



Doc#: 0815542167 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/03/2008 02:53 PM Pg: 1 of 9

This instrument was prepared
by and, after recording,
return to:

ARONBERG GOLDGEHN
330 North Wabash Ave. - Suite 1700
Chicago, Illinois 60611
Attention: Ned S. Robertson

Property Address:
5315 Dansher Road,
Countryside, Illinois

Space above this Line for Recorder's Use Only

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement") is made as of this 23rd day of May, 2008, by and among **COLE TAYLOR BANK**, an Illinois state bank ("Senior Lender"), **5315 DANSHER, LLC**, an Illinois limited liability company ("Junior Lender"), and **COUNTRYSIDE HOLDINGS, LLC**, an Illinois limited liability company ("Borrower").

RECITALS:

A. Borrower, Sokol and Company ("Sokol") and Senior Lender have entered into that certain Loan Agreement dated May 23, 2008 (together with all amendments thereto, the "Senior Loan Agreement") whereby Senior Lender has agreed to make various loans to Sokol and Borrower aggregating \$7,738,738.85 ("Senior Indebtedness"). The loans to Sokol are evidenced by (i) a Revolving Note dated May 23, 2008 executed by Sokol in favor of Senior Lender in the amount of \$4,000,000.00, (ii) an Equipment Term Note dated May 23, 2008 executed by Sokol in favor of Senior Lender in the amount of \$500,000.00 and (iii) a Draw Term Equipment Note dated May 23, 2008 executed by Sokol in favor of Senior Lender in the amount of \$500,000.00 (collectively, the "Sokol Notes"). The loan to Borrower is evidenced by that certain Promissory Note dated May 23, 2008, executed by Borrower in favor of Senior Lender in the original principal amount of \$2,738,738.85 (the "Senior Note");

B. In connection with the Senior Loan Agreement, Senior Lender will also be the owner and holder of that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated of even date with the Senior Note, granting Senior Lender a first lien mortgage on the property commonly known as 5315 Dansher Road, Countryside, Illinois (the "Property") and legally described on Exhibit A attached hereto and incorporated herein by reference (the "Senior Mortgage");

Box 400-CTCC

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

C. Junior Lender is the owner and holder of certain indebtedness of Borrower (the "Junior Indebtedness") evidenced by that certain Promissory Note dated January 17, 2007 executed by Borrower in favor of Junior Lender in the principal amount of \$648,000.00 (the "Junior Note").

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

E. All obligations, liabilities and indebtedness of Borrower and Sokol to Senior Lender now existing or hereafter arising, due or to become due, under the Sokol Notes, the Senior Note and the Senior Loan Documents, as may be amended, modified or supplemented from time to time, are herein called the "Senior Liabilities".

F. 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".

G. Senior Lender's obligations under the Senior Loan Agreement are subject to the Junior Lender agreeing to subordinate its rights under the Junior Loan Documents to the rights of Senior Lender in the manner herein provided.

NOW, THEREFORE, in consideration of the foregoing, 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 or made available to Junior Lender.

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.

3. Subordination of Liens. Junior Lender hereby agrees that the liens and security interest created by the Junior Loan Documents, if any, are and shall be subordinate to the liens and security interests created by the existing Senior Loan Documents and 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.

4. Payment. Borrower shall only be permitted to make payments on the Senior Liabilities in accordance with the terms of the Senior Loan Documents. No payments or distributions whatsoever shall be made on account of the Junior Liabilities (including without

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limitation distribution of casualty insurance or condemnation proceeds) without Senior Lender's prior written consent. Notwithstanding the foregoing, Junior Lender shall be entitled to receive, and Borrower shall be permitted to pay, so long as no Event of Default is in continuance under the Senior Loan Agreement, regularly scheduled payments of principal and interest under the Junior Note (the "Permitted Payments").

5. **Constructive Trust.** Except with respect to Permitted Payments, if Junior Lender receives any payment or other distribution of any kind or character in respect to the Junior Indebtedness or any condemnation award or insurance proceeds relating to the property subject to the Senior Mortgage, each 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. **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 (including the default rate of interest), (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 (subject to acceleration in the event of a default). In all events, any additional Junior Indebtedness or additional unsecured loans to Borrower from members or managers of Borrower shall be fully subordinated to the Senior Indebtedness and shall be at an interest rate no greater than the interest rate applicable to the Junior Note.

(c) **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.

7. **Senior Indebtedness.**

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(a) **No Assignment.** Senior Lender shall not assign or otherwise transfer its interests in the Senior 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.** 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 rate of interest on the Senior Indebtedness in any manner that would require Borrower to pay (or accrue) monthly interest at a rate more than two percent (2%) per annum greater than the rate currently set forth in the Senior Loan Documents (including the default rate of interest), or (ii) shorten the stated maturity date of the Senior Indebtedness (subject to acceleration in the Event of a Default).

(c) **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.

8. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower 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.

9. **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.

10. **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.

11. **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

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otherwise permitted by applicable law and the Junior Loan Documents, but only with respect to collateral that is not subject to the lien of the Senior 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.

12. 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.

13. Successors and Assigns. This Agreement shall be binding upon Junior Lender and Senior Lender and their respective successors and assigns.

14. Notice. All communications provided for herein shall be in writing and shall be deemed to have been given or made when delivered personally, three days after deposited in the United States mail (certified mail, postage prepaid) or one day after deposited with a nationally recognized overnight courier (delivery prepaid), or upon receipt of a confirmation of a facsimile transmission, addressed as follows:

To Senior Lender: Cole Taylor Frank
225 West Washington Street (8th Floor)
Chicago, Illinois 60602
Attention: Gavin Newman
Facsimile Number: 847/699-5700

With a copy to: Aronberg Goldgehn
330 North Wabash Avenue (Suite 1700)
Chicago, Illinois 60611
Attention: Ned S. Robertson
Facsimile Number: 312-222-6370

To Borrower: Countryside Holdings, LLC
5315 Dansher Road
Countryside, Illinois 60525
Attention: John S. Novak, Jr.
Facsimile Number: 708/482-9750

To Junior Lender: 5315 Dansher, LLC
5315 Dansher Road
Countryside, Illinois 60525
Attention: John S. Novak, Jr.
Facsimile Number: 708/482-97

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With a copy to: Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd.
The Prairie Building
835 McClintock Drive
Burr Ridge, IL 60527-0860
Attention: Kenneth J. Nemecek Jr. or Alison Wetzel
Facsimile Number: 630/655-9808

Any party hereto may change the address at which notices hereunder are required to be given to such party by notice to the other parties in accordance herewith.

15. Construction and Interpretation of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a 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.

16. Complete Agreement; No Waiver. This Agreement contains all of the agreements and conditions made between the parties regarding the subject matter hereof, supersedes prior negotiations and agreements regarding the subject matter hereof, and may not be modified orally or in any manner other than by an agreement in writing signed by Senior Lender, Junior Lender and Borrower. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy hereunder.

17. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

18. Termination. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, provided that all rights of Junior Lender hereunder shall automatically terminate at such time as the Junior Liabilities have been indefensibly paid in full.

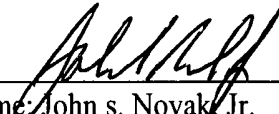
[Signature page follows.]

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

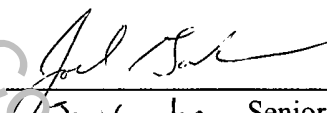
JUNIOR LENDER:

5315 DANSHER, LLC, an Illinois limited liability company

By: 
Name: John S. Novak, Jr.
Title: Manager

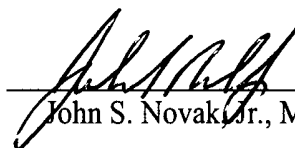
SENIOR LENDER:

COLE TAYLOR BANK, an Illinois state bank

By: 
Joel Gordon, Senior Vice President

BORROWER:

COUNTRYSIDE HOLDINGS, LLC,
an Illinois limited liability company

By: 
John S. Novak, Jr., Manager

Property of Cook County Clerk's Office

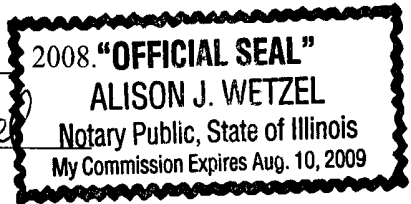
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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that 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 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 27th day of May

Alison J. Wetzel
Notary Public

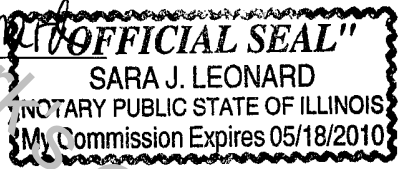


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Joel Gordon, the Senior Vice President of Cole Taylor Bank, an Illinois state bank, 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 29th day of May, 2008.

Sara J. Leonard
Notary Public

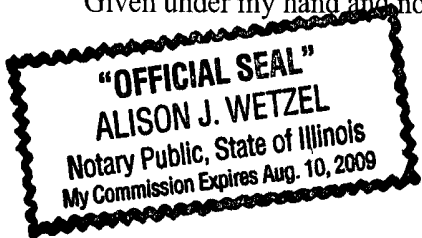


STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that John S. Novak, Jr., Manager of Countryside Holding, 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 27th day of May, 2008.

Alison J. Wetzel
Notary Public



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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 HALF OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN.

P.I.N. Numbers: 18-09-416-049-0000 and
18-09-416-050-0000