

# UNOFFICIAL COPY



Doc#: 0707845008 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/19/2007 10:13 AM Pg: 1 of 11

{SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT}

Property Address: 3700-3740 Sauk Trail, Richton Park, Illinois

P.I.N. # 31-26-311-003, 31-26-311-004, 31-26-311-005  
31-26-311-006, 31-26-311-012

**This Instrument prepared by:**

Blackwell Sanders Peper Martin LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112

**After recording return to:**

Blackwell Sanders Peper Martin LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112



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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

3736 Sauk Trail Plaza  
Richton Park, Illinois

This Agreement is made by SAUK TRAIL PLAZA, LLC, ("Lessor"), ICA MORTGAGE CAPITAL, LLC, ("Mortgagee") and MORAN FOODS, INC., a Missouri corporation, d/b/a Save-A-Lot, Ltd. ("Lessee") as of the 8 day of March, 2007 (the "Execution Date").

### RECITALS:

- A. Lessor is the owner of certain property (the "Shopping Center") situate in the City of Richton Park, County of Cook, State of Illinois and more particularly described in Exhibit A attached hereto;
- B. Lessor and Lessee are parties to a lease dated October 26, 2006, as amended from time to time thereafter (said lease as so amended hereinafter referred to as Lease) covering a portion of the Shopping Center ("Leased Premises"), which Leased Premises are more fully described in the Lease;
- C. The Shopping Center is to be encumbered by a certain Mortgage ("Mortgage") to secure certain obligations of Lessor to Mortgagee, which Mortgage is more fully described as follows: \*\* executed by Lessor to Mortgagee dated March 8, 2007 and recorded in the office of the Recorder of Deeds, County of Cook, State of Illinois as Document No. 0707845008 \*\* Mortgage, Assignment of Leases and Repts, Security Agreement and Financing Statement.

### AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Mortgagee hereby gives its consent to the Lease. Mortgagee warrants and represents to Lessee that it is the owner of the Mortgage; that the Mortgage has not been assigned and that Mortgagee has caused no other liens or encumbrances to be created against the Shopping Center other than the Mortgage.
2. Lessee, for itself and its successors and assigns, does hereby agree that all right, title and interest which Lessee, its successors and assigns, may have in and to the Leased Premises or any part thereof, shall be, and the same hereby is made, subject and subordinate to the lien of the Mortgage, with the same force and effect as though the Mortgage had been executed, delivered and recorded prior to the date of the Lease, provided that Mortgagee hereby agrees that all condemnation awards and property insurance proceeds payable with respect to the Shopping Center shall be applied and paid in the manner set forth in the Lease.
3. So long as Lessee is not in default, beyond any applicable cure period, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease requiring performance on the part of Lessee, (a) Mortgagee will not join Lessee as a party defendant in any action or proceeding for the purpose of foreclosing the Mortgage; (b) any sale or transfer of the Shopping Center or of Lessor's interest in the Lease,

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pursuant to foreclosure of the Mortgage or voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Lessee's possession under the Lease; and (c) the Lease will continue in full force and effect according to its terms.

4. So long as Lessee is not in default, beyond any applicable cure period, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease requiring performance on the part of Lessee, if the Shopping Center shall be transferred to and owned by Mortgagee, or any assignee of Mortgagee or purchaser at judicial sale or any transferee under an action in lieu thereof, by reason of foreclosure or other remedial proceedings brought by Mortgagee or any assignee of Mortgagee or by any other similar manner, Lessee's rights to possession of the Leased Premises under the Lease shall not be terminated thereby, rather Lessee shall attorn to and be bound to Mortgagee or any such assignee, purchaser or transferee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining; and Mortgagee or any such assignee, purchaser or transferee shall be bound, as the Lessor, to Lessee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining except that neither Mortgagee nor any such assignee, purchaser or transferee shall be:
  - 4.1. Bound by any rent or additional rent which Lessee may have paid for more than thirty (30) days in advance of its due date to any prior Lessor.
  - 4.2. Bound by any material amendment to the Lease entered into subsequent to the date of this Agreement which has not been consented to by Mortgagee which consent shall not be unreasonably withheld or delayed.
  - 4.3. Bound by any provision of the Lease restricting the use of properties owned by Mortgagee, other than the Shopping Center, for purposes which compete with Lessee.
5. Subject to the provisions hereof, the Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect to the lien of the Mortgage and to any and all amendments and renewals thereof.
6. This Agreement shall be binding upon and shall inure to the benefit of Lessor, Mortgagee and Lessee, and their respective heirs, personal representatives, transferees, successors and assigns. Except as provided in Section 8, no action on the part of any party to this Agreement shall be construed to be a waiver, release or relinquishment of any rights under this Agreement unless said waiver, release or relinquishment is expressly contained in an instrument executed by the party against whom the waiver, release or relinquishment is being enforced.
7. Lessee agrees that, during the term of the Mortgage, Lessee shall furnish to said Mortgagee the same notice or notices of default by Lessor that Lessee is required to furnish to Lessor under the Lease and Mortgagee shall have the same rights and period to cure such default as Lessor has under the Lease.
8. Mortgagee agrees to notify Lessee in writing of any release, termination or satisfaction of the Mortgage. If Lessee requests in writing that Mortgagee indicate whether the Mortgage has been released, terminated or satisfied and Mortgagee fails to provide written notice to Lessee indicating whether the Mortgage has been released, terminated

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or satisfied within twenty (20) days of such request, then Lessee shall no longer be required to give Mortgagee notices under Section 7 and Mortgagee shall not have the right to cure defaults as provided in Section 7 and Mortgagee's consent to material amendments to the Lease, as provided in Section 4.2, shall not be required.

9. Lessor will by a separate Assignment of Leases and Rents (hereinafter referred to as the "Assignment of Leases") assign its interest in the rents and payments due under the Lease to Mortgagee as security for repayment of its obligations to Mortgagee described in the Mortgage. If in the future there is a default by Lessor in the performance and observance of the terms of the Mortgage, Mortgagee may, at its option under the Assignment of Leases, require that all subsequent rents and other payments due Lessor under the Lease be paid directly to it. Upon notification to that effect to Lessee by Mortgagee, Lessor hereby authorizes and directs Lessee, and Lessee agrees (provided that such agreement shall not affect or limit any of Lessee's rights under the Lease, including but not limited to any rights of offset), to pay any subsequent payments due to Lessor under the terms of the Lease to Mortgagee. Lessor represents and warrants to Lessee that there are no other collateral assignments of the Lease or rents in effect, other than the Assignment of Leases to Mortgagee. Lessor further agrees that this Agreement shall constitute a direction to and full authority to Lessee to pay all such amounts to Mortgagee without proof of the default relied upon and that Lessee is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any amounts due to Lessor under the Lease and Lessee shall have no duty or obligation to inquire as to whether any default under the Mortgage has actually occurred or is then existing.
10. This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State of Illinois.
11. Any notices required or given under this Agreement shall be in writing and shall be sent by U. S. Certified Mail, postage prepaid and shall be sent to the following addresses:

To Mortgagee: ICA Mortgage Capital, LLC  
 c/o The Philipsborn Company  
 Attn: David Kupert  
 222 South Riverside Plaza, Suite 2330  
 Chicago, Illinois 60606

To Lessor: Sauk Trail Plaza, LLC  
 Attn: Richard Blaurock  
 630 S. Wenonah  
 Oak Park, Illinois 60304

To Lessee: Moran Foods, Inc.  
 Attn: Asset Management Group  
 100 Corporate Office Drive  
 Earth City, MO 63045

With copy to: Moran Foods, Inc.  
 Attn: Legal Department – East Building  
 100 Corporate Office Drive  
 Earth City, MO 63045

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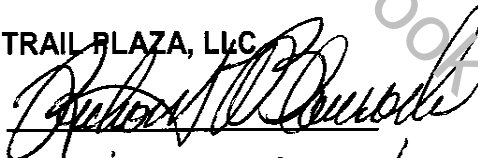
The addresses for such notices may be changed by written notice to the other party of at least thirty (30) days given as provided above. Notices given as provided above shall be deemed complete upon mailing.

- 12. This Agreement may be signed in counterparts and each counterpart shall be effective as an original when a counterpart has been signed by all parties.
- 13. This Agreement contains the entire agreement between the parties concerning the matters addressed herein and no representations, inducements, promises, understandings or agreements (whether express or implied and whether oral or written) made before the execution of this Agreement will change the terms of this Agreement. No covenants shall be implied into any of the terms or provisions of this Agreement. This Agreement may be changed or modified only by a writing that all parties have signed. This Agreement shall not be binding on any party until it is executed and delivered by each party hereto.

The parties hereto have executed this Agreement as of the Execution date.

**LESSOR:**

**SAUK TRAIL PLAZA, LLC**

By:   
 Print: Richard L. Burkrock  
 Its: MANAGER

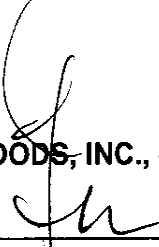
**MORTGAGEE:**

**ICA MORTGAGE CAPITAL, LLC**

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

**LESSEE:**

**MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd.**

By:   
 Print: G. F. Meyer  
 Its: Vice President

Cook County Clerk's Office

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The addresses for such notices may be changed by written notice to the other party of at least thirty (30) days given as provided above. Notices given as provided above shall be deemed complete upon mailing.

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The parties hereto have executed this Agreement as of the Execution date.

**LESSOR:**

**SAUK TRAIL PLAZA, LLC**

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

Print: \_\_\_\_\_

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

**MORTGAGEE:**

**ICA MORTGAGE CAPITAL, LLC**

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

Print: \_\_\_\_\_

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

**LESSEE:**

**MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd.**

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

Print: \_\_\_\_\_

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

Office of Cook County Clerk's Office

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## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_ )  
 )SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said \_\_\_\_\_ by it voluntarily executed.

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

My Commission Expires: \_\_\_\_\_

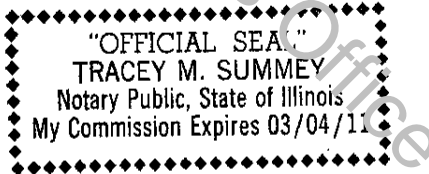
STATE OF Illinois )  
 )SS.

COUNTY OF Cook

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said County, personally appeared Richard L. Blawie to me personally known, who being by me duly sworn, did say that he/she is Manager of of South Park Plaza LLC, a Illinois Limited Liability Comp. and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said manager by it voluntarily executed.

Tracey M. Summey  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3-4-2011



STATE OF MISSOURI )  
 )SS.

COUNTY OF ST. LOUIS )

On this 16th day of February, 2007, before me, a Notary Public in and for said County, personally appeared G. F. Meyer, to me personally known, who being by me duly sworn, did say that he is Vice President of MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd, a Missouri corporation, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Lynn W. McQuesten  
\_\_\_\_\_  
Notary Public

My Commission Expires: Feb 4, 2008

**Lynn W. McQuesten**  
Notary Public  
State of Missouri  
St. Charles County  
My Comm. Exp.: Feb. 4, 2008

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## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_ )  
 )SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said \_\_\_\_\_ by it voluntarily executed.

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

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said \_\_\_\_\_ by it voluntarily executed.

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

My Commission Expires: \_\_\_\_\_

STATE OF MISSOURI )  
 )SS.  
COUNTY OF ST. LOUIS )

On this 16<sup>th</sup> day of February, 2007, before me, a Notary Public in and for said County, personally appeared G. F. Meyer, to me personally known, who being by me duly sworn, did say that he is Vice President of MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd, a Missouri corporation, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Lynn W. McQuesten  
\_\_\_\_\_  
Notary Public

My Commission Expires: Feb 4, 2008

Lynn W. McQuesten  
Notary Public  
State of Missouri  
St. Charles County  
My Comm. Exp.: Feb. 4, 2008



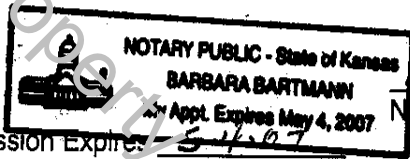
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## ACKNOWLEDGMENTS

STATE OF Kansas )  
 )SS.

COUNTY OF Johnson

On this 28<sup>th</sup> day of February, 2007, before me, a Notary Public in and for said County, personally appeared Kevin Ellis, to me personally known, who being by me duly sworn, did say that he/she is Manager of ICA Mortgage Capital, LLC, a limited liability company, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said Kevin Ellis by it voluntarily executed.



Barbara Bartmann  
Notary Public

My Commission Expires: 5-4-07

STATE OF \_\_\_\_\_ )  
 )SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said \_\_\_\_\_ by it voluntarily executed.

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

My Commission Expires: \_\_\_\_\_

STATE OF MISSOURI )  
 )SS.  
COUNTY OF ST. LOUIS )

On this 16<sup>th</sup> day of February, 2007, before me, a Notary Public in and for said County, personally appeared G. F. Meyer, to me personally known, who being by me duly sworn, did say that he is Vice President of MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd, a Missouri corporation, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Lynn W. McQuesten  
Notary Public

My Commission Expires: Feb 4, 2008

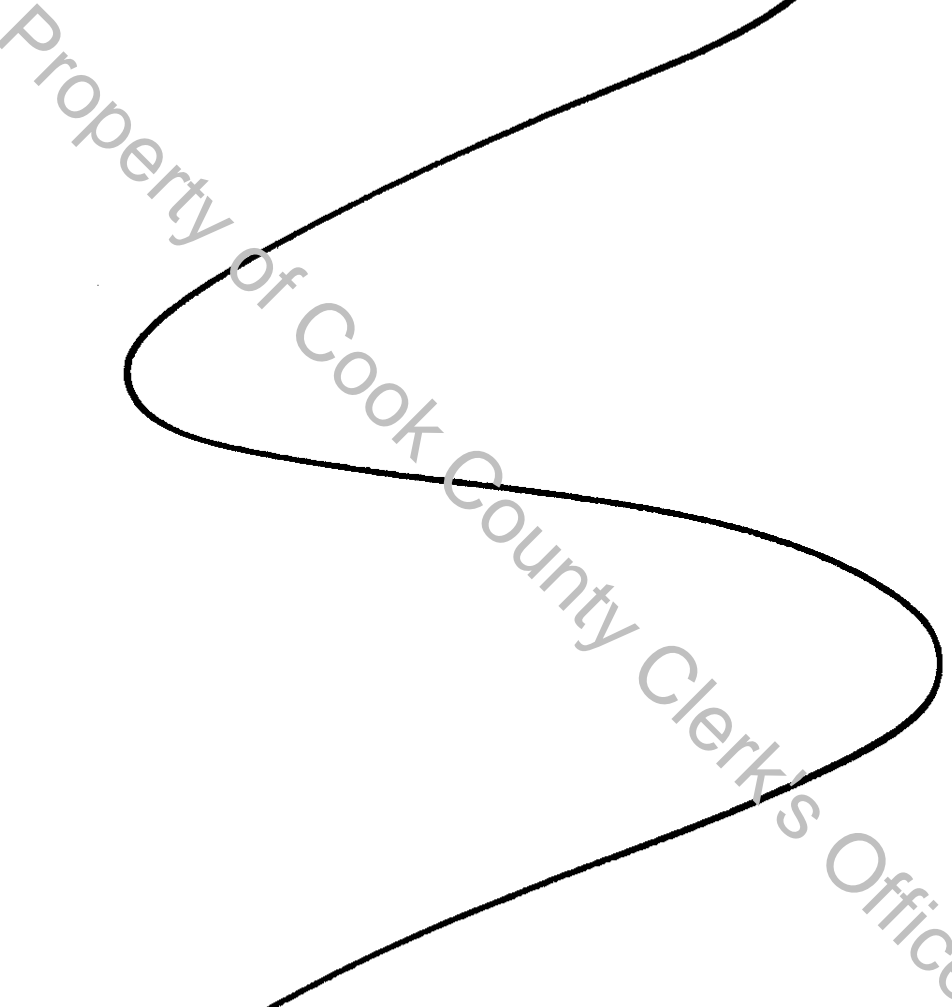
**Lynn W. McQuesten**  
Notary Public  
State of Missouri  
St. Charles County  
My Comm. Exp.: Feb. 4, 2008

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## EXHIBIT A

### LEGAL DESCRIPTION OF SHOPPING CENTER

Property of Cook County Clerk's Office



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## EXHIBIT A

### Legal Description

LOTS 1 TO 11, BOTH INCLUSIVE, IN BLOCK 6 IN SAUK TRAIL ESTATES, A SUBDIVISION OF PART OF SECTION 26, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY RIGHT OF WAY OF THE ILLINOIS CENTRAL RAILROAD COMPANY, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1945, AS DOCUMENT NUMBER 13480686 IN COOK COUNTY, ILLINOIS

Property Address: 3700-3740 Sauk Trail, Richton Park, Illinois

P.I.N. 31-26-311-003, 31-26-311-004, 31-26-311-005  
31-26-311-006, 31-26-311-012

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