

# UNOFFICIAL COPY

PREPARED BY:  
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 222 North LaSalle Street  
 Suite 300  
 Chicago, Illinois 60601  
 Recording Requested By and  
 When Recorded Mail To:  
 GE Asset Management Incorporated  
 707 East Main Street  
 Suite 1300-A  
 Richmond, VA 23219-3310



Doc#: 0531427024 Fee: \$42.00  
 Eugene "Gene" Moore RHSP Fee: \$10.00  
 Cook County Recorder of Deeds  
 Date: 11/10/2005 10:38 AM Pg: 1 of 10

GEAM Loan No. 006130  
 Address: See Exhibit A  
 P.I.N.: See Exhibit A

2012 ag  
 25848  
 1ST AMERICAN TITLE Order #  
 DEC

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

First Colony Life Insurance Company, a Virginia corporation, ("Lender"), has agreed to make a loan (the "Loan") to MJH Northbrook LLC, a Delaware limited liability company ("Landlord"), to be secured by a Mortgage Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement (the "Mortgage") on the property commonly known as Combined Centre, 707 Skokie Boulevard, Northbrook, Illinois (the "Property"), and more particularly described on attached Exhibit A. The parties acknowledge that the Mortgage is being recorded concurrently with the recording of this instrument, or, if recording information is hereafter inserted in this sentence, that the Mortgage was recorded under Cook County Recorder's File No. 0317041201 on 6-19-2005. (The parties hereby authorize the title company to insert the appropriate Mortgage recording information when available.)

Morton's of Chicago/Northbrook, LLC, a Delaware limited liability company ("Tenant"), has a Lease dated October 21, 2005 (the "Lease"), with Landlord on all or a portion of the Property (the "Leased Premises").

Lender needs assurances from Tenant in order to make the Loan. Tenant is willing to give those assurances if Lender will agree, so long as Tenant is not in default under the Lease, not to disturb Tenant's possession of the Leased Premises in the event of foreclosure of the Mortgage. Tenant also understands that, in making the Loan, Lender will rely on the assurances and statements made in this agreement.

NOW, THEREFORE, Lender and Tenant agree as follows:

1. Subordination. Tenant agrees that the Lease, and all rights of Tenant in, to and under the Lease and the Property, are hereby unconditionally subordinated, and shall remain unconditionally subordinate, to the lien of the Mortgage and any and all other instruments held

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by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof.

2. Tenant Not To Be Disturbed. Lender agrees that, so long as Tenant is not in default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default):

Tenant's possession of the Leased Premises under the Lease shall not be disturbed by Lender in any foreclosure or other proceedings brought to enforce the Mortgage or by any deed in lieu of foreclosure.

Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage, and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant To Attorn To Lender. If Lender becomes the owner of the Property by reason of foreclosure or other proceedings brought to enforce the Mortgage or by deed in lieu of foreclosure, the Lease shall continue in full force and effect as if Lender were the original Landlord and Tenant hereby attorns to Lender as Tenant's lessor, except Lender shall not be:

Liable for any act or omission of any prior lessor (including Landlord); provided that, upon becoming owner of the Property, Lender shall perform any maintenance, repair or restoration work to the Leased Premises or the Property required of (but unperformed by) any prior lessor under the Lease; in no event, however, shall Lender have any liability under this subparagraph (a) except for failure to perform such obligations after Lender becomes the owner of the Property; or

Subject to any offset or defense which Tenant might have against any such prior lessor; or

Bound by any prepayment of rent by Tenant, except as required by the terms of the Lease; or

Bound by any amendment, modification or waiver of any material term of the Lease, unless made with the prior written consent of Lender; or

Liable for any obligation of Landlord under the Lease with respect to any property other than the Property given as security for the Loan, and Tenant will look solely to Landlord for performance and observance of any and all such obligations.

If Lender becomes the owner of the Property and thereafter sells or otherwise transfers its interest in the Property, Lender shall have no liability with respect to obligations of the lessor under the Lease which arise following the sale or other transfer of the Property by Lender.

4. Third-Party Owner. If someone acquires the Property through Lender, whether at a trustee or foreclosure sale or otherwise, that person shall have the same rights and obligations to continue the Lease with Tenant as Lender would have under this agreement.

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5. Purchase Options. Any option to purchase, right of first refusal, or other right that Tenant has to acquire all or any of the Property is set forth in the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Mortgage and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof. Foreclosure of the Mortgage or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Mortgage or deed given in lieu of foreclosure.

6. Covenants of Tenant. Tenant covenants as follows:

Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. By its signature below, Landlord consents to Tenant's payment of rent to Lender upon Lender's written demand, agrees that Tenant may rely solely upon Lender's written demand regardless of any dispute between Landlord and Tenant, and releases and discharges Tenant from all liability to Landlord for any payment of rent made as instructed by Lender in writing.

Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust or other security instrument without the prior written consent of Lender.

Tenant shall notify Lender if Landlord is in default under the Lease and will give Lender thirty (30) days after receipt of such notice in which to cure the default before Tenant invokes any of its remedies under the Lease.

7. Assignment of Lease. Tenant understands that Landlord's interest in the Lease has been assigned to Lender in connection with the Loan. Until Lender becomes owner of the Property, however, Lender assumes no duty, liability or obligation to Tenant under the Lease.

8. Costs and Attorneys' Fees. In the event of any claim or dispute arising out of this agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with the claim or dispute, including without limitation those fees, costs and expenses incurred before, during or after suit, in any arbitration, in any appeal, in any proceedings under any present or future bankruptcy act or state receivership, and in any post-judgment proceedings.

9. Notices. Any notices under this agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested. Any notice sent to a party shall be sent to the party at its address below its signature hereon. Each mailed notice shall be deemed given three (3) days after its postmark. Any party may change its address by notice to the other parties.

10. Miscellaneous. This agreement may not be modified except in a writing executed by the parties or their successors in interest. This agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, administrators, representatives, successors, and assigns. This agreement may be executed in counterparts, in which case all originals together shall constitute a single instrument.

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DATED 15<sup>th</sup> November, 2005

“Lender”

First Colony Life Insurance Company, a  
Virginia corporation

By: Cindy J. Glaidel  
Its: Investment Officer

Address:  
707 East Main Street, Suite 1300-A  
Richmond, Virginia 23219-3310

“Tenant”

Morton’s of Chicago/Northbrook, LLC, a  
Delaware limited liability company

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

Address:  
3333 New Hyde Park Road  
New Hyde Park, NY 11042

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DATED 18<sup>th</sup> of November 1, 2005

“Lender”

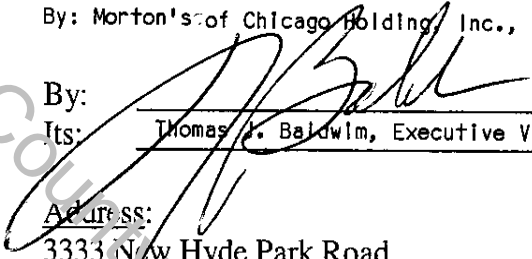
First Colony Life Insurance Company, a  
Virginia corporation

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

Address:  
707 East Main Street, Suite 1300-A  
Richmond, Virginia 23219-3310

“Tenant”

Morton’s of Chicago/Northbrook, LLC, a  
Delaware limited liability company  
By: Morton's of Chicago Holding Inc., Its Member

By:   
Its: Thomas J. Baldwin, Executive V.P./CFO

Address:  
3333 New Hyde Park Road  
New Hyde Park, NY 11042

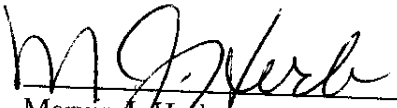
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CONSENTED AND AGREED TO this 26 day of Oct., 2005.

“Landlord”

MJH Northbrook LLC, a Delaware limited liability company

By:   
Marvin J. Herb  
Its: Manager

Address:  
6000 Garlands Lane, Suite 120  
Barrington, IL 60010

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**Lender's Acknowledgement**

STATE OF Virginia )  
County of Henrico ) ss.

I certify that I know or have satisfactory evidence that Cindy J. Heide is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the Investment Officer of First Colony Life Insurance Company, a Virginia corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 25<sup>th</sup> day of October, 2005.

Rhonda L. Mills Crump  
Notary Public

My Commission expires:  
8/31/06

**Tenant's Acknowledgement**

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Morton's of Chicago/Northbrook, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

My Commission expires:  
\_\_\_\_\_

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### Lender's Acknowledgement

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of First Colony Life Insurance Company, a Virginia corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

My Commission expires: \_\_\_\_\_

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


### Tenant's Acknowledgement

STATE OF NEW YORK )  
County of NASSAU ) ss.

I certify that I know or have satisfactory evidence that Thomas J. Baldwin is the person who appeared before me, and said person acknowledged that [he][she] signed this instrument, on oath stated that [he][she] was authorized to execute the instrument and acknowledged it as the Exec. V.P./CFO of Morton's of Chicago Holding, Inc., the Managing Member of Morton's of Chicago/Northbrook, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 19 day of October, 2005.

My Commission expires: \_\_\_\_\_

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

**DAVID GRUBER**  
NOTARY PUBLIC, State of New York  
No. 1591715  
Qualified in Nassau County  
Term Expires March 30, 20 07



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Landlord's Acknowledgement

STATE OF ILLINOIS )  
County of Lake ) ss.

I certify that I know or have satisfactory evidence that Marvin J. Herb, as Manager of MJH Northbrook LLC, a Delaware limited liability company, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged as said Manager as his free and voluntary act and the free and voluntary act of said Manager of such MJH Northbrook LLC, for the uses and purposes mentioned in the instrument.

DATED this 26<sup>th</sup> day of October, 2005.

Meta Suzanne Petter  
Notary Public

My Commission expires:

1-23-07



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## EXHIBIT A

### Legal Description

Address: Combined Centre, 707 Skokie Boulevard, Northbrook, Illinois

P.I.N.: 04-02-424-034

PARCEL 5 (707 SKOKIE BOULEVARD):

LOT 1 IN 707 CONSOLIDATED SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 3, 1979 AS DOCUMENT NUMBER 25034175 IN COOK COUNTY, ILLINOIS.

PARCEL 6 (707 SKOKIE BOULEVARD FRONTAGE ROAD PORTION):

THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 1 IN 707 CONSOLIDATED SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 2, AFORESAID; THENCE NORTH 63 DEGREES 27 MINUTES 13 SECONDS EAST ALONG THE NORTHEASTERLY EXTENSION OF THE NORTHWESTERLY LINE OF SAID LOT 1, 69.55 FEET; THENCE SOUTH 26 DEGREES 29 MINUTES 35 SECONDS EAST 292.80 FEET; THENCE SOUTH 24 DEGREES 38 MINUTES 13 SECONDS EAST, 94.41 FEET; THENCE SOUTH 13 DEGREES 24 MINUTES 33 SECONDS EAST, 100.37 FEET; THENCE SOUTH 05 DEGREES 16 MINUTES 30 SECONDS EAST, 100.15 FEET; THENCE SOUTH 02 DEGREES 12 MINUTES 33 SECONDS EAST, 82.27 FEET TO AN INTERSECTION WITH AN EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 19 MINUTES 56 SECONDS WEST ALONG SAID LAST DESCRIBED LINE, 63.43 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 49 MINUTES 56 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 1, 195.60 FEET TO A CORNER OF SAID LOT 1; THENCE NORTH 26 DEGREES 44 MINUTES 37 SECONDS WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, 447.95 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.