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Doc#: 0534104162 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/07/2005 11:13 AM Pg: 1 of 12

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3/23
This Document Prepared By:

Crowley Barrett & Karaba, Ltd.
20 South Clark Street
Suite 2310
Chicago, Illinois 60603-1805
Attn: Tonya M. Parravano, Esq.

mem
When Recorded Return To:

First Midwest Bank
770 West Dundee Road
Arlington Heights, Illinois 60004
Attn: Mr. Paul Pisul

For Recorder's Use Only

SUBORDINATION AGREEMENT

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THIS SUBORDINATION AGREEMENT (the "Agreement") is made as of the 28th day of October, 2005, between FIFTH THIRD BANK (CHICAGO), a Michigan banking corporation, (the "Junior Lender") and FIRST MIDWEST BANK, an Illinois banking corporation (the "Senior Lender").

RECITALS:

45191928
A. Junior Lender is the owner and holder of a certain Mortgage (the "Junior Mortgage") made by LaSalle Bank National Association, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated November 24, 1998, and known as Trust Number 124683-02 (the "Trust") to the Junior Lender, dated as of July 2, 2004, and recorded in the Cook County Recorder's Office, Cook County, Illinois on July 23, 2004, as Document No. 042052042, encumbering the property legally described as follows (the "Property"):

THE NORTH 37 1/2 FEET OF LOT 2 IN BLOCK 1 IN HARDIN'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 4934-36 South King Drive, Chicago, IL 60615

Permanent Index Number: 20-10-117-017-0000

8318164
B. The Junior Mortgage secures the indebtedness evidenced by a certain Construction Note (the "Junior Note") dated as of July 2, 2004, made by LaSalle Bank National Association, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated August 3, 2001, and known as Trust Number 127980 and Le-Na Enterprises, an Illinois general partnership (jointly, the "Fifth Third Borrower"), payable to the order of Junior Lender in the original principal amount of One Million Three Hundred Twenty Five Thousand and 00/100 Dollars (\$1,325,000.00). The Junior Mortgage and the Junior Note, together with any and all other documents and instruments evidencing and securing the Junior Note are hereinafter collectively referred to as the "Junior Loan Documents."

BOX 334 CTI

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C. Senior Lender is the owner and holder of a certain Mortgage (the “**Senior Mortgage**”), dated as of October 28, 2005, made by the Trust, as mortgagor, to Senior Lender, which is to be recorded in the Cook County Recorder’s Office, Cook County, Illinois.

D. The Senior Mortgage secures the indebtedness evidenced by a certain Promissory Note (the “**Senior Note**”) dated as of October 28, 2005, made by Phyllis Nash (the “**First Midwest Borrower**”) payable to the order of Senior Lender in the original principal amount of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00). The Senior Mortgage and the Senior Note, together with any and all other documents and instruments evidencing and securing the Senior Note are hereinafter collectively referred to as the “**Senior Loan Documents**.”

E. All obligations of the First Midwest Borrower to Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the Senior Loan Documents are herein called the “**Senior Liabilities**.”

F. All obligations of the Trust or the Fifth Third Borrower to Junior Lender now existing or hereafter arising, due or to become due, under the Junior Note and the Junior Loan Documents are herein called the “**Junior Liabilities**.”

NOW, THEREFORE, in consideration of the foregoing and as an inducement to Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto represent, warrant and agree as follows:

1. *Incorporation of Recitals.* The Recitals of this Agreement are incorporated herein and made a part hereof by this reference hereto.

2. *Subordination of Liens.* Junior Lender hereby agrees that the Junior Mortgage shall be subordinate to the Senior Mortgage and that the liens and security interests created by the Junior Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents pursuant to the terms thereof. Nothing herein shall be construed to limit or impair the ability of the Fifth Third Borrower to make, or Junior Lender to receive and apply, any payment of principal, interest or other amounts due under the Junior Loan Documents as and when the same shall become due.

3. *Notices of Default; Forbearance and Right to Cure.* Junior Lender shall give Senior Lender prompt written notice of the occurrence of any default under or with respect to the Junior Loan Documents.

(a) Junior Lender hereby agrees that until the Senior Liabilities have been paid to Senior Lender in full and the Senior Loan Documents have been released, Junior Lender shall not, without giving Senior Lender fifteen (15) days prior written notice and an opportunity to cure the default of the Fifth Third Borrower specified in such notice within such period, take any action of any kind to enforce any right or remedy of any kind provided for in the Junior Loan Documents, whether at law or in equity, and specifically including, but not limited to, any proceeding seeking or contemplating foreclosure of the Junior Mortgage. Said notice to Senior Lender may, at Junior Lender’s election, be given concurrently with the delivery of notice of default to the Fifth Third Borrower.

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(b) Senior Lender hereby agrees that until the Junior Liabilities have been paid to Junior Lender in full and the Junior Loan Documents have been released, Senior Lender shall not, without giving Junior Lender fifteen (15) days prior written notice and an opportunity to cure the default of the First Midwest Borrower specified in such notice within such period, take any action of any kind to enforce any right or remedy of any kind provided for in the Senior Loan Documents, whether at law or in equity, and specifically including, but not limited to, any proceeding seeking or contemplating foreclosure of the Senior Mortgage. Said notice to Junior Lender may, at Senior Lender's election, be given concurrently with the delivery of notice of default to the First Midwest Borrower.

4. Permitted Actions by Senior Lender. Senior Lender may, from time to time, and without notice to Junior Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; (c) extend or renew for one or more periods of time (whether or not longer than the original period), any of the Senior Liabilities; (d) release or compromise any obligation of any nature of any obligor with respect to any of the Senior Liabilities; or (e) receive, collect and apply to the Senior Liabilities any and all rents, contract payments and other income from the Property. Copies of any amendments to the Senior Loan Documents will be delivered to Junior Lender upon execution thereof, regardless of whether consent thereto is required.

5. Permitted Actions by Junior Lender. Junior Lender may, from time to time, and without notice to Senior Lender, take any or all of the following actions: (a) receive, collect and apply to the Junior Liabilities any and all payments of principal, interest or other amounts due under the Junior Loan Documents, as and when the same shall become due and in accordance with the terms of this Agreement; (b) retain or obtain a security interest in any property to secure any of the Junior Liabilities; (c) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Junior Liabilities; (d) extend or renew for one or more periods of time (whether or not longer than the original period), any of the Junior Liabilities; or (e) release or compromise any obligation of any nature of any obligor with respect to any of the Junior Liabilities. Copies of any amendments to the Junior Loan Documents will be delivered to Senior Lender upon execution thereof, regardless of whether consent thereto is required.

6. Assignment. Senior Lender may, from time to time, at its discretion and without notice to Junior Lender, assign or transfer any or all of the Senior Liabilities or any interest therein; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Senior Lender. Junior Lender may, from time to time, at its discretion and without notice to Senior Lender, assign or transfer any or all of the Junior Liabilities or any interest therein; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Junior Liabilities shall be and remain Junior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Junior Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Junior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Junior Lender.

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7. Successors and Assigns. This Agreement shall be binding upon Junior Lender and Senior Lender and their respective successors and assigns and shall inure to the benefit of Junior Lender and Senior Lender and their respective successors and assigns.

8. Effect on Due on Sale Provisions. Junior Lender hereby waives any due on sale or due on refinancing provisions of the Junior Loan Documents as they relate to the Senior Liabilities.

9. Notice. Any notice, demand or other communication which any party may desire or may be required to give hereunder to any other party shall be in writing, and shall be deemed given (i) if and when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth below, or (iii) on the second (2nd) business day after being deposited in United States certified mail, return receipt requested, postage prepaid, addressed to a party at its address set forth below:

If to Senior Lender: FIFTH THIRD BANK (CHICAGO)
1701 Golf Road, Tower 1
7th Floor, MD GRLM&E
Rolling Meadows, IL 60008
Attn: Mr. Arthur M. Feierberg
Assistant Vice President

With a Copy To: CROWLEY BARRETT & KARABA, LTD.
20 South Clark Street, Suite 2310
Chicago, IL 60603-1805
Attn: Tonya M. Parravano, Esq.

If to Junior Lender: FIRST MIDWEST BANK
P.O. Box 9003
Gurnee, Illinois 60031

With a Copy To: FIRST MIDWEST BANK
770 West Dundee Road
Arlington Heights, Illinois 60004
Attn: Mr. Paul Pisula
Vice President

Any party hereto may change the address at which notices hereunder are required to be given to such party by notice to the other parties in accordance herewith.

10. Governing Law and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11. Execution of Additional Documents. Junior Lender agrees to execute such further documents or instruments and take such further actions as Senior Lender may reasonably request from time to time to carry out the intent and purpose of this Agreement.

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12. Termination. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities.

13. Counterparts. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one and the same agreement.

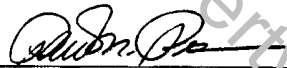
IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first written above.

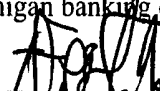
SENIOR LENDER:

JUNIOR LENDER:

FIRST MIDWEST BANK, an Illinois banking corporation.

FIFTH THIRD BANK (CHICAGO), a Michigan banking corporation

By: 
Name: PAUL M. PISULA
Its: VICE PRESIDENT

By: 
Name: MARK J. ALBERT
Its: ASSISTANT VICE PRESIDENT

Cook County Clerk's Office

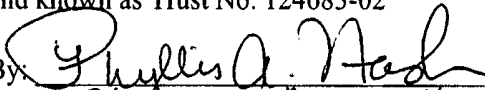
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CONSENT AND AGREEMENT OF BORROWER AND GUARANTORS

The undersigned hereby acknowledge the terms of and consent to the foregoing Agreement and agree for themselves and their respective successors and assigns, that (i) said Agreement does not constitute a waiver or partial waiver by Senior Lender of any of its rights under the Senior Loan Documents, or in any way release the undersigned from their obligations to comply with the terms and conditions contained in the Senior Loan Documents; (ii) said Agreement does not constitute a waiver or partial waiver by Junior Lender of any of its rights under the Junior Loan Documents, or in any way release the undersigned from their obligations to comply with the terms and conditions contained in the Junior Loan Documents; and (iii) the undersigned will not take any action contrary to or inconsistent with this Agreement.

Dated as of October 28, 2005.


LASALLE BANK, N. A., as Trustee under Trust Agreement dated November 24, 1998, and known as Trust No. 124683-02


By: 
Name: PHYLLIS A. NASH
Its: OWNER / BENEFICIARY

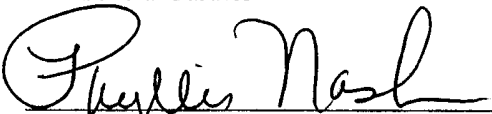
ATTEST:

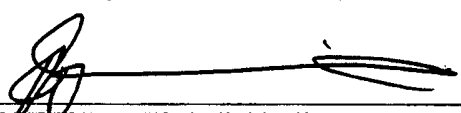
By: _____
Name: _____
Its: _____

LE-NA ENTERPRISES, an Illinois general partnership

By: 
Name: Ekeh Lewis
Its: General Partner

By: 
Name: Phyllis Nash
Its: General Partner


PHYLLIS NASH, individually


EKEH LEWIS, individually

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

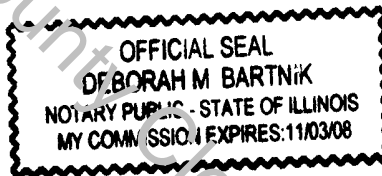
I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that PAUL PISULA, personally known to me to be the VICE PRESIDENT of **FIRST MIDWEST BANK**, an Illinois banking corporation, and the same person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT, appeared before me this day and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of NOVEMBER, 2005

Deborah M Bartnik
NOTARY PUBLIC

My Commission Expires:

11.3.2008



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO
HEREBY CERTIFY that Artur Feinberg, personally known to me to be the
AVP of FIFTH THIRD BANK (CHICAGO), a Michigan banking association,
and the same person whose name is subscribed to the foregoing instrument as such
AVP, appeared before me this day and acknowledged that he signed and delivered the
said instrument as his own free and voluntary act and the free and voluntary act of said Bank for the
uses and purposes therein set forth.

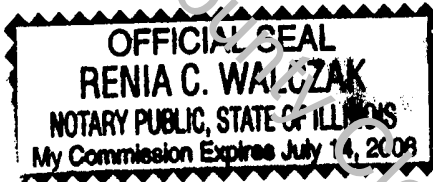
GIVEN under my hand and Notarial Seal this 1st day of November 2005

[Signature]

NOTARY PUBLIC

My Commission Expires:

07-14-2008

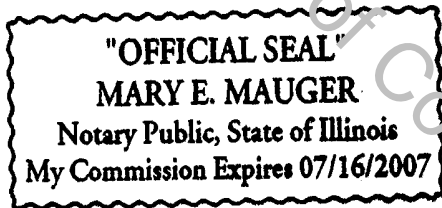


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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that PHYLUSS NASH, as OWNER, and BENEFICIARY as _____, of LASALLE BANK, N.A., a national banking association, not personally, but in its capacity as Trustee, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee as aforesaid. for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____.



Mary E. Mauger

NOTARY PUBLIC

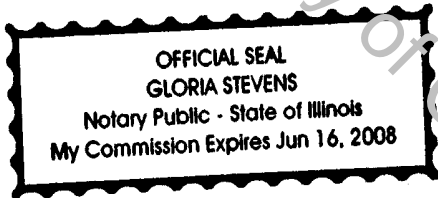
My Commission Expires: _____

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that Ekeh Lewis and Phyllis Nash, personally known to me to be the general partners of LE-NA ENTERPRISES, an Illinois general partnership, and the same persons whose names are subscribed to the foregoing instrument as such general partners, appeared before me this day and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and the free and voluntary act of said partnership for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of NOVEMBER 2005



Gloria Stevens
NOTARY PUBLIC

My Commission Expires:

6-16-08

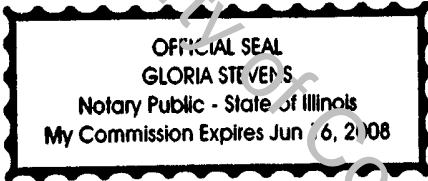
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that **PHYLLIS NASH**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that she signed and delivered the said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of NOVEMBER 2005.

Gloria Stevens
NOTARY PUBLIC



My Commission Expires:

6-16-08

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that EKEH LEWIS, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of NOVEMBER 2005.



Gloria Stevens
NOTARY PUBLIC

My Commission Expires:

6-16-08