

# UNOFFICIAL COPY

This Instrument Prepared By  
and After Recording Mail to:

Joel A. Stein  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street  
Suite 1700  
Chicago, Illinois 60606



Doc#: 0400619186  
Eugene "Gene" Moore Fee: \$48.50  
Cook County Recorder of Deeds  
Date: 01/06/2004 02:26 PM Pg: 1 of 13

## INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is dated as of December 31, 2003, by an among LaSalle Bank National Association ("Junior Lender"), Pacific Coast Investment Company, a Washington corporation ("Senior Lender"), and Wallace Funeral Home, Ltd., an Illinois corporation ("Borrower").

### WITNESSETH:

A. Borrower has executed and delivered to Junior Lender a promissory note in the original principal amount of Eight Hundred Twenty Thousand and No/100 Dollars (\$820,000.00) dated as of September 30, 2001, and made payable to the order of Junior Lender (the "Junior Lender Note") and any amendment, supplement or restatement thereof and any guaranties thereof, are referred to herein as the "Junior Loan Debt";

B. As further assurance for the payment of all liabilities and obligations due under the Junior Loan Debt, Borrower has granted to Junior Lender a lien under the terms of the Mortgage dated August 25, 2000, recorded with the Cook County Recorder of Deeds October 19, 2000, as Document No. 00919603 (hereinafter "Junior Mortgage") and Borrower has executed and delivered to Junior Lender additional loan documents to evidence and or secure the Junior Loan Debt (collectively with the Junior Mortgage, the "Junior Loan Documents");

C. Borrower in settlement of certain obligations to Junior Lender, and more particularly to contemporaneously herewith reduce the amount now due on the Junior Lender Note by Five Hundred Thousand and No/100 Dollars (\$500,000.00), has agreed to become indebted to Senior Lender in an amount not to exceed Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) outstanding from time to time in the aggregate, exclusive of accrued interest.

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charges, expenses, attorneys' fees, other sums chargeable to Borrower by Senior Lender and all other Borrower's obligations (all such indebtedness now or hereafter arising, along with any modification, amendment, refinancing or supplement thereto and any guaranties thereof, being hereinafter referred to as the "Senior Debt");

D. As security for the payment of the liabilities and obligations due under the Senior Debt, Borrower, pursuant to a Mortgage of even date herewith (the "Senior Mortgage") has granted to Senior Lender a first lien and security interest in and upon the real property described on Exhibit A attached hereto and all appurtenances thereto (the "Mortgaged Property") (said lien and security interest of Senior Lender in the Mortgaged Property is referred to herein as the "Senior Lien"). Borrower is executing and delivering to Senior Lender certain other documents, agreements, and certificates and as additional security for the payment of the Senior Debt (the "Senior Collateral Documents") (hereinafter the Senior Collateral Documents and the Senior Mortgage are collectively referred to as the "Senior Loan Documents"); and

E. In consideration of the payment to it of the Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Lump Sum Payment"), Junior Lender has agreed, among other things, (i) to subordinate the Junior Loan Debt to the Senior Debt, (ii) to subordinate the lien of the Junior Mortgage to the Senior Lien, and all of the other Senior Loan Documents, (iii) extend the term of the Junior Lender Note to a date six (6) months from the date of the Lump Sum Payment, (iv) adjust the interest rate to the non-default rate, and (v) adjust the payment schedule such that the next installment of interest shall not be due and payable until the first of the month next succeeding ninety (90) days after the Lump Sum Payment.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Priority of Liens. Notwithstanding the date, time, manner or order of perfection or attachment of the security interests and liens of the Senior Mortgage and Junior Mortgage granted by Borrower to Senior Lender or to the Junior Lender, and notwithstanding the usual application of the priority provisions of the Uniform Commercial Code in effect in any jurisdiction or any other applicable law or judicial decision of any jurisdiction, or whether Junior Lender holds possession of all or any part of the Mortgaged Property, or if Senior Lender is perfected without filing or possession in any part of the Mortgaged Property, the Senior Lien, the Senior Mortgage, and all of the other Senior Loan Documents shall be a first, senior and prior security interest in and lien on the Mortgaged Property superior to the Junior Mortgage and all of the other Junior Loan Documents.

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## 2. Subordination of Junior Loan Debt.

a. Junior Lender hereby subordinates any and all claims now or hereafter owing to it by Borrower under the Junior Mortgage and all of the other Junior Loan Documents to any and all claims of Senior Lender under the Senior Mortgage, the Loan Agreement and all of the other Senior Loan Documents.

b. Junior Lender agrees, if Junior Lender has received from Senior Lender notice of any Event of Default under the Senior Loan Documents, not to accept any payment in respect of the Junior Loan Debt, except as expressly provided herein or with the express, prior written consent of the Senior Lender, and Junior Lender agrees to pay over to Senior Lender any funds that may be received from Borrower as a payment on account of the Junior Loan Debt if Junior Lender has received from Senior Lender notice of any Event of Default under the Senior Loan Documents. In case any funds shall be paid or delivered to either Junior Lender under the circumstances described in clause (i) or (ii) of the preceding sentence, such funds shall be held in trust by such Junior Lender for, and immediately paid and delivered to, Senior Lender (in the form received, endorsed over to the Senior Lender).

c. Junior Lender agrees that the priority of the Senior Debt set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against Borrower under any bankruptcy or insolvency law or laws relating to the relief of debtors of any jurisdiction, whether now or hereafter in effect, and in any out-of-court composition, assignment for the benefit of Junior Lenders or other arrangement of any kind.

3. Proceeds. The order of priority of liens set forth in Section 1 hereof shall apply to all proceeds of the Mortgaged Property, including, without limitation, any insurance proceeds payable in the event of loss of, or damage to, the Mortgaged Property.

4. Perfection and Release of Liens. Upon payment and satisfaction in full of the Junior Loan Debt, Junior Lender shall release the Junior Lender Lien, if in existence at such time, as soon as practicable upon the request of the Senior Lender.

5. Violation of Agreement by Borrower. Except as provided in Section 2 hereof, Borrower agrees to make no payment whatsoever on the Junior

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Loan Debt nor consent to or participate in any act which is in violation of the provisions of this Agreement.

6. Immediate Effect. This Agreement shall be effective immediately upon its execution by each of the parties hereto, and there are no conditions precedent or subsequent to the effectiveness of this Agreement.

7. Successors and Assigns; Continuing Effect, Etc. This Agreement is being entered into for the benefit of, and shall be binding upon, each of the Senior Lender, the Junior Lender, Borrower, and their respective permitted successors, assigns, heirs and personal representatives, as applicable. Senior Lender may participate out to other parties any portion of its interest under the Senior Debt and no such participant shall be required to become a signatory hereto. Any assignee or transferee shall execute and deliver to the other parties hereto an agreement pursuant to which they become parties hereto as fully as if they were signatories hereto and providing for the effectiveness of this Agreement as to such transferee or assignee and other parties and the lien and debt priority of such party shall be that of such party's assignor and transferor. This Agreement shall be a continuing agreement, shall be irrevocable and shall remain in full force and effect so long as any of the Senior Debt or the Junior Loan Debt is outstanding and so long as the Loan Agreement has not been terminated.

8. Notification of Default. Senior Lender and Junior Lender shall give written notice to the other of an Event of Default by Borrower under the Senior Debt and of a breach or default by Borrower under the Junior Loan Debt, respectively; *provided, however,* that the failure to give such notice absent gross negligence shall not be deemed to be a breach of this Agreement and shall not affect the effectiveness or any declaration of such breach, default or Event of Default, as the case may be. Junior Lender understands that, subject to any grace or cure period under Junior Lender's agreements with Borrower, any default by Borrower under the Junior Loan Debt is, automatically, an Event of Default of Borrower under the Senior Debt. Nothing in this Agreement shall be interpreted to limit or restrict the right of Senior Lender and Junior Lender to waive any default under their respective documents, and the Senior Lender, and Junior Lender agrees that any waiver will be in writing and to provide the other parties hereto with a copy of any such waiver.

10. Notices. Except as otherwise provided herein, all notices, requests and demands to or upon a party hereto to be effective shall be in writing and shall be sent by certified or registered mail, return receipt requested, personal delivery against receipt, delivery service against receipt, overnight courier service against receipt, or by telegraph or telex and, unless otherwise expressly provided herein, shall be deemed to have been validly serviced, given or delivered when delivered against receipt, or one (1) Business Day after deposit in the mail, postage

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prepaid, or, in the case of telegraphic notice, when delivered to the telegraph company, or, in case of telex notice, when sent, answer back received, addressed as follows:

If to Junior Lender:

LaSalle Bank National Association  
135 S. LaSalle Street, Suite 2140  
Chicago, IL 60603  
Attn: Richard D. Snedden, Vice President

(312) 904-8169 facsimile

With a copy to:

Deutsch, Levy & Engel, Chartered  
225 W. Washington Street  
Suite 1700  
Chicago, Illinois 60606  
Attn: Joel A. Stein

(312) 346-1859 facsimile

If to Senior Lender:

Pacific Coast Investment Company  
700 Fifth Ave., Ste. 6010  
Seattle, WA 98104  
Attn: Gary Ryno

(206) 624-5220

With a copy to:

Schiff Hardin & Waite  
Sears Tower  
233 S. Wacker Drive, Suite 6600  
Chicago, IL 60606-6473  
Attn: Brian D. Kluever

(312) 258-5700 facsimile

If to Borrower:

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Wallace Funeral Home, Ltd.  
 5838 W. Division  
 Chicago, Illinois 60651  
 Attn: Randy Wallace, President

With a copy to:

Howard Hoffman & Associates  
 105 W. Madison St., Ste. 1001  
 Chicago, Illinois 60602  
 Attn: Howard Hoffman

(312) 332-2278 facsimile

The parties hereto may designate such other address or telecopier number by written notice in the aforesaid manner.

11. Amendments; Modifications. This Agreement may not be modified, altered or amended except by an agreement in writing executed by all of the parties hereto.

12. Amendment. Except as expressly provided in Paragraph E above, Junior Lender, Senior Lender and Borrower each agree to forbear from modifying, altering or amending any payment amount or payment term of the Junior Lender Note or the Senior Lender Note, as the case may be, without the prior written consent of the other lending party, as the case may be.

13. Cost and Expenses of Enforcement. The defaulting party agrees to pay all reasonable costs, legal expenses and attorneys' and paralegals' fees of every kind, paid or incurred by the non-defaulting party in enforcing its rights hereunder, including, but not limited to, litigation instituted in a State or Federal Court, as hereinafter provided (including proceedings under the United States Bankruptcy Code) enforcing obligations of the defaulting party under this Agreement.

14. FORUM; AGENT; VENUE; JURY TRIAL WAIVER. TO INDUCE SENIOR LENDER TO ACCEPT THIS AGREEMENT, EACH OF BORROWER AND JUNIOR LENDER IRREVOCABLY AGREES THAT, SUBJECT TO THE SENIOR LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEED IS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. EACH OF BORROWER AND THE JUNIOR LENDER HEREBY CONSENTS AND AGREES THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR, AT THE SENIOR LENDER'S OPTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, SHALL HAVE

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EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE SENIOR LENDER AND ANY OTHER PARTY HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH OF BORROWER AND THE JUNIOR LENDER HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH IT IS A PARTY.

15. Governing Law. This Agreement shall be governed and controlled by the laws of the State of Illinois without regard to principles of conflict of laws.

16. Severability. In the event any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed one original and all of which taken together shall constitute one and the same instrument.

18. Definitions. All capitalized terms used in this Agreement which are not specifically defined herein shall have the meaning set forth in the Loan Agreement.

19. Patriot Act. Borrower represents and warrants to Senior Lender and Junior Lender that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of any such person or entity. Borrower further represents and warrants to Senior Lender and Junior Lender that Borrower and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, nor facilitating, the transactions contemplated by this agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Borrower hereby agrees to defend, indemnify and hold harmless Senior Lender and Junior Lender from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representations and warranties.

20. Borrowers Acknowledgment. Borrower hereby consents to this Agreement and agrees to abide by the terms hereof.

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In witness whereof the parties hereto have executed this Intercreditor Lender and Subordination Agreement the day and year first above written.

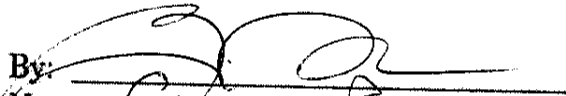
**JUNIOR LENDER:**

**SENIOR LENDER**

LaSalle Bank National Association

Pacific Coast Investment Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Name: Gary M. Egnor  
Its: CEO

**BORROWER**

Wallace Funeral Home, Ltd.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office



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## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ of **LaSalle Bank National Association** who executed the within Agreement and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of

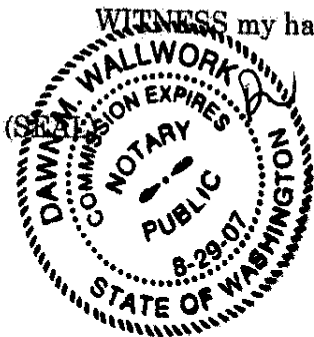
My commission expires:

## ACKNOWLEDGMENT

*Washington*  
STATE OF ~~ILLINOIS~~ )  
 ) SS.  
COUNTY OF ~~COOK~~ )

On 12-24-03, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Gary M. Rupp personally known to me (or proved to me on the basis of satisfactory evidence) to be the CEO of **Pacific Coast Investment Company**, who executed the within instrument and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



*Dawn M. Wallwork*  
\_\_\_\_\_  
Notary Public in and for the  
State of *Washington*

My commission expires: 8-29-07

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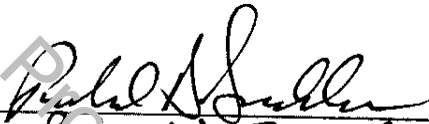
In witness whereof the parties hereto have executed this Intercreditor Lender and Subordination Agreement the day and year first above written.

JUNIOR LENDER:

SENIOR LENDER

LaSalle Bank National Association


Pacific Coast Investment Company

By:   
Name: Robert D. SWEDDEN  
Its: Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

BORROWER

Wallace Funeral Home, Ltd.

By:   
Name: NANCY WALLACE  
Its: PRESIDENT-AGENT

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

On 12-23-03, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared R. Snedden personally known to me (or proved to me on the basis of satisfactory evidence) to be the VP of **LaSalle Bank National Association** who executed the within Agreement and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)



Karen Parrish  
Notary Public in and for the  
State of

My commission expires:

## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ of **Pacific Coast Investment Company**, who executed the within instrument and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of

My commission expires:

# UNOFFICIAL COPY

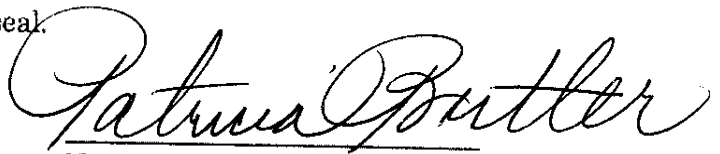
## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

On 12/31/09 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as \_\_\_\_\_ of **Wallace Funeral Home, Ltd.** and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)



Notary Public in and for the  
State of  
My commission expires:



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STREET ADDRESS: 5838 W DIVISION

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 16-50-226-031-0000 / 032 / 033 / 034 / 035 / 036

**LEGAL DESCRIPTION:**

LOTS 19 TO 25 IN BLOCK 2 IN CONGER AND DAVIS SUBDIVISION OF THE SOUTH 1/2 OF THE WEST 1/2 OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 SECTION 5, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

