

UNOFFICIAL COPY



Doc#: 0734122055 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/07/2007 12:10 PM Pg: 1 of 13

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the 6th day of December, 2007 by and between LASALLE BANK NATIONAL ASSOCIATION ("Senior Lender") and THE SISTERS OF SAINT CASIMIR OF CHICAGO ("Junior Lender").

RECITALS:

8389921 Korman D1 495
A. Junior Lender has heretofore made a loan ("Junior Loan") to Holy Cross Hospital, an Illinois not-for-profit corporation (the "Borrower"). The Junior Loan is evidenced by a certain Secured Revolving Demand Note dated as of November 1, 2004 (the "Junior Note"). The Junior Note is secured by a Security Agreement dated as of November 1, 2004 ("Junior Security Agreement") providing Junior Lender with a lien in all of the Borrower's accounts (including "Accounts" as defined in Section 9-106 of the Uniform Commercial Code), contract rights (including rights to receive payments and other rights under all equipment and other leasing contracts) and rights to payment and rights or accounts receivable evidencing or representing indebtedness due or to become due to the Borrower on accounts of goods sold or leased or services rendered, claims, instruments and other general intangibles (including tax refunds, royalties and all the rights to the payment of money of every nature and description, including, but not limited to, any such right and evidenced by chattel paper and all liens, securities, guarantees, remedies, security interests and privileges pertaining thereto (the "Junior Collateral"). The Junior Note and the Junior Security Agreement are collectively referred to as the "Junior Loan Documents", and all obligations of Borrower to Junior Lender, however created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, are referred to herein as "Junior Obligations".

B. Pursuant to the terms and conditions contained in a certain Letter of Credit Agreement dated as of December 1, 2007, executed by and between the Borrower and the Senior Lender (the "Letter of Credit Agreement"), the Borrower has requested that the Senior Lender issue its Irrevocable Transferable Direct-Pay Letter of Credit to Wells Fargo Bank, National Association. As security for the payment of its Obligations (as defined in the Letter of Credit Agreement) to the Senior Lender under the Letter of Credit Agreement, the Borrower has executed and delivered to the Senior Lender that certain Holy Cross Hospital Direct Note

UNOFFICIAL COPY

Obligation, Series 2007B (LaSalle Bank), of even date herewith (as amended, restated or replaced from time to time, the "LaSalle Bank Master Note") pursuant to the Master Indenture (as defined in the Letter of Credit Agreement), executed by the Borrower and made payable to the order of the Senior Lender in the principal amount of \$16,153,424.66. The Borrower has also executed a Mortgage, of even date herewith ("Senior Mortgage") providing the Senior Lender with a first lien in the real estate legally described in Exhibit A attached hereto (the "Hospital Property"). The Hospital Property and all other collateral securing the Senior Obligations under the Senior Loan Documents are referred to herein as the Senior Collateral. The LaSalle Bank Master Note, the Letter of Credit Agreement and each of the Related Documents, as defined in the Letter of Credit Agreement, as amended, restated or replaced from time to time, being collectively referred to herein as the "Senior Loan Documents", and all obligations of Borrower to Senior Lender, however created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, are referred to herein as "Senior Obligations".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Junior Lender and Senior Lender hereby agree that until Senior Lender has, in writing, notified Junior Lender that the obligations evidenced and secured by the Senior Loan Documents have been paid and satisfied in full and all obligations arising in connection therewith have been discharged:

1. Subordination of Junior Obligations and Junior Loan Documents.

a. The Junior Loan Documents and the obligations and liens arising in connection therewith are and shall continue to be expressly subject and subordinate to the lien of the Senior Loan Documents, and to any and all advances, in whatever amount and whenever made, with interest thereon, and to any and all expenses, charges and fees incurred by the Senior Lender pursuant to the terms of the Senior Loan Documents (including, but without limitation, any and all such advances, interest, expenses, charges and fees (including those made pursuant to amendments or modifications to the Senior Loan Documents) which may increase the indebtedness secured by the Senior Loan Documents above the original principal amount thereof).

b. Regardless of whether a default exists under the Junior Loan Documents, Junior Lender shall not, without the prior written consent of Senior Lender and except as set forth in Paragraph 2 of this Agreement either: (a) demand payment of, sue for or accept any payments on account of all or any part of the Junior Obligations, or (b) take any action to enforce any security interest in or lien on, or accept any transfer of, or exercise any other rights with respect to the Senior Collateral or any other property in which Junior Lender now or at any time hereafter has a security interest pursuant to the Junior Loan Documents (including, without limitation, the commencement of a foreclosure action), until Senior Lender has notified Junior Lender in writing that all of the Senior Obligations have been paid and satisfied in full and have been discharged.

c. Upon a distribution of the assets or readjustment of the indebtedness of Borrower by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all

UNOFFICIAL COPY

or any of the debts of Borrower, the application of the Senior Collateral to the payment, liquidation or satisfaction of the Senior Obligations shall have priority over the payment, liquidation and satisfaction of the Junior Obligations. Senior Lender is irrevocably authorized and empowered to receive and collect any and all dividends, payments and distributions made on account of any proof of claim relating to the Junior Obligations in whatever form the same may be paid or issued until the Senior Obligations are fully and indefeasibly satisfied in cash. Junior Lender agrees to file a proof of claim in respect of the Junior Obligations and to execute and deliver to Senior Lender such assignments or other instruments as Senior Lender may require to enable Senior Lender to collect all dividends, payments and distributions which may be made at any time on account of the Junior Obligations until Senior Lender has notified Junior Lender in writing that the Senior Obligations have been paid and satisfied in full and have been discharged.

d. Whether or not a default under the Senior Loan Documents exists, if Senior Lender undertakes to enforce its liens, security interests and other rights under the Senior Loan Documents, Junior Lender agrees that it will not hinder, delay or otherwise prevent Senior Lender from taking any and all action Senior Lender deems necessary or appropriate to enforce its liens, security interests and other rights under the Senior Loan Documents.

e. In the event that, despite the provisions herein, any payment shall be paid or delivered to Junior Lender in violation of the terms of this Agreement, Junior Lender shall hold such payment in trust for the benefit of Senior Lender and shall immediately pay and deliver such payment to Senior Lender. In such event, Junior Lender agrees to reimburse Senior Lender for all costs, including reasonable attorney's fees, incurred by Senior Lender in the course of collecting said sums should Junior Lender fail to voluntarily turn the same over to Senior Lender as herein required.

2. Permitted Payments. Notwithstanding anything to the contrary contained herein, provided that no default has occurred under any of the Senior Loan Documents, Borrower may make regularly scheduled payments of interest on the Junior Obligations to Junior Lender so long as such payment will not create a default under any of the Senior Loan Documents.

3. Insurance Proceeds and Claims. Junior Lender shall have no right to participate in the adjustment or settlement of insurance losses or condemnation claims regarding the Senior Collateral. Junior Lender hereby agrees, upon the request and at the direction of Senior Lender, to endorse in favor of Senior Lender any and all checks payable to the Junior Lender which represent insurance and condemnation proceeds paid for claims relating to the Senior Collateral in any way. Junior Lender hereby appoints Senior Lender as its attorney-in-fact, in its place and stead, to settle all insurance and/or condemnation claims relating to the Senior Collateral and to receive all payments and endorse all checks with regard thereto to the full extent of all amounts secured by the Senior Loan Documents. Senior Lender shall remit to Junior Lender, to the extent permitted by law, any portion of the insurance proceeds and/or condemnation awards remaining after payment in full of the Senior Obligations.

UNOFFICIAL COPY

4. Amendment and Modifications. Junior Lender shall not amend or modify or consent to the amendment or modification of any of the Junior Loan Documents to the extent the same affects the Senior Collateral without the prior written approval of Senior Lender.

5. Waiver of Notices, Defenses, Etc. Junior Lender hereby waives: (i) notice of the existence, creation or non-payment of all or any of the Senior Obligations and (ii) all diligence by Senior Lender in collection or protection of or realization upon the Senior Loan Documents; and (iii) any protest, defense, claim or objection, in any way relating to any amendment, modification, renewal or extension of the terms and provisions of any of the Senior Loan Documents, including, without limitation, any increase in the Senior Obligations or extension of time for payment of the Senior Obligations.

6. Commencement of Bankruptcy Proceedings. Junior Lender agrees not to commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to Borrower without first obtaining Senior Lender's prior written consent; provided, however, the foregoing shall not prohibit Junior Lender from participating in any proceeding commenced by Borrower, Senior Lender or other unrelated third parties.

7. Commencement of Collateral Proceedings. Junior Lender agrees not to commence, or join with any other creditor in commencing, any action affecting any management agreement, personal property lease, conditional sales agreement, executory contract or lease of any Senior Collateral (collectively the "Lease"), or take any action to subordinate any such Lease to the Junior Loan Documents, or any of them, until such time as the Senior Obligations have been fully and indefeasibly satisfied in cash.

8. Action Taken by Senior Lender. Senior Lender may, from time to time, whether before or after any discontinuance of this Agreement, at its sole discretion, without notice to the Junior Lender or any other party, and without impairing or affecting this Agreement or any of Senior Lender's rights hereunder or under the Senior Loan Documents, take any or all of the following actions: (i) retain or obtain a security interest in any property to secure any of the Senior Obligations; (ii) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Obligations; and (iii) extend or renew (for one or more periods) or release, compromise, modify, amend, alter or exchange any obligations of Borrower or any other obligor with respect to the Senior Obligations or the Senior Collateral.

9. Remedies Upon Default. Junior Lender hereby covenants and agrees that upon the occurrence of a default under the Senior Loan Documents, Senior Lender may, at its sole discretion, without notice to Junior Lender: (i) with or without releasing and extinguishing any liens or security interests created by the Senior Loan Documents, cause title in and to all or any portion of the Senior Collateral to be transferred, assigned or conveyed to a nominee for Senior Lender, subject to the lien, if any, of the Junior Loan Documents (and such transfer shall not constitute an event of default under the Junior Loan Documents); (ii) take possession of the Senior Collateral and take all actions necessary to operate and maintain the Property, including, without limitation, the right to complete construction of the improvements and the right to lease or sell all or any portion of the Senior Collateral or any interest in the Senior Collateral, without Senior Lender's having any obligation to commence a foreclosure proceeding or have a receiver

UNOFFICIAL COPY

appointed and/or (iii) exercise all rights and remedies available at law and under the Senior Loan Documents. Junior Lender hereby waives the right to assert any and all claims and defenses against Senior Lender relating to or arising from any action taken by Senior Lender pursuant to this Agreement, including, without limitation, the right to assert that the Senior Mortgage was merged into any deed or instrument of conveyance to a nominee for Senior Lender.

10. Assignment by Senior Lender. Senior Lender may, from time to time, whether before or after any discontinuance of this Agreement, at its discretion and without notice to the Junior Lender, assign or transfer any or all of the Senior Obligations or any interest therein and/or any or all of the Senior Loan Documents, or any interest therein, and notwithstanding any such assignment or transfer or subsequent assignment or transfer thereof, the Senior Obligations and Senior Loan Documents shall be and remain Senior Obligations and Senior Loan Documents for the purposes of this Agreement.

11. Waiver of Right of Subrogation. Until such time as the Senior Obligations have been paid in full, Junior Lender waives and releases any and all rights of subrogation which Junior Lender may have against the Senior Collateral 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 the Junior Loan Documents or pay liens encumbering the Senior Collateral or otherwise protect any liens arising under the Junior Loan Documents.

12. Notices. Any notice required or desired to be served, given or delivered hereunder shall be in writing (including facsimile transmission), and shall be deemed to have been validly served, given or delivered upon the earlier of (a) personal delivery, (b) in the case of mailed notice, three (3) days after deposit in the United States mail, with proper postage for certified mail, return receipt requested, prepaid, or in the case of notice by Federal Express or other reputable overnight courier service, one (1) Business Day after delivery to such courier service, and (c) in the case of facsimile transmission, upon transmission with confirmation of receipt, in any such case addressed to the party to be notified in accordance with the notice address set forth in the Senior Mortgage and the Junior Security Agreement, with respect to the Junior Lender.

13. Governing Law, Etc. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The captions herein are for purposes of convenience only. This Agreement may be modified only by an agreement in writing signed by the parties hereto.

14. Binding Effect. This Agreement shall be binding upon Junior Lender and Senior Lender and their respective heirs, legatees, legal representatives, successors and assigns, including any owner or holder of any of the Junior Loan Documents or Senior Loan Documents, and shall inure to the benefit of Senior Lender, its successors and assigns, including any subsequent owner or holder of any of the Senior Loan Documents.

UNOFFICIAL COPY

15. Waivers. Junior Lender agrees that Senior Lender shall be entitled to manage and supervise its loans to Borrower as Senior Lender shall deem appropriate and such management and supervisory practices shall not affect the validity or enforceability of this Agreement. Senior Lender shall have no liability to Junior Lender for, and Junior Lender waives any claim which Junior Lender may have against Senior Lender, now or in the future, arising out of (i) any action which Senior Lender takes or fails to take with respect to any agreement related to the Senior Obligations or to the collection of the Senior Obligations or the valuation, use, protection or release of the Senior Collateral, (ii) Senior Lender's election, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 1101 et seq.) (the "Code"), of the application of Section 1111(b)(2) of the Code, or (iii) any borrowing or grant of a security interest under Section 363 or 364 of the Code by Borrower, as debtor in possession.

UNOFFICIAL COPY

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

JUNIOR LENDER:

THE SISTERS OF SAINT CASIMIR OF CHICAGO

By: Sister M. Immacula Wendt
Name: Sister M. Immacula Wendt
Title: President

SENIOR LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: Barbara R. Winder
Name: Barbara R. Winder
Title: FVP

Property of Cook County Clerk's Office

UNOFFICIAL COPY

AGREEMENT OF BORROWER

Borrower acknowledges receipt of a copy of the foregoing Subordination Agreement, and agrees to be bound by the terms and provisions thereof, to mark its books and records so as to clearly indicate that the Junior Loan Documents are subordinated to the Senior Loan Documents in accordance with the terms of such Subordination Agreement, to make no payments or distributions contrary to the terms and provisions thereof, and to do every other act and thing necessary or appropriate to carry out such terms and provisions. In the event of any violation of any of the terms and provisions of the foregoing Subordination Agreement by reason of any act or omission within the direct or indirect control of Borrower, then, at the election of Senior Lender, any and all Senior Obligations shall forthwith become due and payable.

Dated: DECEMBER 6, 2007

HOLY CROSS HOSPITAL, an Illinois not-for-profit corporation

By: 

Name: GARY ZMihal

Title: VICE PRESIDENT

UNOFFICIAL COPY

ACKNOWLEDGMENT

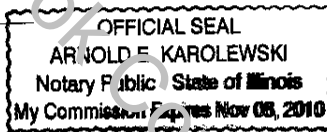
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, ARNOLD E. KAROLEWSKI, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Barbara R. Winter, the First Vice President of LaSalle Bank National Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such First Vice President, appeared before me this day in person and acknowledged that she signed and delivered said instrument as her own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this 25th day of DECEMBER, 2007.

Arnold E. Karolewski

Notary Public
My Commission Expires:



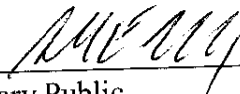
UNOFFICIAL COPY

ACKNOWLEDGMENT

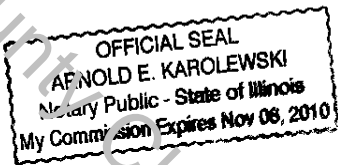
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that GARY ZMAHAL personally known to me to be the VICE PRESIDENT of Holy Cross Hospital, an Illinois not-for-profit corporation, and personally known to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as VICE PRESIDENT of such company as his free and voluntary act and deed and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

Given under my hand and official seal this 6th day of DECEMBER, 2007



 Notary Public



UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL 1:

BLOCKS 5 AND 6 EXCEPT THE EAST 150 FEET OF BLOCK 6 AND EXCEPT THE WEST 35 FEET OF THE EAST 185 FEET OF THE SOUTH 180 FEET OF BLOCK 6 IN HIRSH AND YOUNG'S SUBDIVISION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO THAT PART OF VACATED WEST 68TH STREET LYING EASTERLY OF THE EAST LINE OF SOUTH CALIFORNIA AVENUE AND WESTERLY OF THE WEST LINE OF SOUTH WASHTENAW AVENUE EXCEPT THE EAST 150 FEET OF THE SOUTH ONE HALF THEREOF, LYING NORTH OF AND ADJOINING BLOCK 6 IN HIRSH AND YOUNG'S SUBDIVISION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

VACATED PART OF SOUTH FAIRFIELD AVENUE EAST OF AND ADJOINING THE EAST LINE OF BLOCK 5 AND WEST OF AND ADJOINING THE WEST LINE OF BLOCK 6, IN HIRSH AND YOUNG'S SUBDIVISION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, THAT PART OF SAID STREET BEING OTHERWISE COMMONLY DESCRIBED AS THAT PART OF SOUTH FAIRFIELD AVENUE BETWEEN THE SOUTH LINE OF WEST 68TH STREET AND THE NORTH LINE OF WEST 69TH STREET, CHICAGO IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 13, 14, 15, AND 16 IN WILLIAM H BRITTIGAN'S RESUBDIVISION OF LOTS 1-11 BOTH INCLUSIVE, IN BLOCK 1 AND LOTS 1 TO 11 BOTH INCLUSIVE IN BLOCK 2 IN C.S. THORNTON'S SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOTS 9 AND 10 IN WILLIAM BRITTIGAN'S RESUBDIVISION OF LOT 1 TO 11 BOTH INCLUSIVE, IN BLOCK 1 AND LOTS 1 TO 11 BOTH INCLUSIVE IN BLOCK 2, IN C.S. THORNTON'S SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24 TOWNSHIP 38 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 5:

LOTS 11 AND 12 IN WILLIAM BRITTIGANS RESUBDIVISION OF LOT 1 TO 11 BOTH INCLUSIVE, IN BLOCK 1 AND LOTS 1 TO 11 BOTH INCLUSIVE IN BLOCK 2, IN CS THORNTONS SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24 TOWNSHIP 38 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

2701 W. 68th Street
Chicago, Illinois 60629

PERMANENT TAX IDENTIFICATION NUMBER:

19-24-406-003-0000
19-24-413-001-0000
19-24-413-002-0000
19-24-413-003-0000
19-24-413-004-0000
19-24-413-007-0000
19-24-413-008-0000

Prepared by and after recording return to:

George J. Schaefer
Foley & Lardner LLP
321 N. Clark Street, Suite 2800
Chicago, Illinois 60610