



Doc#: 0328135155  
Eugene "Gene" Moore Fee: \$54.00  
Cook County Recorder of Deeds  
Date: 10/08/2003 09:37 AM Pg: 1 of 16

This Document Prepared By  
and After Recording Return To:

Eric M. Roberson  
Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S  
USE ONLY

Loan No: 157753

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (hereinafter referred to as the "Agreement") made as of the 26th day of September, 2003, by and between LASALLE BANK NATIONAL ASSOCIATION, a national banking association, having an office at 135 South LaSalle Street, Chicago, Illinois 60603 (hereinafter referred to as the "Subordinate Mortgagee"), and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation having an office c/o Delaware Lincoln Investment Advisers, 1300 South Clinton, Fort Wayne, Indiana 46802, Attn: Loan Servicing, Loan No. 157753 (hereinafter referred to as the "Senior Mortgagee").

**WITNESSETH:**

WHEREAS, the Senior Mortgagee is the owner and holder of that certain Mortgage and Security Agreement, dated the 12th day of October, 1995, of record as Document No. 95713126 in the Office of the Recorder of Deeds of Cook County, Illinois, (said Mortgage and Security Agreement, and any extensions, modifications, amendments, substitutions and consolidations thereof, being hereinafter referred to as the "Senior Mortgage"), and being given by LaSalle National Trust U/T #45786, an Illinois land trust (hereinafter referred to as the "Borrower"), which said Senior Mortgage creates a first lien on the real property of the Borrower, which real property is located in the County of Cook, Illinois, the legal description of said real property being more particularly described in Exhibit A attached hereto and made a part hereof, together with all improvements and structures located thereon and the property described in the said Senior Mortgage (hereinafter collectively referred to as the "Premises"), and the Note secured thereby (said Note, and any extensions, modifications, amendments, substitutions and consolidations thereof, being hereinafter referred to as the "Senior Note"), evidencing and securing a certain loan made by the Senior Mortgagee to the Borrower (the "Senior Loan"); and

**BOX 333-CTI**

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WHEREAS, the Borrower and its beneficiary, Irving-Harlem Venture, Limited, an Illinois limited partnership, have executed and delivered to the Subordinate Mortgagee (i) that certain Construction Loan Mortgage Note dated September 1, 2003 (said note, and any extensions, modifications, amendments, substitutions and consolidations thereof, being hereinafter referred to as the "*Subordinate Note*") in a principal sum not to exceed Four Million Four Hundred Thousand and No/100 Dollars (\$4,400,000.00); (ii) that certain Mortgage and Security Agreement dated as of September 1, 2003 (said mortgage, and any extensions, modifications, amendments, substitutions and consolidations thereof, being hereinafter referred to as the "*Subordinate Mortgage*") securing the Subordinate Note, evidencing and securing a certain subordinate loan made by the Subordinate Mortgagee to the Borrower (the "*Loan*"); (iii) that certain Construction Loan Agreement dated as of September 1, 2003 (the "*Subordinate Loan Agreement*"); (iv) that certain Construction Loan Assignment of Rents and Leases dated as of September 1, 2003 (the "*Subordinate Assignment of Leases*"); (v) that certain Subordinate Assignment of Plans, Permits and Contracts dated as of September 1, 2003 (the "*Subordinate Assignment of Plans*"); (vi) that certain Construction Loan Indemnity Agreement dated as of September 1, 2003 (the "*Subordinate Indemnity*"), not including the agreements of parties other than Borrower or its beneficiary; and (vii) that certain UCC financing statement dated as of September 1, 2003 (the "*Subordinate UCC Statement*"; together with the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, the Subordinate Assignment of Leases, the Subordinate Assignment of Plans and the Subordinate Indemnity are together with any modifications, amendments, consolidations and extensions thereto are hereinafter collectively referred to as the "*Subordinate Loan Documents*") and

WHEREAS, the Senior Mortgagee is unwilling to allow the Borrower to further encumber the Premises with the Subordinate Mortgage unless the Subordinate Mortgage is subordinated to the Senior Mortgage in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Subordinate Mortgagee and the Senior Mortgagee hereby agree as follows:

1. The Subordinate Mortgage, and (except as otherwise provided below in this paragraph 1) the Subordinate Loan Documents, and all advances made thereunder are hereby, and shall continue to be, subject and subordinate in lien and in payment to the lien and payment of the Senior Mortgage and any other document evidencing, securing or guaranteeing the indebtedness secured by the Senior Mortgage or otherwise executed in connection with the Senior Mortgage (collectively, together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the "*Senior Loan Documents*"), and all advances made thereunder without regard to the application of such proceeds together with all interest, prepayment premiums and all other sums due under the Senior Mortgage, the Senior Note, and the Senior Loan Documents. All of the terms, covenants and conditions of the Subordinate Mortgage and the Subordinate Loan Documents are hereby, and shall continue to be, subordinate to all of the terms, covenants and conditions of the Senior Mortgage and the Senior Loan Documents. The foregoing shall apply, notwithstanding the availability of

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other collateral to the Senior Mortgage or the actual date and time of execution, delivery, recordation, filing or perfection of the Senior Mortgage or the Subordinate Mortgage, or the lien or priority of payment thereof, and notwithstanding the fact that the Senior Loan or any claim for the Senior Loan may be subordinated, avoided or disallowed, in whole or in part, under Title 11 of the United States Code (the "*Bankruptcy Code*") or other applicable federal or state law. In the event of a proceeding, whether voluntary or involuntary, for insolvency, liquidation, reorganization, dissolution, bankruptcy or other similar proceeding pursuant to the Bankruptcy Code or other applicable federal or state law, the Senior Loan shall include all interest accrued on the Senior Loan, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of any of such proceedings, even if the claim for such interest is not allowed pursuant to applicable law. Notwithstanding anything herein to the contrary, (a) any guaranties and any indemnities that are executed by parties other than Borrower or its beneficiary and that are not secured by any of the collateral pledged to secure the Senior Loan prior to the date of this Agreement (the "*Senior Loan Collateral*"), and (b) any other collateral pledged for the Subordinate Loan that is not a part of the Senior Loan Collateral ((a) and (b) being hereafter referred to as the "*Separate Subordinate Loan Collateral*"), shall not be deemed to be a part of the Subordinate Loan Documents and shall not be subordinate to the Senior Loan Documents, and any rights Senior Mortgagee may hereafter acquire in the Separate Subordinate Loan Collateral shall not be automatically senior to the rights of Subordinate Mortgagee solely on account of this Agreement.

2. In addition, without limiting the foregoing, the Subordinate Mortgagee agrees that all rights of the Subordinate Mortgagee under the Subordinate Mortgage and under the Subordinate Loan Documents in and to the Premises and the proceeds thereof (including but not limited to assignments of leases and rents, issues and profits and the rights with respect to insurance proceeds and condemnation awards) shall be expressly subject and subordinate:

(a) to the rights of the Senior Mortgagee in and to the Premises and the proceeds thereof (including but not limited to assignments of leases and rents, issues and profits and rights with respect to insurance proceeds and condemnation awards) on the terms set forth in the Senior Mortgage and the Senior Loan Documents; and

(b) to any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage or the Senior Loan Documents.

3. The Subordinate Mortgagee hereby represents and warrants that (a) subject to paragraph 4(h), it will be the owner and holder of the Subordinate Mortgage (*provided* that nothing herein shall be deemed to prohibit (i) issuance of participations in the Subordinate Loan, as long as the Subordinate Mortgagee or an affiliate bank of the Subordinate Mortgagee remains the agent bank, or (ii) transfer of the Subordinate Loan in connection with the merger or consolidation of Subordinate Mortgagee into another entity, or transfer of all of the assets of Subordinate Mortgagee to another entity (a

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“*Permitted Transfer*”)); (b) none of the Subordinate Loan Documents will be modified or amended without the prior written consent of the Senior Mortgagee (which the Senior Mortgagee may withhold in its sole discretion) in any manner that would (i) increase the interest rate, the principal amount, or the monthly payments of principal and interest, (ii) change the amortization schedule, payment dates or maturity date thereof, or (iii) change any of the other economic terms of the Subordinate Loan; (c) the maximum principal amount of the Subordinate Note to be secured by the Subordinate Mortgage will be Four Million Four Hundred Thousand and No/100 Dollars (\$4,400,000.00), plus the amount of any protective advances made pursuant to the Subordinate Mortgage, not to exceed the lesser of Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) or ten percent (10%) of the principal amount of the Subordinate Note (“*Protective Advances*”); (d) interest on the principal balance of the Subordinate Loan shall be calculated at the annual variable rate equal to 0.5% per annum less than the Subordinate Mortgage’s Prime Rate (as defined in the Subordinate Mortgage), or at the option of the Borrower and its beneficiary, equal to LIBOR plus 250 basis points (except that after the date of any delinquency in a payment under the Subordinate Note, interest at the default rate of 3% per annum greater than the rates stated above shall be permitted as provided in the Subordinate Note); (e) the Subordinate Loan will not provide for negative amortization or the accrual, deferral or capitalization of interest, but Senior Lender agrees that (i) Subordinate Mortgagee may fund from the Subordinate Loan proceeds interest payments during the construction period, and (ii) interest may continue to accrue on principal outstanding under the Subordinate Loan following the Borrower’s failure to pay sums when due with respect to the Subordinate Loan; (f) the Subordinate Loan will not provide for the payment of any prepayment fee or penalty or any other fee in connection with the acceleration or maturity of the Subordinate Loan, although the Subordinate Loan may provide for a LIBOR contract breakage charge on the terms set forth in the Subordinate Note as in effect on the date of this Agreement; (g) the Premises will not secure any other loans made by Subordinate Mortgagee; (h) any rights of the Subordinate Mortgagee in and to the lien, estate or other interest in the Premises will not be subject to the rights of any third parties by way of subrogation, indemnification or otherwise; (i) the Subordinate Loan will not provide for any kind of equity, profit or cash flow participation, and (j) the proceeds of the Subordinate Loan will not be disbursed for any purpose other than the following (as set forth in the budget approved by Senior Mortgagee) without the consent of the Senior Mortgagee: (1) interest on the Subordinate Loan, (2) financing fees and expenses in connection with the Subordinate Loan, and (3) hard costs and soft costs incurred in connection with the construction and leasing of a new building on the Premises to Borders, Inc., improvements in other areas of the Premises related to the construction and leasing of such building to Borders, Inc., and related site improvements to the Premises.

4. The Subordinate Mortgagee hereby agrees that so long as any sum shall remain outstanding on the Senior Mortgage:

(a) The Subordinate Mortgagee shall simultaneously send to the Senior Mortgagee due notice of all defaults under the Subordinate Mortgage as well as copies of all notices required to be delivered to the Borrower under the



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Subordinate Mortgage. Notice under the Subordinate Mortgage shall not be deemed effective until such notice has been received by the Senior Mortgagee. The Senior Mortgagee shall have the right, but shall not have any obligation whatsoever, to cure any such default within the period commencing on the date the Senior Mortgagee receives notice of such default and ending on the later to occur of (i) ten (10) days after the expiration of the applicable grace period permitted to the Borrower under the Subordinate Loan Documents; or (ii) thirty (30) days following the Senior Mortgagee's receipt of such notice (the "Cure Period"). Furthermore, with respect to non-monetary defaults under the Subordinate Loan Documents, if (i) such non-monetary default is susceptible to being cured by the Senior Beneficiary with reasonable effort, but is not susceptible to being cured by Senior Beneficiary with reasonable effort within the Cure Period; (ii) the Senior Mortgagee, within the Cure Period, gives the Subordinate Mortgagee written notice of the Senior Mortgagee's intention to cure any such default; (iii) during the time in which the Senior Mortgagee is curing such default, all other obligations evidenced or secured by the Subordinate Loan Documents are at all times paid and performed in a complete and timely fashion and no other monetary or non-monetary default occurs under the Subordinate Loan Documents (provided any such other defaults shall likewise be subject to cure by Senior Mortgagee, as provided above); and (iv) thereafter, the Senior Mortgagee promptly commences and diligently prosecutes the cure to completion, the Subordinate Mortgagee shall not commence any Enforcement Action (as hereinafter defined). Nothing contained in this Agreement shall be deemed or construed to require the Senior Mortgagee to commence or continue to prosecute any such cure to completion or prevent the Senior Mortgagee from discontinuing such cure. The term "Enforcement Action" shall mean, with respect to the Subordinate Loan, (i) the acceleration of all or any part of the Subordinate Loan (except for acceleration by operation of law and without affirmative action by Subordinate Mortgage, e.g., upon the filing of a bankruptcy proceeding by Borrower); (ii) commencement or pursuit of any foreclosure proceeding; (iii) the exercise of any power of sale; (iv) the acceptance by the Subordinate Mortgagee of a deed or assignment in lieu of foreclosure; (v) the obtaining of a receiver; (vi) the taking of possession or control of the Premises; (vii) the suing on the Subordinate Note; (viii) the exercising of any banker's lien or rights of set-off or recoupment; or (ix) the taking of any other enforcement action against the Premises, except for the making of Protective Advances (as defined in paragraph 3(c));

(b) Subject to paragraph 4(a), the Subordinate Mortgagee shall not, unless the Senior Mortgagee shall have received at least ten (10) days' prior written notice of Subordinate Mortgagee's intention to do so, (i) declare a default under the Subordinate Mortgage with respect to the Premises; (ii) accelerate the indebtedness secured by the Subordinate Mortgage; (iii) commence any action to foreclose the Subordinate Mortgage; or (iv) take any other Enforcement Action;

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(c) In the event (i) the Subordinate Loan becomes or is declared due and payable prior to its stated maturity; (ii) the Borrower defaults under the Senior Loan Documents or the Subordinate Loan Documents; or (iii) any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the property, assets or business of the Borrower or the proceeds thereof, in whatever form, to any creditor or creditors of the Borrower or to any holder of indebtedness of the Borrower by reason of any liquidation, dissolution or other winding up of the Borrower or the Borrower's business, or of any receivership or custodianship for the Borrower or for all or substantially all of the Borrower's property, or of any insolvency or bankruptcy proceedings or assignment for the benefit of creditors, or any proceeding by or against the Borrower for any relief under any bankruptcy, reorganization or federal or state insolvency law or laws, or any federal or state law relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension, then, and in the event of the occurrence of (i), (ii) or (iii) above, any payment or distribution of any kind or character, whether in cash, property or securities that shall be payable or deliverable with respect to the Subordinate Loan, or that has been received by the Subordinate Mortgagee after the occurrence of (i), (ii) or (iii) above (except from Separate Subordinate Loan Collateral as defined in paragraph 1), shall be held in trust by the Subordinate Mortgagee for the benefit of the Senior Mortgagee and shall forthwith be paid or delivered directly to the Senior Mortgagee for application to the payment of the Senior Loan to the extent necessary to make payment in full of all sums due under the Senior Loan remaining unpaid after giving effect to any concurrent payment or distribution to the Senior Mortgagee. In any such event, the Senior Mortgagee may, but shall not be obligated to, demand, claim and collect any such payment or distribution that would, but for these subordination provisions, be payable or deliverable with respect to the Subordinate Loan. In the event of the occurrence of (i), (ii) or (iii) above and until the Senior Loan shall have been fully paid and satisfied and all of the obligations of the Borrower to the Senior Mortgagee have been performed in full, no payment shall be made to or accepted by the Subordinate Mortgagee in respect of the Subordinate Loan;

(d) No tenant under any lease of any portion of the Premises shall be made a party defendant in any foreclosure of the Subordinate Mortgage for the purpose of or with the effect of terminating such lease, nor shall Subordinate Mortgagee take any Enforcement Action or any other action that would terminate any leases or other rights held by or granted to or by third parties with respect to the Premises;

(e) If any action or proceeding shall be brought to foreclose the Subordinate Mortgage or to commence any other Enforcement Action, (i) notice of the commencement of any foreclosure of the Subordinate Mortgage shall be given to the Senior Mortgagee and true copies of all notices thereof and papers served or entered in such action shall be delivered to the Senior Mortgagee; (ii) no portion of the rents, issues or profits of the Premises shall be collected except

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through a receiver appointed by the court in which such foreclosure action or proceeding is brought, after due notice of the application for the appointment of such receiver shall have been given to the Senior Mortgagee, and the rents, issues and profits so collected by such receiver shall be applied first to the payment and maintenance of taxes and insurance on the Premises, and then to the payment of principal and interest due and owing on the Senior Mortgage prior to the payment, if any, of any principal or interest due and owing on the Subordinate Mortgage; and (iii) if, during the pendency of any such foreclosure action or proceeding, an action or proceeding shall be brought by the Senior Mortgagee for the foreclosure of the Senior Mortgage and an application is made by the Senior Mortgagee for an extension of such receivership for the benefit of the Senior Mortgagee, all such rents, issues and profits held by such receiver as of the date of such application shall be applied by the receiver solely for the benefit of the Senior Mortgagee, and the Subordinate Mortgagee shall not be entitled to any portion thereof until all sums due and owing pursuant to the Senior Mortgage and the Senior Loan Documents have been paid in full and applied as aforesaid;

(f) In the event the Senior Mortgagee shall release, for the purposes of restoration of all or any part of the improvements on or within the Premises, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, the Subordinate Mortgagee shall release for such purpose all of the Subordinate Mortgagee's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation, and the Subordinate Mortgagee agrees that the balance of such proceeds remaining shall be applied to the reduction of principal under the Senior Mortgage. If the Senior Mortgagee holds such proceeds, awards or compensation and/or monitors the disbursement thereof, the Subordinate Mortgagee agrees that the Senior Mortgagee shall also hold and monitor the disbursement of such proceeds, awards and compensation to which the Subordinate Mortgagee is entitled. Nothing contained in this Agreement shall be deemed to require the Senior Mortgagee, in any way whatsoever, to act for or on behalf of the Subordinate Mortgagee or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of the Subordinate Mortgagee, and all or any of such sums so held or monitored may be commingled with any funds of the Senior Mortgagee;

(g) If the Subordinate Mortgagee shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Premises, that lien, estate, right or other interest shall be subordinate to the Senior Mortgage as provided herein, and the Subordinate Mortgagee hereby waives any and all rights it may acquire by subrogation or otherwise to the lien of the Senior Mortgage or any portion thereof;

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(h) Except for a Permitted Transfer (as defined in paragraph 3(a)), the Subordinate Mortgagee shall not pledge, assign, hypothecate, transfer, convey or sell the Subordinate Mortgage or any interest in the Subordinate Mortgage (other than to an Institutional Mortgagee (as hereinafter defined)), or modify, waive or amend any of the terms or provisions of the Subordinate Mortgage, without the prior written consent of the Senior Mortgagee, which it may withhold in its sole discretion. The term "Institutional Mortgagee" shall mean any of the following entities holding the Subordinate Mortgage for its own account, and not for the account of any other entity: (i) a federal or state chartered commercial bank or trust company or a federal or state chartered savings bank or a savings and loan association or insurance company organized and existing under the laws of the United States, or any state thereof, (ii) a foreign bank or branch office of a foreign bank; (iii) a foreign pension fund not subject to ERISA; (iv) a foundation, college or university; or (v) a nationally recognized commercial credit corporation. Any such entity described in the preceding sentence shall: (i) have a net worth in excess of \$200,000,000.00; (ii) not be a parent, subsidiary or affiliate of or an entity owned or controlled in whole or in part, directly or indirectly, by the Borrower; (iii) be experienced in making commercial real estate loans on property of the size and character of the Premises; and (iv) agree in writing to be subject to all of the terms, conditions and obligations under the Subordinate Loan Documents and this Agreement;

(i) As to all leases now or hereafter in effect with respect to the Premises, the Subordinate Mortgagee agrees to approve all leases that are approved by the Senior Mortgagee. The Subordinate Mortgagee shall also enter into recognition and non-disturbance agreements with any tenants to whom the Senior Mortgagee has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Mortgagee,

(j) The Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the release of all or any portion of the Premises from the lien of the Senior Mortgage, and hereby waives any equitable right in respect of marshalling the Subordinate Mortgagee might have, in connection with any release of all or any portion of the Premises by the Senior Mortgagee under the Senior Mortgage. The Subordinate Mortgagee further waives any rights it may have (i) to require the separate sales of any portion of the Premises; (ii) to require the Senior Mortgagee to exhaust the Senior Mortgagee's remedies against any portion of the Premises, or any portion thereof or any other collateral; and (iii) to require the Senior Mortgagee to proceed against any portion of the Premises or any other collateral, before proceeding against any other portion of the Premises. Further, in the event of any foreclosure, the Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the sale, either separately or together, of all or any portion of the Premises;



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(k) The Subordinate Mortgagee shall not collect payments for the purpose of escrowing taxes, assessments or other charges imposed on the Premises or insurance premiums due on the insurance policies required under the Senior Mortgage or the Subordinate Mortgage if the Senior Mortgagee is collecting payments for such purposes; however, the Subordinate Mortgagee may collect payments for such purposes if the Senior Mortgagee is not collecting the same, as long as such payments shall be held in trust by the Subordinate Mortgagee to be applied only for such purposes;

(l) Within ten (10) days after request by Senior Mortgagee, Subordinate Mortgagee shall furnish to Senior Mortgagee a statement, duly acknowledged and certified, setting forth the original principal amount of the Subordinate Note, the unpaid principal balance, all accrued interest but unpaid interest and any other sums due and owing thereunder, the rate of interest, and the amount of the monthly payments;

(m) In any case commenced by or against the Borrower or a general partner of the Borrower under Chapter 11 of the Bankruptcy Code or any similar federal or state statute (a "*Reorganization Proceeding*"), the Senior Mortgagee shall have the exclusive right to exercise any voting rights in respect of the Senior Mortgage and the Senior Loan Documents, and the Subordinate Mortgagee shall have the exclusive right to exercise any voting rights in respect of the Subordinate Mortgage and the Subordinate Loan Documents, except that, without the consent of the Senior Mortgagee, the Subordinate Mortgagee shall not have the right to vote to accept any plan of reorganization unless the Senior Mortgagee gives the Subordinate Mortgagee permission to do so, or the Senior Mortgagee votes to accept such plan;

(n) In any Reorganization Proceeding with respect to the Borrower or any general partner of the Borrower, the Subordinate Mortgagee shall file a proof of claim in respect of the Subordinate Mortgagee's claims against the Borrower and any such general partner and shall send to the Senior Mortgagee a copy of such proof of claim together with evidence of its filing with the appropriate court or other authority. If the Subordinate Mortgagee should fail to file such proof of claim by the tenth (10th) business day before the last day for filing of proofs of claim, or if the Senior Mortgagee reasonably believes that the proof of claim so filed is less than the proper amount thereof, then the Senior Mortgagee may file such proof of claim, or corrected proof of claim, on behalf of the Subordinate Mortgagee. If objection is made to the allowance of any claim of the Subordinate Mortgagee, the Senior Mortgagee shall have the right to intervene and fully participate in such proceedings, and if such rights are denied and the Subordinate Mortgagee fails to defend such claim, then the Senior Mortgagee may defend such claim in the name of the Subordinate Mortgagee; and

(o) To the extent any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement

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of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to such trustee, receiver or other similar party, the Senior Loan or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

5. The Senior Mortgagee hereby agrees as follows:

(a) Within ten (10) days after request by Subordinate Mortgagee, Senior Mortgagee shall furnish to Subordinate Mortgagee a statement, duly acknowledged and certified, setting forth the original principal amount of the Senior Note, the unpaid principal balance, all accrued interest but unpaid interest and any other sums due and owing thereunder, the rate of interest, and the amount of the monthly payments.

(b) Senior Mortgagee consents to the placing of the Subordinate Mortgage on the Premises subject to the terms of this Agreement. This consent is limited to the Subordinate Mortgage described above and shall not be deemed (i) to be a consent to any future encumbrances or to any modification, renewal, extension or increase of the Subordinate Mortgage, for which the Senior Mortgagee's consent is required under paragraph 3(b) hereof (except for Protective Advances as permitted in paragraph 3(c) hereof); (ii) to be a waiver of the limitation on further encumbrances contained in the Senior Mortgage; (iii) to be a consent to or waiver of any other term or condition of the Senior Mortgage; or (iv) to prejudice any right or rights that the Senior Mortgagee may now or in the future have under or in connection with the Senior Mortgage.

(c) Senior Mortgagee will use reasonable efforts to provide Subordinate Mortgagee a copy of any notice of default that it sends to Borrower. Notwithstanding the foregoing, any failure on the part of Senior Mortgagee send any such copy shall not constitute a default hereunder, and the Subordinate Mortgagee to pursue any remedies against Senior Mortgagee or limit or otherwise delay any Enforcement Action or other remedy that Senior Mortgagee may elect to pursue on account of such default.

6. The Senior Mortgagee and the Subordinate Mortgagee shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

7. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or

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partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

8. Each party hereto acknowledges that, to the extent that no adequate remedy at law exists for breach of its obligations under this Agreement, in the event either party fails to comply with its obligations hereunder, the other party shall have the right to obtain specific performance of the obligations of such defaulting party, injunctive relief, or such other equitable relief as may be available.

9. Any notice to be given under this Agreement shall be in writing and shall be deemed to be given when received by the party to whom it is addressed. Notices shall be in writing and sent by certified U.S. mail, hand delivery, or by special courier (in each case, return receipt requested). Notices to the other party hereto shall be sent to the address first set forth herein or such other address or addresses as shall be designated by such party in a written notice to the other party.

10. In the event of any conflict between the provisions of this Agreement and the provisions of the Senior Mortgage, the Senior Loan Documents, the Subordinate Mortgage or the Subordinate Loan Documents, the provisions of this Agreement shall prevail.

11. No person, including, without limitation, the Borrower, other than the parties hereto and their successors and assigns as holders of the Senior Mortgage and the Subordinate Mortgage, shall have any rights under this Agreement.

12. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party against whom the enforcement of such amendment, supplement, modification, waiver or termination would be asserted, unless such amendment, supplement, modification, waiver or termination was made in a writing signed by such party.

14. In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and other application of the remaining provisions hereof, shall not in any way be affected or impaired thereby.

15. The parties hereby waive any right they may have to trial by jury in any action or proceeding of any kind or nature, in any court in which an action may be commenced, arising out of or in connection with this Agreement.

16. Time is of the essence of this Agreement.

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17. This Agreement shall be construed in accordance with and governed by the laws of Illinois.

18. This Agreement shall bind and inure to the benefit of the Senior Mortgagee and the Subordinate Mortgagee and their respective successors, permitted transferees and assigns.

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

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: Maria Alexakis  
Printed Name: MARIA ALEXAKIS  
Title: VP

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation

By: Delaware Investment Advisers, Attorney-in-Fact

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

LASALLE BANK NATIONAL ASSOCIATION, a  
national banking association

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE LINCOLN NATIONAL LIFE INSURANCE  
COMPANY, an Indiana corporation

By: Delaware Investment Advisers,  
Attorney-in-Fact

By: Susan J. Bonnell  
Printed Name: Susan J. Bonnell  
Title: Vice President

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 2003, by MARIA ALEXAKIS, as VP on behalf of LaSalle Bank National Association, a national banking association.

Maria T. Esparza  
Notary Public



My commission expires: 4-29-07

STATE OF INDIANA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of September, 2003, by \_\_\_\_\_ as \_\_\_\_\_ on behalf of Delaware Investment Advisers, a series of Delaware Management Business Trust, which executed the foregoing instrument as Attorney-in-Fact for The Lincoln National Life Insurance Company, an Indiana Corporation.

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

My commission expires: \_\_\_\_\_

CLERK'S OFFICE OF COOK COUNTY

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STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of September, 2003,  
by \_\_\_\_\_, as \_\_\_\_\_ on behalf of  
LaSalle Bank National Association, a national banking association.

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

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS  
COUNTY OF ALLEN     )

The foregoing instrument was acknowledged before me this 23 day of September, 2003,  
by Susan J. Bonnell, as Vice President on behalf of  
Delaware Investment Advisers, a series of Delaware Management Business Trust, which  
executed the foregoing instrument as Attorney-in-Fact for The Lincoln National Life Insurance  
Company, an Indiana Corporation.

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

RICHELLE K. REEVES  
Notary Public

\_\_\_\_\_  
Resident of Allen County  
My commission expires: ~~My Commission Expires 03-19-2009~~

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1 THROUGH 12 INCLUSIVE IN NORRIDGE COMMONS SUBDIVISION, BEING A SUBDIVISION OF LOTS 9, 12, 13, 14, 15 & PARTS OF LOTS 16 & 17 IN FULLER'S SUBDIVISION, AND PART OF THE SOUTH WEST FRACTIONAL 1/4 NORTH OF THE INDIAN BOUNDARY LINE IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED DECEMBER 30, 1977 AS DOCUMENT NO. 24266265 AND AS CORRECTED BY CERTIFICATE OF CORRECTION RECORDED DECEMBER 5, 1980 AS DOCUMENT NO. 2563809, EXCEPTING FROM SAID LOT 7 THAT PART ACQUIRED BY THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION IN CONDEMNATION CASE 99 L 50584, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR THE PURPOSE OF ACCESS, PARKING VEHICLES AND THE PASSAGE OF PEOPLE AND MOTOR VEHICLES CREATED BY THE RECIPROCAL APPURTENANT EASEMENT RECORDED FEBRUARY 14, 1977 AS DOCUMENT 23823377 OVER THE AREA DESCRIBED IN EXHIBITS C-1 AND C-1A THEREIN.

#### Permanent Tax Index Numbers:

13-18-318-013-0000  
13-18-318-014-0000  
13-18-318-016-0000  
13-18-318-017-0000  
13-18-318-018-0000  
13-18-318-019-0000  
13-18-318-020-0000  
13-18-318-027-0000  
13-18-318-028-0000  
13-18-318-029-0000  
13-18-318-030-0000  
13-18-318-031-0000  
13-18-318-032-0000  
13-18-318-033-0000  
13-18-318-034-0000

#### Address of Premises:

Northeast Corner  
Harlem Avenue and Forest Preserve Drive  
Norridge, Illinois