



200707030119

Skagit County Auditor

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

BURLINGTON RETAIL LLC

SPORTSMAN'S WAREHOUSE, INC.

Tenant

FIRST AMERICAN TITLE CO.

AND

90816

CIBC INC.,

Lender

ACCOMMODATION RECORDING ONLY

County: Skagit

State: Washington

Premises: 2000 South Burlington Blvd.
Burlington, Washington, 98233

Dated: as of June 15, 2007

UNRECORDED LEASE

200706260081

Record and return by mail to:

CASSIN CASSIN & JOSEPH LLP

711 Third Avenue, 20th Floor

New York, New York 10017

Attention: Michael J. Hurley, Jr., Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this 25 day of June, 2007, by and among ("Landlord"), CIBC INC., a Delaware corporation ("Lender"), and Sportsman's Warehouse, Inc., a Utah corporation ("Tenant").

RECITALS:

A. Tenant has executed that certain lease dated February 23, 2006 as amended by written agreements dated June 26, 2006, September 30, 2006, and December 13, 2006 (the foregoing collectively, the "Lease"), with SHDP Associates, LLC, predecessor-in-title to Landlord, as lessor, covering the premises described in the Lease containing a building of approximately 60,458 square feet (the "Premises") in that certain building located at 2000 S. Burlington Blvd (the "Property") and more particularly described in Exhibit A attached hereto and made a part hereof by this reference; and

* Burlington, WA.

B. Lender has made (or agreed to make) a loan to Landlord secured by a mortgage or deed of trust encumbering the Property and an assignment of Landlord's interest in the Lease (said mortgage or deed of trust and assignment of leases, together with any amendments, renewals, increases, modifications, substitutions or consolidations of either of them, collectively, the "Security Instrument"); and

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. The Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase or right of first refusal to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

2. Tenant agrees to deliver to Lender, in the manner set forth in Paragraph 13 of this Agreement, a copy of any notice of default sent to Landlord by Tenant. If Landlord fails to cure such default within the time provided in the lease, Lender shall have the right, but not the obligation, to cure such default on behalf of Landlord within thirty (30) calendar days after the time provided for Landlord to cure such default in the Lease has expired or, if such default cannot be cured within that time, within a reasonable period provided Lender is proceeding with due diligence to cure such default. In such event, Tenant shall not terminate the Lease by reason of the default described in such notice while such remedies are being diligently pursued by Lender. Further, Tenant shall not terminate the Lease on the basis of any default by Landlord which is incurable by Lender (such as, for example, the bankruptcy of Landlord or breach of any representation by Landlord), provided Lender is proceeding with due diligence to commence an action to appoint a receiver or to obtain the right to possession of the Property by foreclosure, deed in lieu of foreclosure, or otherwise ("Foreclosure"). Tenant hereby agrees that no action taken by Lender to enforce any rights under the Security Instrument or related security documents, by reason of any default thereunder (including, without limitation, the appointment of a receiver, any Foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Tenant to terminate the Lease nor shall such action invalidate or constitute a breach of any of the terms of the Lease.

3. So long as Tenant is not in default under the Lease, Lender shall not disturb Tenant's possession and occupancy of the Premises during the term of the Lease.



4. If Lender or its nominee or designee, or another purchaser of the Property upon a Foreclosure (any such person or entity, a "Successor Owner") succeeds to the interest of Landlord under the Lease, subject to Tenant's performance of its obligations under the Lease, the Lease will continue in full force and effect. Thereupon, Successor Owner shall recognize the Lease and Tenant's rights thereunder and Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Lease, including, but not limited to, any option to purchase or right of first refusal to purchase the Property as may be provided in the Lease. Notwithstanding the foregoing, Tenant agrees that any such option or right of first refusal to purchase the Property or any portion thereof, as may be provided in the Lease shall not apply to any Foreclosure, as defined herein, and shall not apply to any transfer of the Property by Successor Owner following such Foreclosure. In consideration of the foregoing, Lender agrees that any such option or right of first refusal shall not be terminated by any Foreclosure or conveyance of the Property by Successor Owner following such Foreclosure; rather, any such option or right of first refusal shall remain as an obligation of any party acquiring the Property following the conveyance of the Property by Successor Owner following such Foreclosure. Furthermore, Tenant expressly confirms to Lender that any acquisition of title to all or any portion of the Property pursuant to Tenant's exercise of any option or right of first refusal contained in the Lease shall result in Tenant taking title subject to the terms, conditions and lien of the Security Instrument.

5. Tenant agrees that, if Successor Owner shall succeed to the interest of Landlord under the Lease, Successor Owner shall not be:

- (a) liable for any prior act or omission of Landlord or any prior landlord or consequential damages arising therefrom, except for acts or omissions or damages arising therefrom notice of which was provided to Lender pursuant to Paragraph 2 of this Agreement; or
- (b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord unless Lender has failed to cure any default by Landlord as herein provided, except for offsets or defenses notice of which was provided to Lender pursuant to Paragraph 2 of this Agreement; or
- (c) required or obligated to credit Tenant with any rent or additional rent for any rental period beyond the then current month which tenant might have paid Landlord; or
- (d) bound by any amendments or modifications of the Lease made without Lender's or Successor Owner's prior written consent; or
- (e) liable for refund of all or any part of any security deposit unless such security deposit shall have been actually received by Lender.

6. Tenant agrees that, without the prior written consent of Lender in each case, Tenant shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, or tender a surrender of the Lease (except in each case that, upon a default by Landlord under the Lease, Tenant may exercise its rights under the Lease after giving to Lender the notice and cure period required by this Agreement), (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

7. To the extent that the Lease shall entitle Tenant to notice of the existence of any Security Instrument and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.



8. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to require that Tenant pay all rent under the Lease as directed by Lender, which payment shall, to the extent made, satisfy the obligations of Tenant under the Lease. Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant to Lender.

9. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Landlord under the Lease unless and until Lender takes title to the Property. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Property or the portion thereof containing the Leased Premises, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease, and Successor Owner is hereby released or relieved of any other liability hereunder and under the Lease, except as specifically described in Paragraphs 5(a) and 5(b) of this Agreement. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

10. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, except as specifically described in Paragraphs 5(a) and 5(b) of this Agreement.

11. EACH OF TENANT, LENDER AND LANDLORD HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The words, "Lender", "Landlord" and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

13. All notices and all other communication with respect to this Agreement shall be directed as follows: if to Lender, 300 Madison Avenue, 8th Floor, Attn: Real Estate Finance, New York, New York 10017, or such other address as Lender may designate in writing to Tenant; and, if to Tenant, at the address set forth in the Lease or at such other address as tenant may designate in writing to Lender. All notices shall be in writing and shall be (a) hand-delivered, (b) sent by United States express mail or by private overnight courier, or (c) served by certified mail postage prepaid, return receipt requested, to the appropriate address set forth above. Notices served as provided in (a) and (b) shall be deemed to be effective upon delivery or upon refusal thereof. Any notice served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

14. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.



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15. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

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AGREED AND CONSENTED TO:

LANDLORD: Burlington Retail, LLC, a Washington limited liability company

By: SHDP Associates, LLC, a Washington limited liability Company, Manager

By: SHD Associates, LLP, a Washington limited liability partnership, Manager

By: 

Michael J. Hess, Partner



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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CIBC Inc., a Delaware corporation

By: _____

Name:

Title:

Todd Roth

Authorized Signatory



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SPORTSMAN'S WAREHOUSE, INC.

By:

Stuart B. Utgaard

Name: Stuart B. Utgaard

Title: CEO



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STATE OF NEW YORK

:
: SS.:

COUNTY OF NEW YORK

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **TODD ROTH, AUTHORIZED SIGNATORY** of **CIBC INC.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and, being by me first duly sworn, declared and acknowledged to me under oath that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of June, 2007.



Notary Public in and for _____
County, State of _____

WILLIAM L. BREWER
Notary Public, State of New York
No. 02BR5043310
Qualified in New York County
Commission Expires May 30, ~~19~~2011



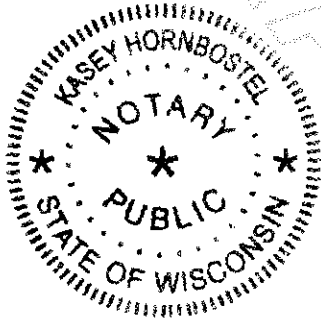
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STATE OF WISCONSIN)
 : ss.:
COUNTY OF ST. CROIX)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Stuart B. Utgaard, in his capacity as the CEO of **Sportsman's Warehouse, Inc.**, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and, being by me first duly sworn, declared and acknowledged to me under oath that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said corporation, on behalf of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21 day of June, 2007.

Kasey Hornbostel
Notary Public in and for St. Croix
County, State of Wisconsin



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EXHIBIT A

Legal Description of Property

The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

Lot 1 as delineated on Sportsmans Plaza Binding Site Plan, as approved on December 22, 2005 and recorded on January 13, 2006 under Auditor's File No. 200601130002, TOGETHER WITH that portion conveyed under Auditor's File No. 200611090022 and EXCEPT that portion conveyed under Auditor's File No. 200611090023.



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