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Doc#: 0710247061 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/12/2007 03:12 PM Pg: 1 of 10

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SUBORDINATION AND INTERCREDITOR AGREEMENT

Dated as of April 6, 2007.

Prepared by and after
recording return to:

Robert N. Sodikoff
Aronberg Goldgehn Davis & Garmisa
330 North Wabash, Suite 3000
Chicago, IL 60611

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SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement") is made as of this 6th day of April, 2007, by and among **VILLAGE BANK & TRUST** ("Senior Lender"), **FIRST DUPAGE BANK** ("Junior Lender") and **1340 WEST PRATT, LLC** ("Borrower").

RECITALS:

A. Senior Lender is the owner and holder of the certain indebtedness of Borrower ("Senior Indebtedness") evidenced by the Promissory Note, dated January 23, 2007, executed by Borrower in favor of Senior Lender in the amount of \$700,000.00 (the "Senior Note");

B. Senior Lender is also the owner and holder of that certain Mortgage dated January 23, 2007, granting Senior Lender a first lien mortgage on the property commonly known as 1340 West Pratt Boulevard a/k/a 6800 North Wayne Avenue, Chicago, Illinois and legally described on Exhibit A attached hereto and incorporated herein by reference (the "Senior Mortgage");

The Senior Note and the Senior Mortgage, together with all other documents and instruments evidencing and securing the Senior Note are hereinafter collectively referred to as the "Senior Loan Documents".

C. Junior Lender is or will be the owner and holder of certain indebtedness of Borrower (the "Junior Indebtedness") owed to Junior Lender, with a current principal balance outstanding of \$320,000, as follows:

(i) Mortgage Note, dated of even date herewith, executed by Borrower in favor of Junior Lender in the amount of \$320,000.00 (the "Junior Note").

D. Junior Lender is or will be also the owner and holder of the following document securing the Junior Note:

(i) Junior Mortgage and Assignment of Rents, dated of even date herewith, from Borrower in favor of Junior Lender, granting Junior Lender a second lien mortgage on the property commonly known as 1340 West Pratt Boulevard a/k/a 6800 North Wayne Avenue, Chicago, Illinois, and legally described on Exhibit A attached hereto and incorporated herein by reference (the "Junior Mortgage").

E. All documents, instruments and agreements evidencing the Junior Indebtedness and securing the Junior Indebtedness are hereinafter collectively referred to as the "Junior Loan Documents".

F. All obligations, liabilities and indebtedness of Borrower to Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the Senior Loan Documents, to the extent permitted to be incurred or to exist under the terms hereof, are herein called the "Senior Liabilities".

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G. All obligations, liabilities and indebtedness of Borrower to Junior Lender now existing or hereafter arising, due or to become due, under the Junior Indebtedness and the Junior Loan Documents are herein called the "Junior Liabilities".

H. Junior Lender has agreed, among other things, to make the loan evidenced by the Junior Note on the condition that Senior Lender enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and as an inducement to Junior Lender to make the loan evidenced by the Junior 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. Warranties of Senior Lender. Senior Lender represents and warrants that true, correct and complete copies of all documents evidencing and securing the Senior Liabilities have heretofore been delivered to Junior Lender and are described in Recital paragraphs A and B above.

2. Warranties of Junior Lender. Junior Lender represents and warrants that true, correct and complete copies of all documents evidencing and securing the Junior Liabilities have heretofore been delivered to Senior Lender and are described in Recital paragraphs C and D above.

3. Subordination of Liens. Junior Lender hereby agrees that the liens and security interest created by the Junior Loan Documents are and shall be subordinate to the liens and security interests created by the existing Senior Loan Documents and to the extent permitted hereunder 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 or in connection with the Senior Loan Documents pursuant to the terms hereof (to the extent and only if permitted under the terms of this Agreement).

4. Payment. Borrower shall only be permitted to make payments on the Senior Liabilities and the Junior Liabilities in accordance with the terms of the Senior Loan Documents or the Junior Loan Documents, as applicable. No other distributions whatsoever shall be made on account of the Junior Liabilities (including without limitation distribution of casualty insurance or condemnation proceeds) shall be made on account of the Junior Liabilities without Senior Lender's consent, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing to the contrary, Junior Lender shall be entitled to accept for its own account all outstanding principal and interest in respect of the Junior Indebtedness on the Maturity Date (as defined in the Junior Loan Documents) and any regularly scheduled payment of principal or interest in respect of the Junior Indebtedness, and any voluntary prepayment, and any payment of fees, costs, expenses, indemnities or other amounts constituting Junior Indebtedness made by Borrower from time to time when same is due and payable pursuant to the terms of the Junior Loan Documents.

5. Constructive Trust. Except for payments permitted to be made to Junior Lender pursuant to Section 4 hereof, if Junior Lender receives any payment or other distribution of any kind or character in respect to any condemnation award or insurance proceeds relating to the

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property subject to the Senior Mortgage, such payment or other distribution shall be received and shall be held by Junior Lender in trust for Senior Lender and promptly turned over by Junior Lender to Senior Lender. Junior Lender shall execute such further documents or instruments and take such further action as Senior Lender may reasonably require from time to time to effectuate the intent of this Agreement.

6. Certain Actions. Junior Lender hereby agrees that so long as the Senior Indebtedness remains unsatisfied, Junior Lender shall not collect escrow payments from Borrower in respect of the Junior Indebtedness or as required under any Junior Loan Document. Senior Lender hereby consents to the execution of the Junior Loan Documents by Borrower and agrees that the execution, delivery and recording, as applicable, of the Junior Loan Documents does not constitute a default or an Event of Default under the Senior Loan Documents.

7. Junior Indebtedness.

(a) **No Assignment.** Junior Lender shall not assign or otherwise transfer its interests in the Junior Indebtedness unless it provides Senior Lender with written notice of same and the assignee or transferee thereof agrees in writing to be bound by the provisions of this Agreement on the same terms as the Junior Lender.

(b) **No Amendment.** Without the prior written consent of Senior Lender, Borrower and Junior Lender will not amend or modify the Junior Indebtedness or the Junior Loan Documents in any way that will: (i) increase the payment rate of interest on the Junior Indebtedness in any manner that would require Borrower to pay (or accrue) monthly interest at a rate greater than the rate currently set forth in the Junior Loan Documents, (ii) increase the amount of payments required by the Junior Loan Documents (other than reasonable and customary fees charged in connection with waivers, consents, amendments and forbearances), (iii) increase the principal amount of the Junior Indebtedness, (iv) cross-collateralize the Junior Indebtedness with any other loan, (v) add additional default provisions to any of the Junior Loan Documents or delete existing notice and cure periods for any default (other than the addition of default provisions that are added to the Senior Loan Documents) or (vi) shorten the stated maturity date of the Junior Indebtedness.

(c) **Representations.** Junior Lender hereby represents and warrants to Senior Lender that to the knowledge of Junior Lender, there exists as of the date hereof no default, Event of Default or circumstance or state of facts that, with the giving of notice or the passage of time or both, could constitute such a default or Event of Default with respect to the Junior Indebtedness.

(d) **Junior Lender Default Notice.** Junior Lender shall use commercially reasonable efforts to copy Senior Lender on all written notices sent to Borrower with respect to any default or Event of Default under any of the Junior Loan Documents and to send such notices at the same time and in the same manner delivered to Borrower.

8. Senior Indebtedness.

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(a) **No Assignment.** Senior Lender shall not assign or otherwise transfer its interests in the Junior Indebtedness unless it provides Junior Lender with written notice of same and the assignee or transferee thereof agrees in writing to be bound by the provisions of this Agreement on the same terms as the Senior Lender.

(b) **No Amendment.** Subject to the foregoing, without the prior written consent of Junior Lender, Borrower and Senior Lender will not amend or modify the Senior Indebtedness or the Senior Loan Documents in any way that will: (i) increase the payment rate of interest on the Senior Indebtedness in any manner that would require Borrower to pay (or accrue) monthly interest at a rate greater than the rate currently set forth in the Senior Loan Documents, (ii) increase the amount of payments required by the Senior Loan Documents (other than reasonable and customary fees charged in connection with waivers, consents, amendments and forbearances), (iii) increase the principal amount of the Senior Indebtedness, (iv) cross-collateralize the Senior Indebtedness with any other loan, (v) add additional default provisions to any of the Senior Loan Documents or delete existing notice and cure periods for any default (other than the addition of default provisions that are added to the Junior Loan Documents) or (vi) shorten the stated maturity date of the Senior Indebtedness.

(c) **Representations.** Senior Lender hereby represents and warrants to Junior Lender that to the knowledge of Senior Lender, there exists as of the date hereof no default, Event of Default or circumstance or state of facts that, with the giving of notice or the passage of time or both, could constitute such a default or Event of Default with respect to the Senior Indebtedness.

(d) **Senior Lender Default Notice.** Senior Lender shall use commercially reasonable efforts to copy Junior Lender on all written notices sent to Borrower with respect to any default or Event of Default under the Senior Loan Documents and to send such notices at the same time and in the same manner delivered to Borrower.

9. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower, Borrower's creditors, or to Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of Borrower, or any sale of all or substantially all of the assets of Borrower, or otherwise), the Senior Liabilities shall first be paid in full from the proceeds arising from the foreclosure or sale of the property subject to the liens of the Senior Loan Documents before Junior Lender shall be entitled to receive and to retain any payment or distribution with respect to the Junior Liabilities arising out of the proceeds from the foreclosure or sale of such property.

10. **Subrogation.** Until such time as the Senior Liabilities have been paid in full, Junior Lender waives and releases any and all rights of subrogation which it has against the Borrower and which subrogation would result in Junior Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Junior Lender may advance either to cure defaults under security instruments or pay liens encumbering the Borrower or otherwise protect the lien of the Junior Loan Documents or any of them.

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11. Continuing Validity. Except as provided in this Agreement the terms and provisions of the Junior Loan Documents and the Senior Loan Documents shall remain in full force and effect.

12. Obligations of Borrower Absolute. Nothing contained in this Agreement is intended to or shall impair, as between the Borrower and their creditors other than Senior Lender, the obligations of the Borrower to the Junior Lender to pay the Junior Indebtedness as and when such Junior Indebtedness shall become due and payable in accordance with its terms, or to affect the relative rights of the Junior Lender and creditors of the Borrower other than the Senior Lender, nor shall anything herein prevent Junior Lender from exercising all remedies otherwise permitted by applicable law and the Junior Loan Documents upon the happening of a default under the Junior Loan Documents, subject to the rights of Senior Lender in respect to assets, whether in cash, property or securities, of the Borrower received upon the exercise of any such remedy.

13. Conflict with Documents. To the extent of any conflict between the provisions of this Agreement and any of the Senior Loan Documents, the provisions of this Agreement shall control. Similarly, to the extent of any conflict between the provisions of this Agreement and any of Junior Loan Documents, the provisions of this Agreement shall control.

14. Successors and Assigns This Agreement shall be binding upon Junior Lender and Senior Lender and their respective successors and assigns whether immediate or remote.

15. Notice. Any notice, demand or other communication which any party may desire or may be required to give 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 business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below:

If to Senior Lender:

Village Bank & Trust
234 West Northwest Highway
Arlington Heights, Illinois 60004
Attention: Christopher M. Henkel

with a copy to:

Attention: _____

If to Borrower:

1340 West Pratt, LLC
2636 North Lincoln Avenue
Chicago, Illinois 60614
Attention: John F. Lally

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11. Continuing Validity. Except as provided in this Agreement the terms and provisions of the Junior Loan Documents and the Senior Loan Documents shall remain in full force and effect.

12. Obligations of Borrower Absolute. Nothing contained in this Agreement is intended to or shall impair, as between the Borrower and their creditors other than Senior Lender, the obligations of the Borrower to the Junior Lender to pay the Junior Indebtedness as and when such Junior Indebtedness shall become due and payable in accordance with its terms, or to affect the relative rights of the Junior Lender and creditors of the Borrower other than the Senior Lender, nor shall anything herein prevent Junior Lender from exercising all remedies otherwise permitted by applicable law and the Junior Loan Documents upon the happening of a default under the Junior Loan Documents, subject to the rights of Senior Lender in respect to assets, whether in cash, property or securities, of the Borrower received upon the exercise of any such remedy.

13. Conflict with Documents. To the extent of any conflict between the provisions of this Agreement and any of the Senior Loan Documents, the provisions of this Agreement shall control. Similarly, to the extent of any conflict between the provisions of this Agreement and any of Junior Loan Documents, the provisions of this Agreement shall control.

14. Successors and Assigns This Agreement shall be binding upon Junior Lender and Senior Lender and their respective successors and assigns whether immediate or remote.

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If to Senior Lender:

Village Bank & Trust
234 West Northwest Highway
Arlington Heights, Illinois 60004
Attention: Christopher M. Henkel

with a copy to:

Attention: _____


If to Borrower:

1340 West Pratt, LLC
2636 North Lincoln Avenue
Chicago, Illinois 60614
Attention: John F. Lally


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

JUNIOR LENDER:
FIRST DUPAGE BANK

By: 
Dean Lawrence, Executive Vice President

SENIOR LENDER:
VILLAGE BANK & TRUST

By: 
Its: ALAN S. BAKER, SENIOR VICE PRESIDENT

BOBROWER:
1340 WEST PRATT, LLC,
an Illinois limited liability company

By: 
Steven Golovan, Manager

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Dean Lawrence, Executive Vice President of First DuPage Bank, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person 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 April, 2007.

Lorraine M. Pintozzi
Notary Public

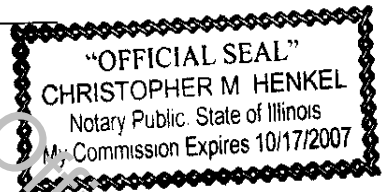
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Alan Silber, a SR. Vice President of Village Bank & Trust, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SR. Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5th day of April, 2007.

Christopher M. Henkel
Notary Public

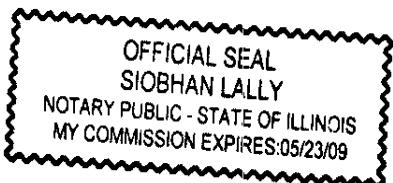
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Steven Golovan, Manager of 1340 West Pratt 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 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 6th day of April, 2007.

[Signature]
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

LOT 7 IN BLOCK 4 IN L. E. INGALL'S SUBDIVISION OF BLOCKS 5 AND 6 IN CIRCUIT COURT PARTITION OF THE EAST ½ OF THE NORTHWEST ¼ AND THE NORTHEAST FRACTIONAL ¼ OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART OF SAID LOT 7 CONVEYED TO THE CHICAGO MILWAUKEE AND ST. PAUL RAILROAD BY DEED DATED JULY 4, 1904, AND RECORDED AUGUST 17, 1904, AS DOCUMENT 3580383 AND EXCEPT THAT PART CONVEYED TO BURTON HANSON BY DEED DATED SEPTEMBER 22, 1910, AND RECORDED NOVEMBER 29, 1910, AS DOCUMENT 4670041 AND EXCEPT THAT PART DEEDED FOR PUBLIC STREET AND USED BY CHICAGO MILWAUKEE AND ST. PAUL RAILROAD COMPANY UNDER DOCUMENT NUMBER 6093233, APRIL 20, 1917, AND RECORDED IN BOOK 150, PAGES 30 AND 31, ALL IN COOK COUNTY, ILLINOIS.

REAL PROPERTY TAX IDENTIFICATION NUMBER: 11-32-122-007-0000

COMMONLY KNOWN AS: 1340 WEST PRATT BOULEVARD
A/K/A 6800 NORTH WAYNE AVENUE
CHICAGO, ILLINOIS 60626