



W2328605

E# 2328605 PG 1 OF 8
ERNEST D ROWLEY, WEBER COUNTY RECORDER
18-MAR-08 307 PM FEE \$27.00 DEP SC
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

**PREPARED BY AND RETURN
TO AFTER RECORDING:**

**Ryan P. Rivera, Esq.
Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, N.W., Ste. 400
Atlanta, Georgia 30339
(770) 955-3555**

(above space for recording only)

**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT ("Agreement"), dated the 25 day of FEB., 2008, by and between **ALLSTATE INSURANCE COMPANY**, an Illinois insurance company, ~~as agent and investment manager for one or more of its affiliated life insurance companies~~, whose address is c/o Allstate Investments, LLC, 3075 Sanders Road, Suite G5A, Northbrook, IL 60062, Attention: Beverly Sinople ("Lender"), **Riverdale Center IV, L.C.**, a Utah limited liability company, whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101 ("Landlord") and **Ulta Salon, Cosmetics & Fragrance, Inc.**, a Delaware corporation, whose address is Windham Lakes Business Park, 1135 Arbor Drive, Romeoville, Illinois 60446 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a lease dated FEBRUARY, 2008, (the "Lease") pertaining to certain premises as described in Exhibit A (the "Premises") located at Riverdale Shopping Center (the "Shopping Center"); and

WHEREAS, Lender has made or agreed to make a loan in the amount of SEVENTEEN MILLION and No/100 Dollars (\$ 17,000,000.00) secured by, among other things, a lien (the "Mortgage") upon the real property described in Exhibit A attached hereto (which includes the Premises); and

WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises and related Common Area (as such terms are defined in the Lease) and pylon or other signage of the Shopping Center under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and

2.

WHEREAS, Lender wishes for Tenant to recognize and attorn to Lender in the event that Lender succeeds to the rights of the Landlord under the Lease as a result of foreclosure or otherwise.

NOW, THEREFORE, in consideration of the foregoing, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual undertakings hereinafter set forth, the parties hereby covenant and agree as follows:

1. **SUBORDINATION.** Subject to the terms of this Agreement, the Lease is and shall be subject and subordinate, as set forth in this Agreement, to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon. The foregoing notwithstanding, in no event shall any of Tenant's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the lien in favor of Lender.

2. **NON-DISTURBANCE.** Notwithstanding anything to the contrary contained in the Lease, so long as the Tenant is not in default beyond any applicable notice and cure periods, Lease is in full force and effect and no default exists under the Lease by Tenant, or any permitted assignee or sublessee (hereinafter referred to collectively as "Tenant"), beyond any applicable grace, notice and cure period except in due exercise of Tenant's rights and remedies thereunder, Tenant's possession, use and enjoyment of the Premises and the related Common Area, including but not limited to related signage, shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of Landlord, and all rights and privileges of Tenant under the Lease, or any renewals, modifications, or extensions thereof, shall be recognized by Lender and any Successor Landlord (as defined in paragraph 3 below). If any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein unless such joinder shall be required by law and Tenant shall not thereby be subjected or exposed to any liability, cost or expense, and such joinder shall not result in the termination of the Lease or disturb Tenant's possession or use and enjoyment of the premises demised thereunder, and the foreclosure or sale in any such action or proceeding shall be made subject to all rights of Tenant under the Lease. Compliance by Landlord with any of the terms or provisions of the Lease shall not constitute a breach of or a default under or with respect to the Mortgage or any obligation secured thereby.

3. **ATTORNMEN**T. In the event that title to the Premises or any other interest therein, which includes the right to receive payment of rent or to enforce the performance of other obligations under the Lease, is transferred as a result of any trustee's sale, judicial foreclosure, deed in lieu of foreclosure or other proceedings pursuant to the Mortgage, Tenant will attorn to the purchaser or transferee who acquires such title or other interest ("Successor Landlord") and will recognize such Successor Landlord as landlord under and subject to the terms and conditions of the Lease. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect that might give it any right or election to terminate the Lease by reason of any such foreclosure proceeding.

4. **PERFORMANCE BY TENANT.** Landlord hereby agrees that in the event that Tenant receives any notice from Lender or any Successor Landlord to pay rent or other sums or render any other performance under the Lease to such Lender or Successor Landlord, Tenant

may render performance in accordance with such notice without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord.

5. **SUCCESSOR LANDLORD LIABILITY.** Tenant shall have the same rights and remedies for a breach of the Lease against any Successor Landlord, including Lender in the event that Lender shall succeed to the interest of Landlord under the Lease, that Tenant might have had under the Lease against Landlord; provided, however, that Lender or any Successor Landlord shall not:

(a) be liable for any act or omission of any prior landlord (including the Landlord) under the Lease, except for such acts or omissions of any prior Landlord for which Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement and then liability shall be limited to damages relating to acts and omissions occurring after the date Lender has succeeded to the interest of Landlord; or

(b) be subject to any offsets or defenses that Tenant might have against any prior landlord (including the Landlord) except for offsets arising under the Lease with respect to costs and expenses (but not damages) incurred by Tenant after Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement; or

(c) be bound by any rent that Tenant might have paid for more than one month in advance or any other payment made in excess of the amounts provided in the Lease to any prior landlord (including the Landlord), except if such payments were required under the Lease; or

(d) be bound by any material amendment to the Lease affecting term or rent made without Lender's prior written consent.

Provided, however, that nothing herein shall excuse Lender or any Successor Landlord from liability or responsibility for, or limit any right or remedy of Tenant with respect to, any breach or default that continues from and after the date when Lender or such Successor Landlord obtains title to or takes possession or control of the Premises.

6. **NOTICE OF LEASE TERMINATION.** Before exercising any remedy to terminate the Lease due to a Landlord default under the Lease, Tenant shall give Lender notice of such default by Landlord. Lender shall have the same period of time provided Landlord under the Lease within which to cure such default. The Lender's cure period shall commence to run upon receipt of Tenant's notice, and may run simultaneously with the Landlord's cure period.

7. **SUCCESSORS AND ASSIGNS.** The terms "Lender", "Successor Landlord" and "Landlord" shall include such parties and any successors or assigns, including any successors in title to the Premises. The term "Tenant" shall include any permitted assignee or sublessee.

8. **GOVERNING LAW.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state where the Premises are located and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of such state.

9. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all of the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect or regard whatsoever, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

TENANT:

Ulta Salon, Cosmetics & Fragrance, Inc.,
a Delaware corporation

By: Alex J. Lelli, Jr.
Alex J. Lelli, Jr. #WTR
Senior Vice President,
Growth and Development

STATE OF ILLINOIS)
) ss
COUNTY OF WILL)

On this 25th day of February 2008, before me, the undersigned officer, personally appeared Alex J. Lelli, Jr., who acknowledged himself to be the Senior Vice President Growth and Development of Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

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

Shirley Walker
Notary Public

My Commission Expires:
8-4-09

[NOTARY SEAL]

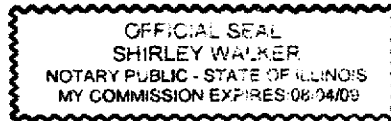


EXHIBIT A

Legal Description

A tract of land situated in Weber County, State of Utah, more particularly described as follows:

All of Lot 1, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof, filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats at Page 47 of the Official Records of the Weber County Recorder.

RIVERDALE CENTER IV, L.C. PROPERTY

The land situated in Weber County, State of Utah, more particularly described as follows:

All of Lots 2, 3 and 4, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof, filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats at Page 47 of the Official Records of the Weber County Recorder.

Tax Parcel Numbers	06-305-0001	} 2
	06-305-0002	
	06-305-0003	
	06-305-0004	