

RECORDING REQUESTED BY:



Doc#: 0703733100 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/08/2007 09:10 AM Pg: 1 of 8

WHEN RECORDED MAIL TO:

LOAN: \_\_\_\_\_

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT**

THIS AGREEMENT is entered into as of the 3/11 of January, 2007 by and among BANCO POPULAR NORTH AMERICA, "Tenant", HEDJO BANCO, LLC and EMAN PROPERTIES BANCO, LLC, collectively "Landlord", and LASALLE BANK NATIONAL ASSOCIATION, "Lender".

**RECITALS:**

This agreement is entered into with reference to the following facts:

- a. This Agreement affects the Property described in Exhibit "A" attached hereto.
- b. Landlord and Tenant have entered into the Lease covering the Premises in the Property.
- c. Lender will not make or continue the Loan to the Landlord which is secured by the Mortgage covering the property, unless the Lease is subordinated to the lien of the Mortgage.
- d. The parties hereto desire expressly to confirm the subordination of the Lease to the lien of the Mortgage, it being a condition precedent to Lender's obligation to make or continue the Loan that the lien of the Mortgage be at all times prior and superior to the leasehold interests and estates created by the Lease.
- e. Tenant has requested that Lender agree not to disturb Tenant's POSSESSORY rights in the Premises in the event Lender should foreclose the Mortgage and provided that Tenant is not then in default under the Lease and provided further that Tenant attorns to Lender or the purchaser at any foreclosure sale of the Property, Lender is willing to agree to such request.

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

**Subordination.** Anything to the contrary in the Lease notwithstanding, the Lease and the leasehold estate created thereby, and all of Tenant's rights thereunder, are and shall be and shall at all times remain subject, subordinate and inferior to the Mortgage and the lien thereof, and all rights of Lender thereunder and to any and all renewals, revisions, modifications, consolidations, replacements and extensions thereof.

**Acknowledgment and Agreement by Tenant.** Tenant acknowledges and agrees that:

- a. Tenant consents to the Mortgage and the agreements evidencing and securing the loan.
- b. Lender would not make or have made the Loan without this Agreement.

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**UNOFFICIAL COPY****SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT**

(continued)

- c. Tenant has notice that the Lease and the rent and all other sums are due thereunder have been assigned or are to be assigned to Lender as security for the Loan secured by the Mortgage. In the event that Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.
- d. Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Lender.
- e. Within ten (10) days after Lender's request, Tenant shall deliver to Lender and to any persona designated by Lender estoppel certificates executed by Tenant, in recordable form, certifying (If such be the case) that the Lease is in full force and effect, the date and amount of Tenant's most recent payment of rent, that there are no defenses or offsets outstanding under the Lease (or stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Lender may reasonably request.
- f. This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement from this Lender.

**Non-disturbance, Attornment and New Lease.** In the event of foreclosure of the Mortgage, or upon a sale of the Property pursuant to the trustee's power of sale contained herein, or upon a transfer of the Property by conveyance in lieu of foreclosure, then:

- a. **Non-disturbance and Attornment.** So long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, conditions of the Lease, the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Property and Tenant, subject to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease, including renewals or extensions thereof, if any. Tenant hereby agrees to attorn to and accept any such successor owner as Landlord under the Lease, and to be bound by and perform all of the obligations imposed on Tenant by the Lease, and Lender and any such successor owner of the Property will not disturb the possession of Tenant, and will be bound by all of the obligations imposed on the Landlord by the Lease during the period of time Lender or any such successor owner is the owner of the Property, provided, however, that Lender or any purchaser at a trustee's or sheriff's sale or any successor owner of the property, shall not be:
  - (i) liable for any act or omission of a prior landlord (including Landlord); or
  - (ii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
  - (iii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period of in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord including Landlord).
- b. **New Lease.** Upon Lender's written request Tenant given at any time after foreclosure, trustee's sale or conveyance in lieu thereof, Tenant (as tenant) agrees to execute a lease of the Premises with Lender or its successor (as landlord) upon the same terms and conditions as the Lease between Landlord and Tenant, which leases shall cover any unexpired term of the Lease existing at the time of such foreclosure, trustee's sale or conveyance in lieu of foreclosure; provided that the priority of such new lease, as between the parties thereto, is the same as the priority of the Lease, as between Tenant and Lender.
- c. Lender shall have no responsibility to provide (or liability for not providing) any additional space for which Tenant has any option or right under the Lease unless Lender at its option elects to provide the same and Tenant hereby releases Lender from any obligation it may otherwise have to provide the same, and agrees that Tenant shall have no right to cancel the Lease, abate rent or assert any claim against Lender as a result of the failure to provide any option space.

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## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

(continued)

**Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and mortgagor or trustier under the Mortgage, acknowledges and agrees for itself and its heirs, successors and assigns, that:

- a. This Agreement does not (1) constitute a waiver by Lender of any of its rights under the Mortgage; and/or (2) in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage.
- b. The provisions of the Mortgage remain in full force and effect and must be complied with by Landlord
- c. In the event Lender notifies Tenant of a default under the Mortgage, Tenant must pay all rent and all sums due under the Lease directly to Lender or as otherwise required pursuant to Lender's notice, and any and all claims for such rent and other sums by landlord against Tenant are hereby waived and released.

**No Obligation of Lender.** Lender shall have no obligation or incur marketability with respect to the erection or completion of the improvements in which the premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

### Miscellaneous.

- a. This Agreement supersedes any inconsistent provisions of the Lease.
- b. Nothing contained in the Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Mortgage.
- c. Lender shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.
- d. In the event that Lender shall acquire title to the Premises or the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the premises for the payment and discharge of any obligations; imposed upon Lender hereunder or under the Lease, and Lender is hereby released and relieved of any other obligations hereunder and under the lease.
- e. This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be in the responsibility of the party to whom Lender's interest is assigned or transferred; and provided further that the interest of Tenant under this Agreement may not be assigned or transferred without the prior written consent of Lender.
- f. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

[Signature Page Following]

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## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

(continued)

IN WITNESS WHEREOF, the parties have executed this Agreement at Chicago, Illinois, as of the day and year first above written.

**NOTICE:** THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT CONTAINS PROVISIONS WHICH ALLOWS THE PERSON OBLIGATED ON THE LEASE TO OBTAIN OR CONTINUE A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER THAN IMPROVEMENT OF THE PROPERTY.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, THE PARTIES CONSULT THEIR ATTORNEYS WITH RESPECT THERETO.

**LENDER:**

LASALLE BANK NATIONAL ASSOCIATION

By: *Simone E. Ewing*  
Authorized Officer

**TENANT:**

BANCO POPULAR NORTH AMERICA

By: *Jurate O'Brien*  
Jurate O'Brien, Vice President

**LANDLORD:**

HEDJO BANCO, LLC and EMAN PROPERTIES BANCO, LLC

By: *[Signature]*  
Authorized Signer

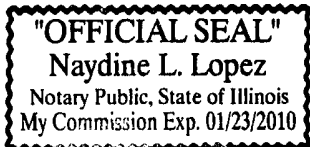
### CERTIFICATE OF ACKNOWLEDGMENT

STATE OF ILLINOIS  
COUNTY OF COOK

On December 19, 2006, before me, *Naydine L. Lopez*, personally appeared JURATE O'BRIEN, VICE PRESIDENT of BANCO POPULAR NORTH AMERICA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature 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]*

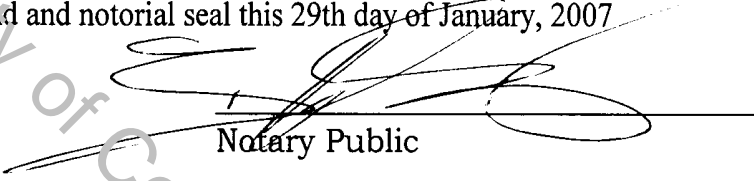


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STATE OF ILLINOIS     )  
   ) ss.:  
 COUNTY OF COOK        )

I, Barbara Lowery, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Timothy Ervin, the Managing Director of LaSalle Bank National Association, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the use and purposes therein set forth.

Given under my hand and notarial seal this 29th day of January, 2007

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

My commission expires: 05/12/2009



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## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT (continued)

### CERTIFICATE OF ACKNOWLEDGMENT

STATE OF ILLINOIS  
COUNTY OF COOK

On January 9th 2007, before me, ~~Robert Lee~~ Laverne M. Heiser, personally appeared PETER LEEB, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the 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.

Laverne M. Heiser



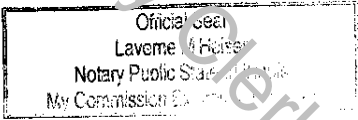
### CERTIFICATE OF ACKNOWLEDGMENT

STATE OF ILLINOIS  
COUNTY OF COOK

On January 9th 2007, before me, Laverne M. Heiser, personally appeared Cynthia E. Coleman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the 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.

Laverne M. Heiser



### CERTIFICATE OF ACKNOWLEDGMENT

STATE OF ILLINOIS  
COUNTY OF COOK

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the 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.

\_\_\_\_\_

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## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

(continued)

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### EXHIBIT "A"

#### PROPERTY DESCRIPTION

*see attached*

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 20 TO 28, BOTH INCLUSIVE, IN BLOCK 3 IN SIMON ETLINGER'S SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

pin numbers:

19-11-326-040

19-11-326-041

19-11-326-042

19-11-326-043

19-11-326-044

19-11-326-045

19-11-326-046

19-11-326-047

19-11-326-048