

Prepared by and after recording
return to:

Faye Cushman, B6-267B.)
Sears Siding & Windows, Inc.)
3333 Beverly Road)
Hoffman Estates, IL 60179)

[This space reserved for recording purposes]

Inst # 1999-32222

08/02/1999 132222
04:12 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
21.00
006 MMS

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT is made and entered into as of the 22nd day of July, 1999, by and between **WEST COAST LIFE INSURANCE COMPANY** ("Lender") and **SEARS SIDING & WINDOWS, INC.**, f/k/a Spray-Tech, Inc. a Florida corporation ("Tenant").

RECITALS

WHEREAS, Principal Mutual Life Insurance Company ("**Landlord**") is the owner of certain real property, legally described on Exhibit "A", attached hereto and made a part hereof (the "**Landlord Parcel**"), which is located in the Riverchase Business Park (the "**Shopping Center**") in the City of Birmingham, State of Alabama.

WHEREAS, by the Lease dated July 9, 1996, (the "**Lease**"), the Tenant has leased from Landlord a portion of the Landlord Parcel and the improvements thereon (the "**Premises**"), containing approximately 5,000 square feet, together with various easements and rights over the Landlord Parcel and the Shopping Center.

WHEREAS, Lender is the holder of a mortgage or beneficiary under a deed of trust on the Landlord Parcel, given to the Lender by Landlord dated as of July 30, 1999, recorded on _____, in the ^{Probate} Office of the Recorder of Deeds [~~Registrar of Titles~~] of Jefferson County, Alabama, in Book 1999 at Page 32219, as Document No. _____ (collectively referred to herein with any other documents securing the debt secured by the mortgage as the "**Mortgage**").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lender hereby consents to the Lease.

2. The Lease is and shall be subject and subordinate at all times to the lien of the Mortgage and to all renewals, replacements and extensions of the Mortgage to the full extent of the principal sum secured thereby and interest thereon.
3. In the event that Lender shall commence an action to foreclose the Mortgage or to obtain a receiver of the Premises, or shall foreclose the Mortgage by advertisement, entry and sale according to any procedure available under the laws of the state where the Landlord Parcel is located, Tenant shall not be joined as a party defendant in any such action or proceeding and Tenant shall not be disturbed in its possession of the Premises, provided Tenant is not in default under the Lease past any applicable cure period.
4. In the event that Lender shall acquire the Premises upon foreclosure, or by deed in lieu of foreclosure, or by any other means:
 - (a) Tenant shall be deemed to have made a full and complete attornment to Lender as the landlord under the Lease so as to establish direct privity between the Lender and Tenant; and
 - (b) All rights and obligations of Tenant under the Lease shall continue in full force and effect and be enforceable by and against Tenant respectively with the same force and effect as if the Lease had originally been made and entered into directly by and between Lender as the landlord thereunder, and Tenant; and
 - (c) Lender shall recognize and accept the rights of Tenant and shall thereafter assume the obligations of Landlord under the Lease.
5. Nothing herein contained shall impose any obligations upon Lender to perform any of the obligations of Landlord under the Lease, unless and until Lender shall become owner or mortgagee in possession of the Premises.
6. Any notice required or desired to be given under this Agreement shall be in writing and shall be deemed given (a) upon receipt if delivered personally; (b) two (2) business days after being deposited into the U.S. mail if being sent by certified or registered mail, return receipt requested, postage prepaid; or (c) one (1) business day after being sent by reputable overnight air courier service (i.e., Federal Express, Airborne, etc.) with guaranteed overnight delivery, and addressed as follows:

If to Lender:

**West Coast Life Insurance Company
P. O. Box 2606
Birmingham, Alabama**

If to Tenant:

Sears Siding & Windows, Inc.
c/o Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn: Vice President
Real Estate
Department 824RE

With a copy to:

Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn: Assistant General Counsel
Real Estate
Law Department 766X

Either party, at any time and from time to time (by providing notice to the other party in the manner set forth above), may designate a different address or person, or both, to whom such notice may be sent.

- 7. This Agreement shall be binding upon and inure to the benefit of any person or entity acquiring rights to the Premises by virtue of the Mortgage, and the successors, administrators and assigns of the parties hereto.
- 8. No personalty, real property, or fixtures of the Tenant are subject to the lien of the Mortgage.

IN WITNESS WHEREOF, this Subordination, Attornment and Non-Disturbance Agreement has been signed and sealed on the day and year first above set forth.

Attest:

Lender:

WEST COAST LIFE INSURANCE COMPANY

Natalie B. Reid
Assistant Secretary

By: *Charles M. Priok*
Name: CHARLES M. PRIOK
Title: Vice President

Witness:

Tenant:

SEARS SIDING & WINDOWS, INC.

Jenni Nelson

By: *Chester J. Nolan*
Name: Chester J. Nolan
Title: Its Authorized Agent



STATE OF Alabama)
) SS:
COUNTY OF Jefferson)

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that Charles M. Poirer personally known to me to be the Vice President of West Coast Life Insurance Company, a Co. corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he signed and delivered the said instrument pursuant to authority duly given to him by said Vice President.

GIVEN under my hand and seal this 26th day of July, 1999

Amy Christon Clarke
Notary Public

My Commission Expires:
9.29.2002

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that Chester A. Wolak, personally known to me to be the Authorized Agent of SEARS SIDING & WINDOWS, INC., a Florida corporation, appeared before me this day in person and acknowledged under oath that in such capacity he signed and delivered the said instrument pursuant to authority duly given to him by said corporation.

GIVEN under my hand and seal this 22nd day of July, 1999.

Karen S. Roche
Notary Public

My Commission Expires:



EXHIBIT A

Lot 2, according to the Survey of Wren Park Subdivision, as recorded in Map Book 22, Page 131, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

TOGETHER WITH AN EASEMENT for the use, maintenance, repair and replacement of storm and surface water drainage over and across the following property as recorded in Map Book 22, Page 131, described as follows:

Part of the NW 1/4 of the NE 1/4 of the NE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the NE corner of said Section; thence West along the North line of said Section, 1,245.86 feet; thence 90 degrees, 00 minutes, 00 seconds left, 431.26 feet; thence 111 degrees, 16 minutes, 33 seconds right, 127.85 feet to the beginning of a 50 foot easement lying South of and adjacent to the following described line; thence from last stated course, 27 degrees, 54 minutes, 00 seconds left, 354.41 feet to the end of said 50 foot easement and the beginning of a 25 foot easement, lying South of and adjacent to said line; thence continue along last stated course, 100.00 feet; thence 20 degrees, 43 minutes, 00 seconds right, 482.29 feet; thence 25 degrees, 31 minutes, 00 seconds left, 494.05 feet; thence 19 degrees, 30 minutes, 00 seconds left, 150 feet to the end of said easement, said property being Part of Lot 1, Riverchase Gardens, First Sector, as recorded in Map Book 8, Page 153, in the Probate Office of Shelby County, Alabama, and a Part of Lots 1 and 2, Riverchase Properties, Second Addition to Riverchase, as recorded in Map Book 9, Page 40, in the Probate Office of Shelby County, Alabama.

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