

# UNOFFICIAL COPY



Doc#: 0701022071 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/10/2007 10:41 AM Pg: 1 of 10

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

John N. Oest  
Lord, Bissell & Brook LLP  
111 South Wacker Drive  
Chicago, IL 60606

## SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into this 4<sup>th</sup> day of January, 2007 by and between THE BRITISH SCHOOL OF CHICAGO, L.L.C., an Illinois limited liability company ("Tenant") and NATIONAL CITY BANK, a national banking association, as Agent for itself and other Lenders ("Agent").

### RECITALS:

- A. Agent has agreed to make a mortgage loan ("loan") to BLACKHAWK/HALSTED, LLC, an Illinois limited liability company ("Borrower" and "Landlord") in the maximum principal amount of \$ 70,000,000.00, to be secured by a mortgage (the "Mortgage") on the real property (the "Premises") legally described on Exhibit A attached hereto and made a part hereof.
- B. Tenant is present lessee under a lease dated March 3, 2006, of a portion of the Premises (said lease being referred to as the "Lease"); and
- C. Agent requires that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage and that Tenant attorn to Agent, and acknowledge that the lease is in full force and effect; and
- D. In return, Agent is agreeable to not disturbing Tenant's possession of the portion of the Premises covered by the Lease (the "Demised Premises"), so long as Tenant is not in default under the Lease

NOW THEREFORE, the parties hereby agree as follows:

1. Subordination. So long as Tenant's occupancy is not disturbed as provided in Section 2 below, the rights of Tenant in, to, and under the Lease, and the Demised Premises are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Mortgage, and to any and all renewals, modifications, and extensions thereof, and any and all other instruments held by Agent as security for the loan.

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2. Tenant Not to be Disturbed. So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants, or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Demised Premises, or any extension or renewal rights therefore in the Lease, shall not be diminished or interfered with by Agent, and Tenant's occupancy of the Demised Premises shall not be disturbed by Agent during the term of the Lease or any such extensions or renewals thereof, and (b) Agent 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 (or extinguish the purchase option of Tenant as provided below) and then only for such purposes and not for the purpose of terminating the Lease.

3. Tenant to Attorn to Agent. If Agent shall become the owner of the Demised Premises, or the Demised Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage, or the Demised Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Demised Premises and Tenant, and Tenant hereby attorns to Agent or any other such owner as its lessor, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that Agent or such other owner shall not be

- (a) liable for any act or omission of any prior lessor (including Borrower as lessor), or
- (b) subject to any offsets or defenses which Tenant might have against any such prior lessor; or
- (c) bound by any prepayment of rent or additional rent for more than one (1) month in advance which Tenant might have paid, except as otherwise expressly required by the terms of the Lease; or
- (d) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any such prior lessor made or given without the written consent of Agent or any subsequent holder of the Mortgage; or
- (e) bound to return any security deposit unless Agent has actually received that security deposit; or
- (f) bound by any covenant to perform (including without limitation, any covenant to complete) any renovation or construction in the Demised Premises or to pay any sums to Tenant in connection therewith

Tenant shall be under no obligation to pay rent to Agent or any such other owner until Tenant receives written notice from Agent or any such other owner that it has succeeded to Borrower's interest under the Lease.

4. Purchase Option. Any option or rights contained in the Lease, or otherwise, to acquire any or all of the Demised Premises, including but not limited to all rights set forth in

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Section 27 of the Lease are hereby expressly inapplicable to any foreclosure sale or to delivery of any deed-in-lieu of foreclosure.

5. Agent's Option to Cure Borrower's Default. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Agent at the address set forth below, provided however that Tenant shall have no obligation to deliver Agent any notice of default by Landlord under Section 29(c) of the Lease, nor afford Agent an opportunity to cure such default. Tenant agrees that Agent shall have the right to cure such default on behalf of Borrower within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed, or during any period that Agent is proceeding to cure such default with due diligence, or is diligently taking steps to obtain the right to enter the Demised Premises and cure the default-

6. Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered or delivered by a recognized overnight delivery service with proof of receipt, or on the third business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

To Tenant:

c/o British Schools of America  
4715 16th Street NW  
Washington DC 2001  
Attention: Finance Director  
Telephone No: (202) 829-3700  
Facsimile No.: (202) 726-1989

With a copy to:

Martin, Craig, Chester & Sonnenschein  
2215 York Road; Suite 550  
Oak Brook, Illinois 60523  
Attention: Cathleen Keating  
Telephone No: (630) 472-3407  
Facsimile No: (630) 472-0048

To Agent:

National City Bank  
One North Franklin; Suite 2150  
Chicago, IL 60606  
Attention: John Murphy  
Telephone No: (312) 384-6916  
Facsimile No: (312) 384-4623

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With a mandatory copy to:

Lord, Bissell & Brook LLP  
111 S. Wacker Drive  
Chicago, IL 60606  
Attention: John N. Oest  
Telephone No: (312) 443-0434  
Facsimile No: (312) 896-6434

and another mandatory copy to:

Agent Services  
629 Euclid Avenue  
Locator 01-3028  
Cleveland, OH 44114  
Attention: Traci Sajewski  
Telephone No: (216) 222-4526  
Facsimile No: (216) 222-0103

To Landlord:

Blackhawk/Halsted, LLC  
211 North Clinton Street  
Third Floor  
Chicago, IL 60661  
Attention: Daniel A. Lukas  
Telephone No.: (312) 261-5775  
Facsimile No: (312) 261-5776

With a mandatory copy to:

Stejkowski & Zaffere LLC  
211 North Clinton Street  
Second Floor  
Chicago, IL 60661  
Attention: David G. Stejkowski, Esq.  
Telephone No: (312) 373-7240  
Facsimile No: (312) 212-5557

7. Assignment of Lease. Tenant acknowledges that the interest of Landlord in the Lease is held by Borrower and that Borrower's interest has been assigned to Agent as security under the Mortgage and that Agent assumes no duty, liability, or obligation under the Lease or any extension or renewal of the Lease, either by virtue of said assignment or by any subsequent receipt or collection or rents under the assignment, and that unless the written consent of Agent is first obtained, no cancellation, surrender, or modification may be made of the Lease and no rental shall be paid other than as now provided in the Lease or in such modification of the Lease

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and may receive the written approval of Agent. Agent, or any subsequent owner claiming by through or under Agent (including any purchaser at a foreclosure sale) shall be liable only for the performance of the other obligations of Landlord under the Lease only during the period Agent, or such other owner shall hold such interest in the Demised Premises

8. Rental Payment. Until such time as Tenant is otherwise notified in writing by Agent, it shall make all rental payments under the Lease to Borrower as provided therein.

9. Successor and Assigns. This Agreement and each and every covenant, agreement, and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their heirs, administrators, representatives, successors, and assigns.

10. Non Reduction of Rent. The landlord and tenant represent and warrant that they have not heretofore and will not hereafter enter into any agreement between themselves or with third parties which in any way reduce the rental below its current monthly rate or allow an abatement in rental which would result in the failure to pay monthly rental payments to National City Bank as Agent or its successor in the event a default occurs in the obligation of the landlord to National City Bank as agents.

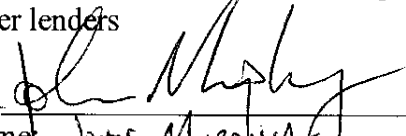
[Signature page to follow]

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IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above.

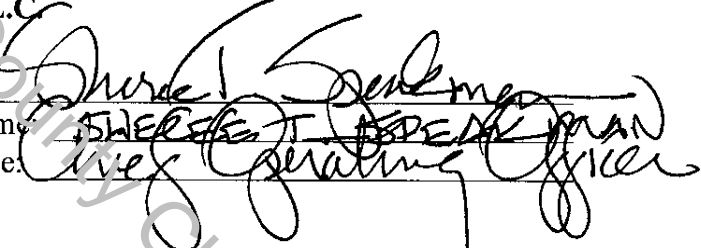
**AGENT:**

**NATIONAL CITY BANK**, as agent for itself and other lenders

By:   
Name: John Murphy  
Title: NICE PRESIDENT

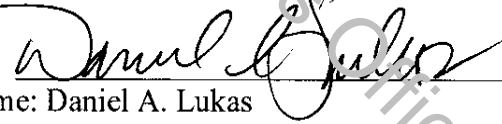
**TENANT:**

**THE BRITISH SCHOOL OF CHICAGO, LLC**

By:   
Name: STEVEN J. FEDERMAN  
Title: Chief Operating Officer

**LANDLORD:**

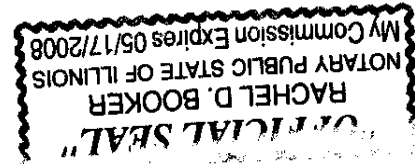
**BLACKHAWK/HALSTED, LLC**

By:   
Name: Daniel A. Lukas  
Its Manager

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[Acknowledgment of Agent)



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF LAKE )

On 15, 2007 before me, Rachel D. Booker, A Notary Public in and for said County and State, personally appeared John Murphy, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument on behalf of the Agent and acknowledged to me that he/she/they executed same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Rachel D. Booker

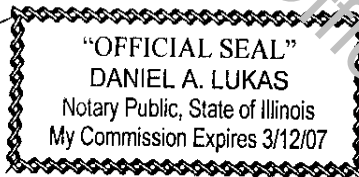
[Acknowledgment of Tenant)

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On JANUARY 4, 2007 before me, DANIEL A. LUKAS, a Notary Public in and for said County and State, personally appeared Shereka S. Spivey personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument on behalf of the Tenant and acknowledged to me that he/she/they executed same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Daniel Lukas



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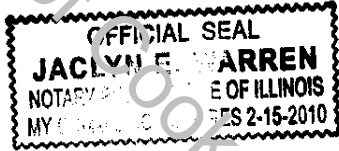
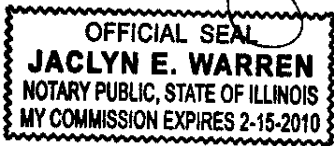
[Acknowledgement of Landlord]

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On January 4, 2007 before me, Jaclyn Warren, a Notary Public in and for said County and State, personally appeared Daniel A Lukas, the manager of the Landlord personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Jaclyn Warren



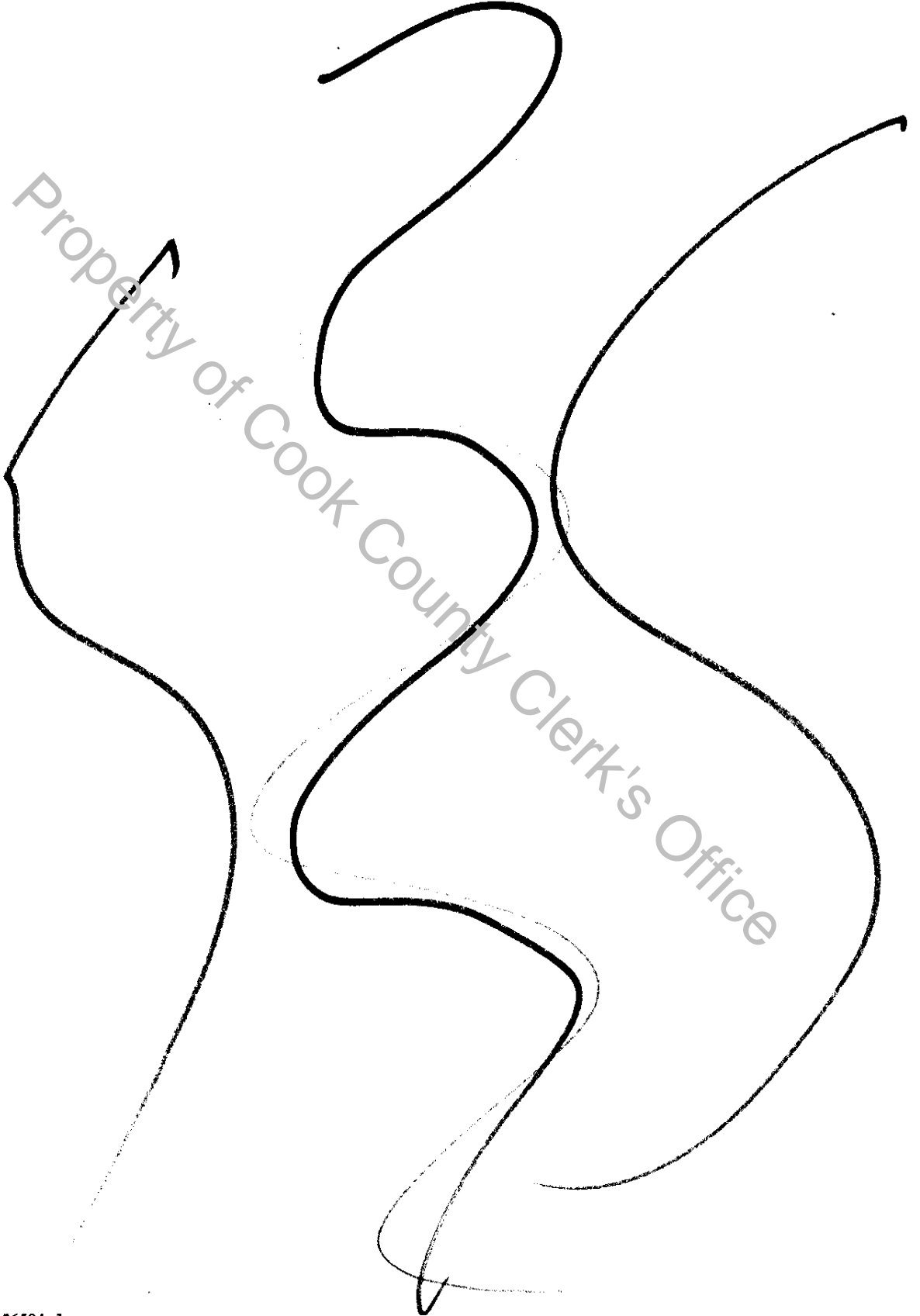
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Exhibit A

LEGAL DESCRIPTION OF THE REAL PROPERTY



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## LEGAL DESCRIPTION

### Parcel 1

THE WEST 66 FEET OF LOTS 14 AND 15 (EXCEPT THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET THEREOF); THE WEST 60 FEET OF LOTS 16, 17, 18, 19, 20, 21 AND 22 AND THE NORTH 2 FEET 11 INCHES OF THE WEST 60 FEET OF LOT 23 IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### Parcel 2

LOTS 1 TO 8, BOTH INCLUSIVE; THE NORTH  $\frac{1}{2}$  OF LOT 9; THAT PORTION OF THE VACATED ALLEY WEST OF AND ADJOINING SAID LOTS 1 TO 8, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 9 AND EAST OF AND ADJOINING LOTS 14 TO 21, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 22, LOTS 14 AND 15, EXCEPT THE WEST 66 FEET THEREOF; THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET OF THE WEST 66 FEET OF LOT 15; LOTS 16 TO 21, BOTH INCLUSIVE, EXCEPT THE WEST 60 FEET THEREOF AND THE NORTH  $\frac{1}{2}$  OF LOT 22, EXCEPT THE WEST 60 FEET THEREOF, ALL IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED AS TO SAID LOTS AND SAID BLOCK 59) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### Parcel 3

THE SOUTH  $\frac{1}{2}$  OF LOT 9, ALL OF LOTS 10, 11, 12 AND 13, THE SOUTH  $\frac{1}{2}$  OF LOT 22 (EXCEPT THE WEST 60 FEET THEREOF), LOT 23 (EXCEPT THE NORTH 2 FEET 11 INCHES OF THE WEST 60 FEET THEREOF), AND LOTS 24, 25, AND 26, AND THAT PORTION OF THE VACATED ALLEY WEST OF AND ADJOINING SAID LOTS 10 TO 13, BOTH INCLUSIVE, AND THE SOUTH  $\frac{1}{2}$  OF LOT 9, AND EAST OF AND ADJOINING SAID LOTS 23 TO 26, BOTH INCLUSIVE, AND THE SOUTH  $\frac{1}{2}$  OF LOT 22 IN BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PIN:** 17-05-219-002-0000, 17-05-219-003-0000, 17-05-219-005-0000, 17-05-219-006-0000

*S23 w. Blackhawk, Chicago, IL*