC., a Delaware corporation, as Tenant

By: _____

Name: Scott Sullivan

Title: Vice President of Law

LANDLORD:

THE SHOPPES AT SCHERERVILLE, L.L.C., a Missouri limited liability company, as Landlord

By: The Shoppes at Schererville GP, Inc., a Delaware corporation, as its manager

By: _____

Name:

Title:



SUPERCUTS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their proper authorized corporate officers, all as of the day and year first above written.

MORTGAGEE:

DB PRIVATE WEALTH MORTGAGE LTD., as Mortgagee

By: _____
Name:
Title:

By: _____
Name:
Title:

TENANT:

SUPERCUTS CORPORATE SHOPS, INC., a Delaware corporation, as Tenant

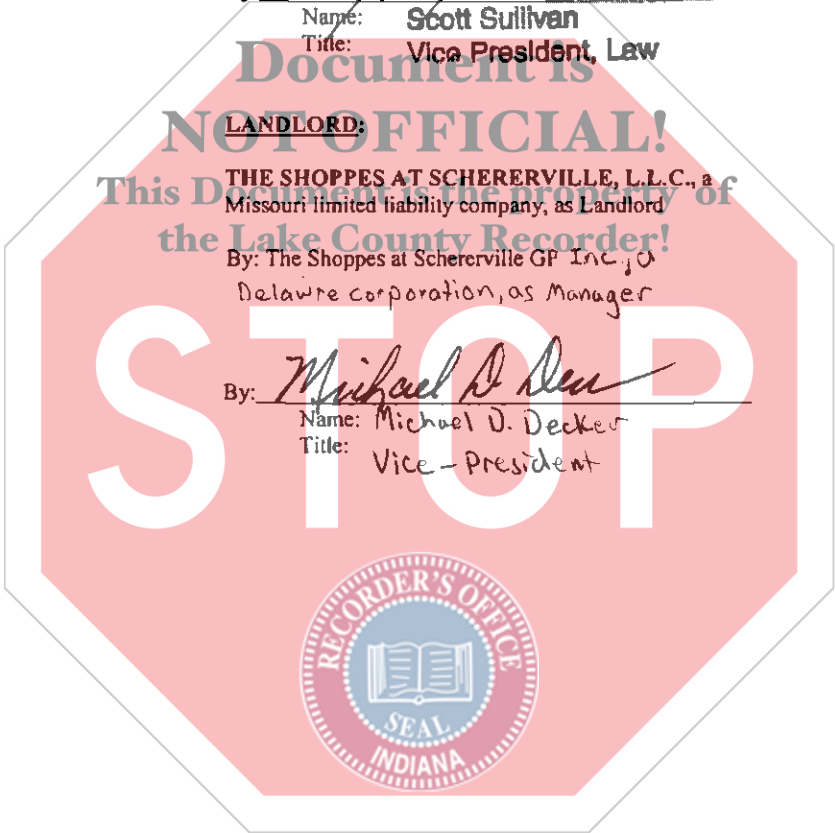
By: *Scott Sullivan*
Name: **Scott Sullivan**
Title: **Vice President, Law**

LANDLORD:

THE SHOPPES AT SCHERERVILLE, L.L.C., a Missouri limited liability company, as Landlord

By: The Shoppes at Schererville GP Inc., a Delaware corporation, as Manager

By: *Michael D. Decker*
Name: **Michael D. Decker**
Title: **Vice - President**



Signature Page to SNDA

SUPERCUTS

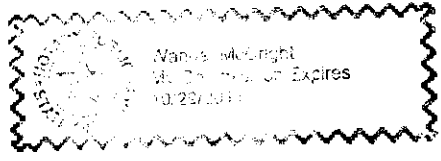
STATE OF Texas
COUNTY OF Dallas ss.

On the 9th day of February, 2011, before me, the undersigned, a notary public in and for said state, personally appeared Michael Keith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Notary Public

[The Shoppes at Schererville, L.L.C. - Landlord]



5/28/2015

STATE OF New York
COUNTY OF Westchester : ss.

On the 14th day of June, 2011, before me, the undersigned, a notary public in and for said state, personally appeared Christopher Y. Yeung, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Christopher Y. Yeung
Notary Public

[Deutsche-Bank Trust Company Americas - Mortgagee]
[DB PRIVATE WEALTH MORTGAGE LTD - Mortgagee]

Christopher Y. Yeung, Notary Public
State of New York, ID No. 01YE6128503
Qualified in New York County
Certificate Filed in Westchester County
Commission Expires June 13, 2012



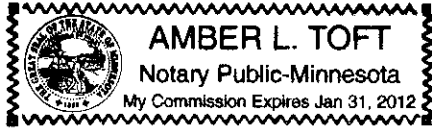
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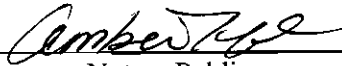
STATE OF MINNESOTA

: ss.

COUNTY OF HENNEPIN

On the 7 day of February, 2011, before me, the undersigned, a notary public in and for said state, personally appeared Scott Sullivan – Vice President of Law, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.





Notary Public

[SUPERCUTS CORPORATE SHOPS, INC. - Tenant]



SUPERCUTS

SCHEDULE A

Legal Description of the Premises



6279941-1

RECORDED

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1: Lots 1, 2, 3, 4 and Outlot A in The Shoppes of Schererville, an Addition to the Town of Schererville, as per plat thereof, recorded in Plat Book 95, page 52, in the Office of the Recorder of Lake County, Indiana.

Parcel 2: Easements created by that certain Declaration of Restrictive Easements, Covenants and Restrictions Agreement, made and entered into as of the 26th day of May 2004 and recorded June 2, 2004 as Document No. 2004 045756, by an between Lowe's Home Centers, inc., a North Carolina corporation and The Shoppes at Schererville, L.L.C., a Missouri limited liability company.

Parcel 3: Easements created by that certain Declaration of Easements, Covenants and Restrictions for The Shoppes at Schererville, Lake County, dated May 28, 2004 and recorded June 2, 2004, as Document No. 2004 045759 executed by The Shoppes at Schererville, L.L.C., a Missouri limited liability company.



Addendum to Subordination, Non-Disturbance and Attornment Agreement (re: Supercuts)

This instrument was prepared by: Paul M. Sayegh, Esq., LeClair Ryan, P.C., 830 Third Avenue, 5th Floor, New York, NY 10022, telephone number: 212-446-5007.

I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Paul M. Sayegh, Esq.

Address of mortgagee: 345 Park Avenue, New York, NY 10154.



Paul M. Sayegh
Esq.
LeClair Ryan, P.C.
830 Third Avenue
New York, NY 10022
212-446-5007