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Doc#: 0703935284 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/08/2007 01:25 PM Pg: 1 of 11

THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:

John W. Morse
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606
8365224-507
2700-193

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is dated January 17, 2007, and is between NATIONAL CITY BANK, a national banking association (the "Senior Mortgagee") and 5315 DANSHER LLC, an Illinois limited liability company (the "Junior Mortgagee").

The Senior Mortgagee, as a condition precedent to (A) extending a \$2,922,900 mortgage loan to Countryside Holdings, LLC an Illinois limited liability company (the "Mortgagor"), and (B) continuing to provide financial accommodations to Sokol and Company, an Illinois corporation ("Sokol"), has required the subordination of the Junior Indebtedness and the Junior Mortgage to the Senior Indebtedness and the Senior Mortgage, all as hereinafter defined, on the terms and conditions herein recited.

In consideration for the financial accommodations to be provided to Mortgagor by Senior Mortgagee and in consideration for continuing to provide financial accommodations to Sokol and for other good and valuable consideration to the Junior Mortgagee, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions:**

A. **Junior Indebtedness.** "Junior Indebtedness" as used herein means the indebtedness evidenced by that certain Secured Promissory Note, dated January 17, 2007, in the amount of \$648,000 made by Mortgagor in favor of Junior Mortgagee (the "Junior Note"), including any and all renewals, modifications, extensions, amendments, consolidations, and refinancings thereof, and all other indebtedness now or hereafter owed by the Mortgagor or Sokol to the Junior Mortgagee.

B. **Junior Mortgage.** "Junior Mortgage" as used herein means the Junior Mortgage, dated January 17, 2007, executed by Mortgagor in favor of Junior Mortgagee, to be recorded in the office of the Cook County Recorder of Deeds, mortgaging and conveying the Property to the

BOX 333-CP

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Junior Mortgagee to secure the Junior Note.

C. Paid In Full or Payment In Full. "Paid In Full" or "Payment In Full" as used herein means (i) the payment in full of the Senior Indebtedness in cash or cash equivalents acceptable to Senior Mortgagee, (ii) the written termination of any obligation on the part of Senior Mortgagee to make any further loans or to afford any other financial accommodation to the Mortgagor and Sokol, and (iii) the written release of all liens and security interests securing the Senior Indebtedness. Payment shall not be deemed to be indefeasible Payment In Full unless such payment shall have been retained by the Senior Mortgagee for a period of time in excess of all applicable preference or other similar periods under applicable bankruptcy, insolvency or creditors' rights laws.

D. Property. "Property" as used herein means the real estate legally described in Exhibit A attached hereto, and all improvements thereon.

E. Senior Indebtedness. "Senior Indebtedness" as used herein collectively means the indebtedness evidenced by (A) the \$2,922,900 Secured Promissory Note, dated January 17, 2007, made by Mortgagor in favor of Senior Mortgagee, and any and all renewals, modifications, extensions, amendments, refinancings, consolidations, conversions, increases, and restatements thereof or thereto; (B) all notes and instruments made by Sokol in favor of Senior Mortgagee; collectively with the note referred to in subparagraph (A), the "Senior Notes"); (C) any and all other loans, advances, overdrafts, indebtedness liabilities and obligations now or hereafter owed by Mortgagor and/or Sokol to the Senior Mortgagee, of every kind and nature, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now due or to become due, whether direct or indirect, or absolute or contingent, whether several, joint or joint and several, whether liquidated or unliquidated, whether legal or equitable, whether disputed or undisputed, whether secured or unsecured; (D) all interest, prepayment penalties, fees, charges, expenses, reasonable attorneys' fees and other costs and sums now or hereafter payable by the Mortgagor and/or Sokol under any of the loans or other indebtedness described in subsections (A), (B) and/or (C) above or under any of the loan documents evidencing or securing such loans or other indebtedness; (E) all Protective Advances (as hereinafter defined); and (F) all other indebtedness now or hereafter secured by the Senior Mortgagee.

F. Senior Mortgage. "Senior Mortgage" as used herein means collectively (i) that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of January 17, 2007 granted by Mortgagor in favor of the Senior Mortgagee, to be recorded in the office of the Cook County Recorder of Deeds, mortgaging and conveying the Property to the Senior Mortgagee to secure the Senior Notes and all other indebtedness therein described, and (ii) any UCC financing statement(s) now or hereafter recorded by Senior Mortgagee against either Mortgagor and/or Sokol, that is recorded against the Property.

2. Representations and Warranties of the Junior Mortgagee:

A. Junior Mortgagee represents to the Senior Mortgagee that Junior Mortgagee is the

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holder of the Junior Note and Junior Mortgage and that neither the Junior Note or Junior Mortgage: (i) has been negotiated, assigned, transferred or delivered to any party by Junior Mortgagee, and (ii) will hereafter be negotiated, assigned, transferred or delivered to any party by Junior Mortgagee, unless such party shall execute and deliver to the Senior Mortgagee a subordination agreement in identical form to this Agreement, with such changes thereto mutually agreed to by Senior Mortgagee and Junior Mortgagee's assignee.

B. Junior Mortgagee represents to the Senior Mortgagee that Mortgagor is current in the payment of all principal and interest due under the Junior Note and that to the best of Junior Mortgagee's knowledge, no default or condition which with the passage of time or giving of notice, or both, would constitute a default, exists under the Junior Note or Junior Mortgage.

3. Subordination.

A. Junior Mortgagee hereby subordinates the Junior Indebtedness and any and all other indebtedness now or at any time or times hereafter owing by the Mortgagor and/or Sokol, or any successor or assign of the Mortgagor and/or Sokol, including without limitation, a receiver, trustee or debtor-in-possession to the Junior Mortgagee, whether such indebtedness is absolute or contingent, direct or indirect and howsoever evidenced, including without limitation, all interest thereon, including pre-petition and post-petition interest, fees and expenses and any other charges, and any refinancings thereof to the Senior Indebtedness, including, but not limited to, all pre-petition and post-petition interest thereon, fees, expenses and all other demands, claims, liabilities or causes of action for which the Mortgagor and/or Sokol may now or at any time or times hereafter in any way be liable to the Senior Mortgagee, whether under any agreement, instrument or document executed and delivered or made by the Mortgagor and/or Sokol to the Senior Mortgagee or otherwise, including any refinancings thereof.

B. Until indefeasible Payment In Full of the Senior Indebtedness, Junior Mortgagee agrees to and does hereby subordinate its claim and right to receive payment of the Junior Indebtedness, or any part thereof, to Senior Mortgagee's claim and right to receive Payment In Full of the Senior Indebtedness. Junior Mortgagee hereby agrees not to accept any payment or distribution of any kind or character on account of the Junior Indebtedness from any person, until such time as the Senior Indebtedness shall have been Paid In Full. Should any payment or distribution of any kind or character be received by Junior Mortgagee on account of the Junior Indebtedness (including in the context of any insolvency proceeding) in violation of this Agreement prior to the time all of the Senior Indebtedness shall have been Paid In Full, Junior Mortgagee shall be deemed to have received the same in trust for the benefit of Senior Mortgagee and shall forthwith deliver the same to Senior Mortgagee in precisely the form received (except for the endorsement or assignment of Junior Mortgagee where necessary) for application against the Senior Indebtedness, whether due or not due. If Junior Mortgagee fails to assign or endorse any lien or payment received by Junior Mortgagee to Senior Mortgagee, then Senior Mortgagee, or any of its officers or employees, is hereby irrevocably authorized to make such assignment or endorsement. For that purpose, Junior Mortgagee hereby appoints Senior Mortgagee as its attorney in fact, which appointment is coupled with an interest and hence

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irrevocable. Mortgagor shall be permitted to pay, and Junior Mortgagee shall be permitted to receive regularly scheduled payments of interest or principal on the Junior Indebtedness in accordance with the terms of the Junior Note so long as: (i) at the time of such payment, or after giving effect thereto, no Event of Default (as such term is defined in the Senior Notes) has occurred and is continuing under the Senior Indebtedness or would occur after giving effect thereto; (ii) no interest is paid at any default rate established under the Junior Note; (iii) the total amount paid, directly or indirectly, by Mortgagor to Junior Mortgagee, John S. Novak, Sr. or any entity or trust owned by (in whole or in part) or controlled by (in whole or in part) John S. Novak, Sr. (collectively, the "Payees") shall not exceed \$250,000 per annum. Within ten (10) days after the end of each calendar year, Junior Mortgagee shall provide to Senior Mortgagee an annual report certifying all amounts received by the Junior Mortgagee from the Mortgagor during the prior calendar year. In the event that payments made to the Payees (as certified by the Junior Mortgagee and the Borrower) exceed \$250,000 per annum, Junior Mortgagee shall be required to disgorge, and immediately pay over to Senior Mortgagee, the difference between the amount paid to the Payees and \$250,000.

C. The Junior Mortgagee hereby subordinates the lien of the Junior Mortgage to the lien of the Senior Mortgage and agrees that the Junior Mortgage is subordinate, subject, and inferior, in payment and priority, to the Senior Mortgage. It is the intent of the parties hereto that the lien of the Senior Mortgage shall be superior to the lien of the Junior Mortgage for the purpose of securing the (i) the Senior Notes, and all renewals, modifications, extensions, amendments, refinancings, consolidations, conversions, increases, and restatements thereof or thereto, (ii) all advances made by Senior Mortgagee under the Senior Mortgage to pay for delinquent taxes (including interest and penalties) on the Property, insurance premiums for the Property, and all other costs expended to protect, perfect, preserve, defend or foreclose the lien of the Senior Mortgage (all of the foregoing collectively "Protective Advances"), and (iii) all other Senior Indebtedness, whether now existing or hereafter created or arising.

D. Junior Mortgagee shall have no right to take any action with respect to the Property, whether by judicial or non-judicial foreclosure, the seeking of the appointment of a receiver for any portion of the Property or otherwise, or to take possession of the Property, unless and until all of Senior Indebtedness shall have been Paid In Full.

E. In the event of the occurrence of any casualty with respect to any of the Property, Junior Mortgagee agrees that Senior Mortgagee shall have the sole and exclusive right to adjust, compromise or settle any such loss with the insurer thereof, and to collect and receive the proceeds from such insurer. Any insurer shall be fully protected if it acts in reliance on the provisions of this paragraph.

F. Junior Mortgagee hereby waives any and all rights to: (a) require Senior Mortgagee to marshal any property or assets of Mortgagor or to resort to any of the property or assets of Mortgagor in any particular order or manner; (b) require Senior Mortgagee to enforce any guaranty or any security interest or lien given by any person or entity other than Mortgagor to secure the payment of any or all of the Senior Indebtedness as a condition precedent or

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concurrent to taking any action against or with respect to the Property; (c) commence any proceedings (whether through the filing of an involuntary petition against Mortgagor or otherwise) under any bankruptcy, insolvency, reorganization, receivership or similar laws for arrangement of debts of Mortgagor; and/or (d) bring any action to contest the validity, legality, enforceability, perfection, priority or avoidability of any of the Senior Indebtedness, any of the loan documents evidencing or securing any of the Senior Indebtedness or any of the security interests and/or liens of Senior Mortgagee in or on any of the Property or any other collateral securing the Senior Indebtedness.

G. Junior Mortgagee hereby covenants and agrees that until the date which is ninety-one (91) days following the date on which all of the Senior Indebtedness shall have been Paid In Full, Junior Mortgagee will not commence, or join in the commencement of, or otherwise cause, invoke or solicit the commencement of, any insolvency proceeding against or concerning the Mortgagor or Sokol without the prior written consent of Senior Mortgagee. In the event any insolvency proceeding is commenced by or against the Mortgagor and/or Sokol, Senior Mortgagee and Junior Mortgagee agree that: (a) this Agreement shall remain binding upon and enforceable by and against each of Junior Mortgagee and Senior Mortgagee notwithstanding the commencement of such insolvency proceeding or the confirmation of any reorganization plan with respect thereto; and (b) in any insolvency proceeding (whether or not Senior Mortgagee has filed any claims therein), Junior Mortgagee agrees to cause any payment by, or distribution of the assets or properties of, the Mortgagor and/or Sokol to which Junior Mortgagee would be entitled except for the provisions of this Agreement, to be paid or distributed by the person making such payment or distribution directly to Senior Mortgagee until the Senior Indebtedness shall have been Paid In Full. With respect to any insolvency proceeding in which the Senior Mortgagee has or has a right to file any claims, Junior Mortgagee shall not file a motion for, or otherwise seek, relief from the automatic stay imposed in such insolvency proceeding, without the prior written consent of the Senior Mortgagee, and Junior Mortgagee shall not oppose any motion or other request made by Senior Mortgagee for relief from the automatic stay. With respect to any Insolvency Proceeding in which the Senior Mortgagee has or has a right to file any claims, Junior Mortgagee shall vote any and all claims it may have to accept or reject a reorganization plan as may be directed by Senior Mortgagee in its sole discretion.

4. **Continuing Subordination.** This Agreement constitutes a continuing subordination until all Senior Indebtedness shall have been Paid In Full.

5. **Effect of Waiver.** No waiver by the Senior Mortgagee of any right hereunder or under the Senior Indebtedness or the Senior Mortgage or any other agreement between the Mortgagor and/or Sokol and the Senior Mortgagee shall affect or impair any of the other rights of the Senior Mortgagee hereunder. A waiver by the Senior Mortgagee of any right hereunder shall be limited to the specific right and specific instance and shall not waive such right to the Senior Mortgagee with respect to another or a different occurrence of the event or another event in respect of which the waiver was given.

6. **Notices.** Any notice or other communication required or permitted to be given

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shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if by overnight courier, on the first business day after delivery to the courier; or (c) if by U.S. Mail, on the fourth (4th) day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

If to Junior Mortgagee: 5315 Dansher, LLC
5315 Dansher Road
Countryside, Illinois 60525
Attn: John S. Novak, Jr.

with a copy to: Goldstine, Skrodzki, Russian, Nemecek and Hoff Ltd.
835 McClintock Drive, Second Floor
Burr Ridge, Illinois 60527
Attn: Kenneth J. Nemecek, Jr.

If to Senior Mortgagee: National City Bank
2021 Spring Road, Suite 400
Oak Brook, Illinois 60523
Attn: Douglas Alwin

with a copy to: Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606
Attn: John W. Morse

or to either party at such other addresses as such party may designate in a written notice to the other party. "Business Day" shall mean any day when Senior Mortgagee is open for business other than Saturday, Sunday or any other day on which national banks in Chicago, Illinois are not open for business.

7. **Further Assurances.** Junior Mortgagee hereby covenants and agrees to take any and all additional actions and execute, deliver, file and/or record any and all additional agreements, documents and instruments as may be necessary or as Senior Mortgagee may from time to time reasonably request to effect the subordination and other provisions of this Agreement.

8. **Modifications in Writing.** No amendment, modification, supplement, termination, consent or waiver of or to any provision of this Agreement nor any consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by or on behalf of each of Junior Mortgagee and Senior Mortgagee.

9. **Miscellaneous.** This Agreement shall be interpreted and enforced in accordance

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with the internal laws of the State of Illinois (excluding conflicts of law rules). The invalidity or unenforceability of any provision hereof shall not affect, modify, or impair the validity and enforceability of all other provisions hereof. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their representatives, heirs, legatees, successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination Agreement on or as of the date and year first above written.

SENIOR MORTGAGEE:

NATIONAL CITY BANK

By: Doug Alwin
Name: Douglas Alwin
Title: Senior Vice President

JUNIOR MORTGAGEE:

5315 DANSHER, LLC, an Illinois limited liability company

By: _____
John S. Novak, Jr., Manager

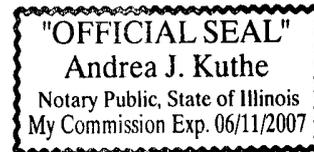
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Andrea Kuthe, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Doug Alwin, SVP of National City Bank, 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 severally acknowledged that he signed and delivered the said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of January, 2007.

Andrea J. Kuthe
Notary Public

My Commission Expires: 6/11/2007



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IN WITNESS WHEREOF, the parties hereto have executed this Subordination Agreement on or as of the date and year first above written.

SENIOR MORTGAGEE:

NATIONAL CITY BANK

By: _____

Name: _____

Title: _____

JUNIOR MORTGAGEE:

5315 DANSHER, LLC, an Illinois limited liability company

By: *John S. Novak, Jr.*
John S. Novak, Jr., Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, _____ of National City Bank, 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 severally acknowledged that he signed and delivered the said instrument as such officer, as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 2007.

Notary Public

My Commission Expires: _____

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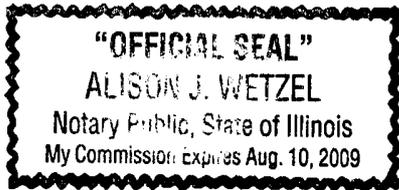
STATE OF ILLINOIS)
)
 COUNTY OF COOK)

SS

I, Alison J. Wetzel, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John S. Novak, Jr., the manager of 5315 Dansher, LLC, an Illinois limited liability company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument, as the manager, as his own free and voluntary act on behalf of the company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16th day of January, 2007.

Alison J. Wetzel
 Notary Public



My Commission Expires: Aug. 10, 2009

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EXHIBIT A

Legal Description

LOT "C" IN THE RESUBDIVISION OF LOT 4 IN TRACT 2 OF DANSHER INDUSTRIAL PARK, BEING A SUBDIVISION IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS

Common Address: 5315 Dansher Road
Countryside, Illinois 60525

PIN: 18-09-416-049-0000
18-09-416-050-0000

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