

# UNOFFICIAL COPY

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Cook County Recorder 41.50

Prepared By and After Recording  
Return to:  
Matthew B. Brotschul  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606



## **SUBORDINATION, NONDISTURBANCE AND ATTORNMEN<sup>T</sup> AGREEMENT**

This SUBORDINATION, NONDISTURBANCE, AND ATTORNMEN<sup>T</sup> AGREEMENT (this "Agreement") is entered into as of ~~April~~<sup>May</sup> 20, 2002 (the "Effective Date"), between ALBANY BANK & TRUST, N.A., whose address is 3400 West Lawrence Avenue, Chicago, Illinois 60625 ("Mortgagee"), and FOREST VILLA PROPERTY, LLC, an Illinois limited liability company, whose address is 6677 North Lincoln Avenue, Suite 100, Lincolnwood, Illinois 60712 ("Optionee"), with reference to the following facts:

A. LaSalle Bank National Association, not personally, but solely as Trustee under a Trust Agreement dated March 8, 1982 and known as Trust No. 39718 ("Optionor") is the owner of certain real property located at 6840 West Touhy Avenue, Niles, Illinois 60714 (such real property, including all buildings, improvements, structures and fixtures located thereon, the "Premises"), as more particularly described on Exhibit A.

B. Certain beneficiaries, or affiliates of such beneficiaries, of Optionor are obligated as borrowers and guarantors for certain indebtedness (the "Loan") due Mortgagee.

C. To secure the repayment of the Loan and to secure the accompanying guaranties, Optionor has entered into that certain Mortgage and Assignment of Leases and Rents, dated as of even date herewith (the "Mortgage") and Collateral Assignment of Rents and Leases encumbering the Premises.

### **Forest**

D. Pursuant to that certain First Villa Option Agreement dated as of December 1, 2001 (the "Option"), Optionor demised to Optionee an option to purchase the Premises on the terms contained in the Option.

E. Certain shareholders or owners of Optionor are obligated as borrowers and guarantors for the Loan.

AMT  
TITLE

F. Optionee and Mortgagee desire to agree upon the relative priorities of their interests in the Premises and their rights and obligations if certain events occur.

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NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, Optionee and Mortgagee agree:

1. **Definitions.**

The following terms shall have the following meanings for purposes of this Agreement.

1.1 **Foreclosure Event.** A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Optionor becomes owner of the Premises; or (c) delivery by Optionor to Mortgagee (or its designee or nominee) of a deed or other conveyance of Optionor's interest in the Premises in lieu of any of the foregoing.

1.2 **Former Optionor.** A "Former Optionor" means Optionor and any other party that was optionor under the Option at any time before the occurrence of any attornment under this Agreement.

1.3 **Offset Rights.** "Offset Rights" means any right(s) or alleged right(s) of Optionee to any offset, defense (other than credits against the Purchase Price for Option Payments and one arising from actual payment and performance, which payment and performance would bind a Successor Optionor pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Optionee's payment of Rent or performance of Optionee's other obligations under the Option, arising (whether under the Option or other applicable law) from Optionor's breach or default under the Option.

1.4 **Successor Optionor.** A "Successor Optionor" means any party that becomes owner of the Premises as the result of a Foreclosure Event.

1.5 **Termination Right.** A "Termination Right" means any right of Optionee to cancel or terminate the Option or to claim a partial or total eviction arising (whether under the Option or under applicable law) from Optionor's breach or default under the Option.

2. **Subordination.**

The Option shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. **Nondisturbance, Recognition and Attornment.**

3.1 **No Exercise of Mortgage Remedies Against Optionee.** So long as the Option is in full force and effect and Optionee is not in default under the Option beyond any applicable cure period, Mortgagee shall not name or join Optionee as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Optionee to be made a party thereto as a condition to proceeding against Optionor or prosecuting such rights and remedies. In the latter case, Mortgagee may join Optionee as a defendant in such

action only for such purpose and not to terminate the Option or otherwise adversely affect Optionee's rights under the Option or this Agreement in such action.

3.2 Attornment. If the Option has not been terminated, then, when Successor Optionor takes title to the Premises: (a) Successor Optionor shall recognize Optionee's rights under the Option and be bound to Optionee under all the terms and conditions of the Option (except as provided in this Agreement); and (b) the Option shall continue in full force and effect as a direct option, in accordance with its terms (except as provided in this Agreement), between Successor Optionor and Optionee.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Optionor or Optionee to execute any further documents. Optionee and Successor Optionor shall, however, confirm the provisions of this Article in writing upon request by either of them.

**4. Protection of Successor Optionor.**

Notwithstanding anything to the contrary in the Option or the Mortgage, Successor Optionor shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Optionor. Any Offset Rights that Optionee may have against any Former Optionor relating to any event(s) or occurrence(s) before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Optionor that occurred before the date of attornment. (The foregoing shall not limit either Optionee's right to exercise against Successor Optionor any Offset Rights otherwise available to Optionee because of events occurring after the date of attornment.

4.2 Modification, Amendment or Waiver. Any modification or amendment of the Option, or any waiver of any of the terms of the Option, made without Mortgagee's written consent.

**5. Exculpation of Successor Optionor.**

Notwithstanding anything to the contrary in this Agreement or the Option, upon any attornment pursuant to this Agreement the Option shall be deemed to have been automatically amended to provide that Successor Optionor's obligations and liability under the Option shall never extend beyond Successor Optionor's (or its successors' or assigns') interest, if any, in the Premises from time to time, including insurance and condemnation proceeds and Successor Optionor's interest in the Option (collectively, "Successor Optionor's Interest"). Optionee shall look exclusively to Successor Optionor's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Optionor under the Option as affected by this Agreement. If Optionee obtains any money judgment against Successor Optionor with respect to the Option or the relationship between Successor Optionor and Optionee, then Optionee shall look solely to Successor Optionor's Interest (or that of its successors and assigns) to collect such judgment. Optionee shall not collect or attempt to collect any such judgment out of any other assets of Successor Optionor.

## 6. Mortgagee's Right to Cure.

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Option or this Agreement, before exercising any Offset Right, Optionee shall provide Mortgagee with notice of the breach or default by Optionor giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Optionor under the Option in which to cure the breach or default by Optionor. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Optionor, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Optionor the cure of which requires Mortgagee to possess and control the Premises, provided only that Mortgagee undertakes to Optionee by written notice to Optionee within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to obtain possession and control of the Premises and to thereafter cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Premises has been appointed and is continuing to serve, Mortgagee shall be deemed to have possession and control of the Premises.

## 7. Miscellaneous.

7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

7.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Optionee of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Optionee regarding the subordination of the Option to the Mortgage and the rights and obligations of Optionee and Mortgagee as to the subject matter of this Agreement.

7.4 Interaction with Option and with Mortgage. If this Agreement conflicts with the Option, then this Agreement shall govern as between the parties and any Successor Optionor, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Option that provide for subordination of the Option to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Optionor's entering into the Option.

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7.5 Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Optionee with respect to the Option. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Optionor provided for in this Agreement.

7.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Illinois without regard to principles of conflict of laws.

7.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.


7.9 Mortgagee's Representation. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Optionee as of the Effective Date.

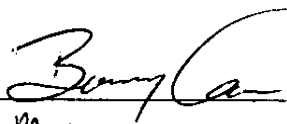
**MORTGAGEE:**

ALBANY BANK & TRUST, N.A.

By:   
Its: SEMUR VICE PRESIDENT

**OPTIONEE:**

FOREST VILLA PROPERTY, LLC, an Illinois limited liability company

By:   
Its: Manager

Property of Cook County Clerk's Office

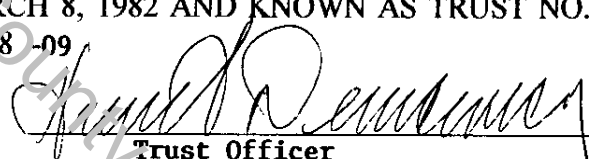
Optionor consents and agrees to the foregoing Agreement. The foregoing Agreement shall not alter, waive or diminish any of Optionor's obligations under the Mortgage or the Option. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Optionee. Optionor is not a party to the above Agreement.

This Agreement is executed by the undersigned, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and, so far as concerns such Trustee, is payable out of the Premises specifically described herein. No personal liability shall be asserted or be enforceable against the undersigned because or in respect of this Agreement or the making, issue or transfer, all such liability, if any, being expressly waived by each subsequent holder hereof, and Mortgagee accepts the same upon the express condition that no duty shall rest upon the undersigned, to sequester the rents, issues and profits arising from the Premises described herein, or the proceeds arising from the sale or other disposition thereof, and that in case of default in the payment of the Loan, the remedy of Mortgagee hereof shall be by the enforcement of any remedy available to Mortgagee under the Mortgage given to secure the Loan, in accordance with the terms and provisions in said Mortgage.

**OPTIONOR:**

LASALLE BANK NATIONAL ASSOCIATION,  
NOT PERSONALLY, BUT AS TRUSTEE  
UNDER A TRUST AGREEMENT DATED  
MARCH 8, 1982 AND KNOWN AS TRUST NO.  
10-39718-09

By:  
Its:

  
Trust Officer

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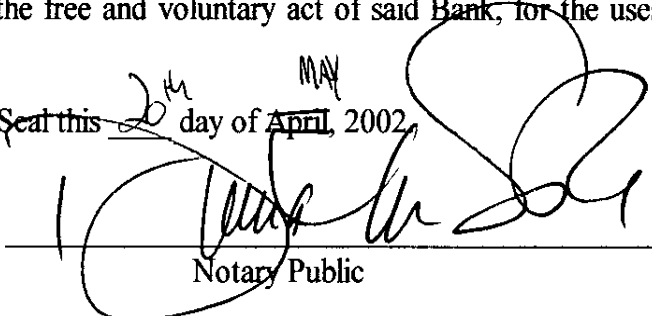
## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

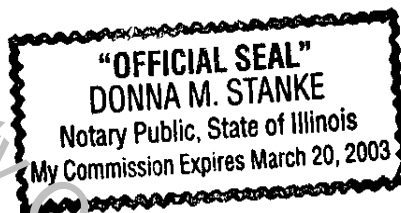
I, DONNA STANKE, a Notary Public in and for said County, in the State of Illinois, DO HEREBY CERTIFY that DAVID RAUSFORD, SENIOR J.P. of ALBANY BANK & TRUST, N.A, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SENIOR J.P. and appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of April, 2002

(NOTARY SEAL)

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_





OPTIONEE'S ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I HEREBY CERTIFY that on this 24<sup>th</sup> day of April, 2002, before me personally appeared BARRY CARR, a Manager of FOREST VILLA PROPERTY, LLC, an Illinois limited liability company, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such Manager for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

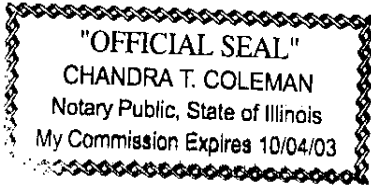
WITNESS my signature at Lincolnwood in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

Chandra T. Coleman

Notary Public

My Commission Expires: 10/04/03



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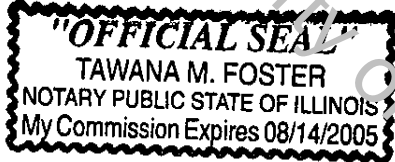
## OPTIONOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I HEREBY CERTIFY that on this 9th day of ~~April~~ <sup>May</sup>, 2002, before me personally appeared Harriet Deniewicz <sup>Trust Officer</sup> of LaSalle Bank National Association, not personally, ~~but~~ as Trustee under a Trust Agreement dated March 8, 1982 and known as Trust No. 39718, to me known to be the same person who signed the foregoing instrument as his free act and deed for the use and purpose therein mentioned.

WITNESS my signature and official seal at Chicago in the County of Cook and State of Illinois the day and year last aforesaid.

(NOTARY SEAL)



Tawana M. Foster  
Notary Public

My Commission Expires: \_\_\_\_\_

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EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF LOT 5 LYING SOUTH WESTERLY OF A LINE DESCRIBED AS BEGINNING 140 FEET SOUTH OF THE NORTH WEST CORNER OF SAID LOT 5 AND RUNNING SOUTH EASTERLY TO A POINT IN THE SOUTHERLY LINE OF SAID LOT, 350.15 FEET EASTERLY OF THE INTERSECTION OF THE SOUTHERLY LINE PRODUCED WESTERLY TO THE WEST LINE OF SAID LOT 5, IN THE CIRCUIT COURT PARTITION OF LOT 2 IN THE WILLIAM WEST AND OTHERS' SUBDIVISION OF PART OF LOT 1 AND LOT 18 OF THE ASSESSOR'S DIVISION OF THE SOUTH WEST 1/4 OF SECTION 30 AND LOT 8 OF THE ASSESSOR'S DIVISION OF JANE MIRANDA'S RESERVE, ALSO LOT 11 OF THE ASSESSOR'S DIVISION OF THE SOUTH WEST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND ALSO: THAT PART LYING NORTH OF TOUHY AVENUE AND LYING WESTERLY OF A LINE DESCRIBED AS BEGINNING AT A POINT IN THE NORTHERLY LINE OF HEREINAFTER DESCRIBED LOT 14, 350.15 FEET EASTERLY OF THE INTERSECTION OF SAID NORTHERLY LINE PRODUCED WESTERLY TO THE WESTERLY LINE OF LOT 5, IN CIRCUIT COURT COMMISSIONER'S SUBDIVISION OF LOT 2 IN HEREINAFTER DESCRIBED WILLIAM WEST AND OTHERS SUBDIVISION; THENCE SOUTHERLY IN A STRAIGHT LINE FORMING AN ANGLE OF 90 DEGREES 14 MINUTES WITH SAID NORTHERLY LINE OF SAID LOT 14 (TURNED EAST TO SOTHERLY) OF THE FOLLOWING DESCRIBED LAND TAKEN AS A TRACT, TO WIT: LOT 9 (EXCEPT THE WESTERLY 25 FEET THEREOF), ALL OF LOTS 10, 11, 12, 13, AND 14 IN WILLIAM WEST AND OTHERS SUBDIVISION OF PART OF LOTS 1 AND LOT 18 IN THE ASSESSOR'S DIVISION OF THE SOUTH WEST FRACTIONAL 1/4 OF SECTION 30 AND LOT 8 IN JANE MIRANDAS RESERVATION IN SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES THAT PART FALLING IN TOUHY AVENUE AND SCHOOL STREET), ALL IN COOK COUNTY, ILLINOIS. ✓

STREET ADDRESS:

6840 Touhy Avenue, Niles, Illinois 60714 ✓

P.I.N.:

10-30-317-044 and 10-30-317-030 ✓

AFTER RECORDING MAIL TO:

Matthew B. Brotschul  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive, Suite 2800  
Chicago, Illinois 60606