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Doc#: 0809154029 Fee: \$102.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/31/2008 09:51 AM Pg: 1 of 13

**SUBORDINATION AGREEMENT**

0711-29519 30FS  
THIS SUBORDINATION AGREEMENT ("Agreement"), dated as of this 17th day <sup>17</sup> of March, 2008, and relating to the current and future indebtedness owed by **James D. Bannos and Annamarie Bannos**, individuals, ("Borrower"), to **AMERICAN ENTERPRISE BANK**, an Illinois banking corporation, ("Subordinator"), is made for the benefit of The Private Bank Mortgage Mortgage Company, a banking corporation ("Lender").

WITNESSETH:

PROPERTY TITLE  
100 NORTH AVE.  
CHICAGO, ILL 60302

WHEREAS, Borrower and Lender are entering loan documents to be dated even date herewith pursuant to which Lender is agreeing to make certain loans and other financial accommodations to and for the benefit of Borrower; and

WHEREAS, Subordinator is a creditor of Borrower, and has previously loaned monies to Borrower pursuant to the terms and conditions of those certain promissory notes dated **October 12, 2005** (the "Junior Note"; a true, correct and complete copy of which is attached to this Agreement as Exhibit A and by this reference made a part hereof); and

WHEREAS, the funds to be advanced by Lender to Borrower pursuant to the "Loan Documents" (hereafter defined) are to be secured by a first lien and security interest in certain assets of Borrower, in an **amount no greater than \$536,000**; and

WHEREAS, Subordinator has agreed to subordinate to the interest of Lender any and all rights to repayment of amounts due and owing, or to become due and owing, under the Junior Note, and the parties have agreed to enter into this Agreement in order to set forth their agreements with respect to such subordination;

NOW, THEREFORE, in consideration of the foregoing premises, to induce Lender to advance funds to Borrower pursuant to the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties, intending to be legally bound, do hereby agree with and for the benefit of Lender, as follows:

1. Incorporation and Definitions. The foregoing recitals and all Exhibits hereto are hereby incorporated in this Agreement and by this reference made a part hereof. As used in this Agreement, the following capitalized terms shall have the following meanings, respectively:

(a) Loan Documents. Any and all agreements, contracts and documents delivered by Debtor to Lender

(b) Collateral. The personal residence of the Borrower commonly known as **1810 Glenview, Park Ridge, Illinois**, described in the Loan Documents or otherwise.

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(c) Junior Liabilities. All Liabilities of Borrower to Subordinator, whether created prior to, on or after the date of this Agreement, whether evidenced by the Junior Note or otherwise, howsoever created or arising, and whether direct or indirect.

(d) Liabilities. With respect to Borrower, any and all debts, obligations, liabilities, covenants and agreements of Borrower, howsoever created, arising or evidenced, fixed or contingent, and whether direct or indirect.

(e) Junior Agreements. All documents, instruments and agreements, written or oral, evidencing Junior Liabilities made by Borrower, including without limitation the Junior Note.

(f) Senior Liabilities. All Liabilities of Borrower to Lender, whether created prior to, or as of the date of this Agreement, whether evidenced under the Loan Documents or otherwise, howsoever created or arising, and whether direct or indirect.

(g) Other Capitalized Terms. Capitalized terms used in this Agreement, unless expressly defined herein, shall have the meanings ascribed to them under the Loan Documents.

2. Consent to Loan Documents. Subject to the terms of this Agreement, and notwithstanding anything to the contrary in the Junior Agreements, Subordinator hereby consents to (i) Borrower's execution and delivery of the Loan Documents and its borrowings from Lender thereunder, (ii) the granting by Borrower of a senior, perfected security interest in the Collateral to Lender, and (iii) any and all other actions to be taken by Borrower as may be required by or under the Loan Documents in order to grant and vest in Lender a senior, perfected security interest in the Collateral. Subordinator acknowledges and agrees that any such action by Borrower shall not be deemed to constitute a default under any of the Junior Agreements.

3. Priority of Security Interests.

(a) The parties hereto acknowledge and agree that Lender shall have and at all times shall retain a first and prior security interest in and to all of the Collateral, and that the security interest of Subordinator, if any, in and to any Collateral shall at all times be junior, inferior and subordinate to the security interest of Lender until the payment in full of all Senior Liabilities.

(b) Subordinator shall execute such documents and take such other actions as may be reasonably required by Lender in order to evidence Lender's first and prior security interest in the Collateral, including, without limitation, causing the following legend to be placed on any UCC Financing Statement filed at any time by Subordinator with respect to Collateral:

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"The security interest of Subordinator evidenced by this Financing Statement shall be subordinate, inferior and subject to the security interest of the American Enterprise Bank in the assets of the Borrower described herein, pursuant to the terms of that certain Subordination Agreement dated **March 17, 2008**, by and among Borrower, Subordinator and American Enterprise Bank."

(c) Subordinator shall promptly terminate its security interest in all Collateral upon payment in full of all amounts due from Borrower under the Junior Agreements.

4. Limitation on Amount and Payment of Junior Liabilities. Subordinator agrees that, except as expressly permitted in Section 5 of this Agreement, it will not accept any prepayments under any Junior Agreements without the prior written consent of Lender. Subordinator shall, from time to time, provide Lender with prompt written notice of any default by Borrower in its obligations under any of the Junior Agreements, including without limitation notice of Borrower commencing or joining with any other creditor in the commencement of any bankruptcy, reorganization or insolvency proceeding with respect to Borrower.

5. Subordination of Junior Liabilities. The payment of the Junior Liabilities shall at all times be subordinated to the payment in full of all Senior Liabilities; provided, however, prior to any Event of Default, Borrower may make regularly-scheduled payments of principal and interest with respect to (and only with respect to) the interest outstanding under the Junior Note, but only so long as any such payment does not cause (or, with the passage of time, the giving of notice or both, will not cause) Borrower to breach any covenant on its part contained in the Loan Documents. The Junior Liabilities shall also be subordinated to any future Liabilities of Borrower to Lender or future advances under existing Senior Liabilities or extensions thereof. All payments in respect of Junior Liabilities made concurrently with or following a default by a Borrower in respect to any of the Senior Liabilities shall be received by Subordinator in trust for the benefit of Lender and promptly turned over to Lender. Subordinator shall not accept any payment from Borrower after an Event of Default by Borrower on any Liabilities to Lender.

6. Bankruptcy and Similar Proceedings. In the event of (i) any dissolution, winding up, liquidation, reorganization or other similar proceedings relating to Borrower (including voluntary or involuntary bankruptcy, receivership or an assignment to the benefit of creditors); (ii) any other marshalling of the assets and liabilities of Borrower; or (iii) or any sale of all or substantially all of the assets of Borrower, the Senior Liabilities shall first be paid in full before Subordinator shall be entitled to receive and retain any payment or distribution of any kind in respect of the Junior Liabilities. To implement the foregoing (a) all payments and distributions of any kind or character in respect of the Junior Liabilities to which Subordinator would have been entitled if the Junior Liabilities were not subordinated pursuant to this Agreement shall be made directly to Lender, (b) Subordinator shall promptly file a claim or claims, in the form required in such proceedings, for the full outstanding amount of the Junior Liabilities, and use his best efforts to cause said claim or claims to be approved and all payments and other

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distributions in respect thereof to be made directly to Lender, and (c) Subordinator hereby irrevocably agrees that Lender may, at its sole discretion, in the name of Subordinator or otherwise, demand, sue for, collect, receive and receipt for any and all such payments or distributions in such bankruptcy proceedings, and file, prove, and vote or consent in any such proceedings with respect to, any and all claims of Subordinator relating to the Junior Liabilities.

7. Unauthorized Payments to Subordinator. In the event Subordinator receives any payment from or on behalf of Borrower other than as expressly permitted by this Agreement, such payment shall be received in trust for the benefit of Lender and promptly turned over by Subordinator to Lender.

8. Application of Payments Regarding Junior Liabilities. All payments and distributions received by Lender in respect of the Junior Liabilities may be applied by Lender first to the payment of any expenses (including reasonable attorneys' fees and costs) paid or incurred by Lender in enforcing this Agreement or in endeavoring to collect or realize upon any of the Junior Liabilities. Any balance thereof shall, solely as between Subordinator and Lender, be applied by Lender in such order of application as Lender may from time to time select toward the payment of the Senior Liabilities remaining unpaid. Notwithstanding any such payments or distributions received by Lender in respect of the Junior Liabilities and so applied by Lender toward the payment of the Senior Liabilities, Subordinator shall be subrogated to the then-existing rights of Lender, if any, in respect of the Senior Liabilities only at such time as this Agreement shall have been discontinued and Lender shall have received payment of the full amount of the Senior Liabilities.

9. Waivers. Subordinator hereby waives: (a) notice of acceptance by Lender of this Agreement; (b) notice of the existence or creation of all or any of the Senior Liabilities; and (c) all diligence in collection or protection of or realization upon the Senior Liabilities or any security therefore.

10. Actions Requiring Lender's Consent. Unless Subordinator shall have obtained the prior written consent of Lender, so long as Senior Liabilities exist Subordinator shall not: (a) take any action to enforce its rights under the Junior Agreements; (b) take any action to cause the sale of collateral, if any, securing the Junior Liabilities, or otherwise attempt to enforce any security interest in property of Borrower; (c) take collateral security for any Junior Liabilities; or (d) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to Borrower.

11. Survival of Agreement. This Agreement shall in all respects be a continuing agreement and shall remain in full force and effect (notwithstanding, without limitation, the termination of Subordinator's existence, or that at any time [or from time-to-time] the Senior Liabilities may have been paid in full), subject to discontinuance only upon receipt by Lender of written notice from Subordinator or any person duly authorized and acting on behalf of Subordinator; provided, however, that no such notice of discontinuance shall affect or impair: (i) any agreement or obligation of Subordinator hereunder with respect to

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any or all Senior Liabilities existing prior to the time of receipt of such notice by Lender; (ii) any or all Senior Liabilities created or acquired after receipt of notice pursuant to previous commitments made by Lender; (iii) any or all extensions, renewals, or advances pursuant to the terms of any of the foregoing; or (iv) any or all interest and penalties accruing on any of the foregoing. In addition, all of the agreements and obligations of Subordinator under this Agreement shall, notwithstanding any such notice of discontinuance, remain fully in effect until all such Senior Liabilities (including any extensions or renewals of any thereof and all such interest and expenses) shall have been paid in full.

12. Rights of Lender Regarding Senior Liabilities. Lender may, from time to time, whether before or after any discontinuance of this Agreement, where agreed to by Subordinator or permitted under the Loan Documents without impairing this Agreement and without notice, except as provided herein to the Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property of Borrower to secure any of the Senior Liabilities, (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities, and (c) extend or renew for one or more periods (whether or not longer than the original period) or increase the principal indebtedness, in such event Lender will give written or verbal notice, alter or exchange any of the Senior Liabilities, or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Liabilities.

13. Assignability of Senior Liabilities. Lender may, from time to time, whether before or after any discontinuance of this Agreement, without notice to Subordinator, assign or transfer any or all of the Senior Liabilities or any interest therein. Notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purposes of this Agreement. Also, every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest therein, shall to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were the Lender; provided, however, unless Lender shall otherwise consent in writing, Lender shall have an unimpaired right, prior and superior to that of any such assignee or transferee, to enforce this Agreement, for the benefit of Lender, as to those of the Senior Liabilities which Lender has not assigned or transferred.

14. No Prejudice to Lender. Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act of Borrower or Subordinator or any noncompliance of Borrower or Subordinator with any agreement, Liability or obligation, regardless of any knowledge thereof which Lender may have or with which the Lender may be charged. No action of Lender permitted hereunder shall in any way affect or impair the rights of Lender or the agreements, covenants or obligations of Subordinator and Borrower under this Agreement.

15. Forbearance. No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of

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any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

16. Amendments. This Agreement may not be altered or amended except by an agreement in writing signed by Borrower, Subordinator and Lender.

17. Further Assurances. Subordinator and Borrower will execute such further documents or instruments and take such further actions as Lender may reasonably, from time to time, request to carry out the intent of this Agreement.

18. Unenforceability of Third Party Defenses. Modification or waiver of any of the provisions of this Agreement shall not be binding upon Lender except as expressly set forth in a writing duly signed and delivered on behalf of Lender. For the purposes of this Agreement, Senior Liabilities shall include all obligations of Borrower to Lender, notwithstanding any right or power of Borrower or anyone else to assert any claim or defense as to the invalidity or unenforceability of any such obligation, and no such claim or defense shall affect or impair the agreements and obligations of Subordinator or Borrower hereunder.

19. Enforceability. This Agreement shall be binding upon Subordinator and its successors and assigns, and upon Borrower and its successors and assigns. This Agreement shall inure to the benefit of and may be enforced by Lender, its successors and assigns.

20. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois.

21. **JURISDICTION AND VENUE.** FOR THE PURPOSES OF ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT, SUBORDINATOR AND BORROWER HEREBY EXPRESSLY SUBMIT TO THE JURISDICTION OF ALL FEDERAL AND STATE COURTS LOCATED IN THE STATE OF ILLINOIS, COUNTY OF COOK, AND CONSENT THAT ANY ORDER, PROCESS, NOTICE OF MOTION OR OTHER APPLICATION TO OR BY ANY OF SAID COURTS OR A JUDGE THEREOF MAY BE SERVED WITHIN OR WITHOUT SUCH COURT'S JURISDICTION BY REGISTERED MAIL OR BY PERSONAL SERVICE, PROVIDED A REASONABLE TIME FOR APPEARANCE IS ALLOWED. SUBORDINATOR AND BORROWER HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT BROUGHT IN ANY FEDERAL OR STATE COURT SITTING IN COOK COUNTY, STATE OF ILLINOIS, AND HEREBY FURTHER IRREVOCABLY WAIVE ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

**SUBORDINATOR AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE (TO THE EXTENT PERMITTED BY APPLICABLE LAW)**

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**ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREE THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.**

22. Notices. Any notices or consents required or permitted by this Agreement shall be in writing and shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, or delivered by facsimile, or delivered by a nationally recognized overnight express delivery service, in any case addressed as follows, unless such address is changed by written notice hereunder:

If to Borrower:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax \_\_\_\_\_

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax \_\_\_\_\_

If to Subordinator:

American Enterprise Bank  
600 N. Buffalo Grove Road  
Buffalo Grove, IL, Illinois 60089  
Attention: Mr. David Schlacks  
Fax: 847-465-0211

Any such notice or communication shall be deemed to have been given either at the time of personal delivery, or in the case of overnight express delivery, as of the date delivery was first attempted, or in the case of facsimile, upon receipt, or in the case of certified mail, five (5) days after delivery to the United States Postal Service.

23. Severability. 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 to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

24. Counterparts. This Agreement may be signed in counterparts each of which will be deemed an original and together shall constitute one and the same document.

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IN WITNESS WHEREOF, this Agreement has been made and delivered at Buffalo Grove, Illinois, as of the day and year first above written.

**American Enterprise Bank**

By: *Al Schmitt*

Its: *vice president*

**Heaven on Seven Management, Inc.**

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

**The Private Bank Mortgage Company.**

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

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

Property of Cook County Clerk's Office



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IN WITNESS WHEREOF, this Agreement has been made and delivered at Buffalo Grove, Illinois, as of the day and year first above written.

**American Enterprise Bank**

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

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

**Heaven on Seven Management, Inc.**

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

**The Private Bank Mortgage Company.**

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

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

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A POLICY ISSUING AGENT OF  
COMMONWEALTH LAND TITLE INSURANCE COMPANY

COMMITMENT NO. 0711-29519

## SCHEDULE A (continued)

### LEGAL DESCRIPTION

LOT 291 IN BLOCK 8 IN LR MCDONALDS PARK RIDGE NORTH, BEING A SUBDIVISION OF THE NORTH ½ OF THE SOUTHEAST ¼ OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 12 AND THE EAST 165.0 FEET (MEASURED AT RIGHT ANGLES TO THE EAST LINE THEREOF) OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 22, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 09-22-422-016-0000

COMMONLY KNOWN AS 1810 GLENVIEW AVE., PARK RIDGE, IL. 60068