

UNOFFICIAL COPY



09113122060

Doc#: 0913122060 Fee: \$68.00
Eugene "Gene" Moore RHISL Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/11/2009 11:32 AM Pg. 1 of 17

Prepared By and After
Recording Return To:

Erin Felchner
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603



Permanent Tax Index Numbers:

Property Address:
3737 S. Paulina, Chicago, Illinois

This Space Reserved for Recorder's Use Only

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of April 29, 2009 by and between **MB FINANCIAL BANK, N.A.**, its successors and assigns (the "Senior Lender"), and **IFF**, successor (by name change) to Illinois Facilities Fund, an Illinois not-for-profit corporation ("Subordinated Lender").

WITNESSETH:

WHEREAS, Pursuant to the terms and conditions contained in that certain Bond and Loan Agreement dated of April 29, 2009 (the "Loan Agreement"), executed by and between the **NAMASTE CHARTER SCHOOL, INC.**, an Illinois not-for-profit corporation (the "Borrower"), the Senior Lender, and Illinois Finance Authority, the Senior Lender has agreed to purchase a bond in the aggregate principal amount of Four Million and 00/100 Dollars (\$4,000,000.00) (the "Loan" or the "Senior Loan");

WHEREAS, the Senior Loan is secured by, among other things, that certain Amended and Restated Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing on the Borrower's leasehold interest in certain real property located in Cook County, Illinois, including, without limitation, the real estate described on **Exhibit A** attached hereto and hereby made a part hereof (the "Property"), dated as of even date herewith, from Borrower in favor of the Senior Lender (as amended, modified, restated or supplemented from time to time, the "Senior Mortgage"), which Senior Mortgage shall, immediately prior to the recordation of the First Subordinated Mortgage (as hereinafter defined), be recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"). The Loan Agreement, the Senior Mortgage, and any other documents and instruments delivered by the Borrower in connection therewith (as the same may be amended, restated or otherwise modified from time to time) are hereinafter sometimes collectively referred to as the "Senior

UNOFFICIAL COPY

Loan Documents”;

WHEREAS, Subordinated Lender has made a loan (“First Subordinated Loan”) to Borrower in the principal amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), which First Subordinated Loan is evidenced by that certain Promissory Note dated as of the date hereof from Borrower to Subordinated Lender (the “First Subordinated Note”) and is secured by, among other things that certain Leasehold Mortgage, Security Agreement and Fixture Filing dated as of the date hereof from Borrower as mortgagor in favor of Subordinated Lender (“First Subordinated Mortgage”), which First Subordinated Mortgage shall, immediately prior to the recordation hereof, be recorded in the Recorder’s Office, granting a lien on Borrower’s leasehold interest in the Property. The First Subordinated Note, the First Subordinated Mortgage, any other Loan Documents (as defined in the First Subordinate Note) and any other documents and instruments delivered by the Borrower in connection therewith (as the same may be amended, restated or otherwise modified from time to time) are hereinafter sometimes collectively referred to as the “First Subordinated Loan Documents”;

WHEREAS, Subordinated Lender has made a loan (“Second Subordinated Loan”, together with the First Subordinated Loan, the “Subordinated Loans”) to Borrower in the principal amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00), which Second Subordinated Loan is evidenced by that certain Promissory Note dated December 21, 2007 (the “Second Subordinated Note”) and secured by that certain Leasehold Mortgage, Security Agreement and Fixture Filing on Borrower’s leasehold interest in the Property, dated of even date therewith, from Borrower in favor of Subordinated Lender (the “Second Subordinated Mortgage”, together with the First Subordinated Mortgage, the “Subordinated Mortgages”), which Second Subordinated Mortgage was recorded in the Cook County Recorder’s Office on December 31, 2007 as document number 0736509079. The Second Subordinated Note, Second Subordinated Mortgage and any other documents and instruments delivered by Borrower in connection therewith (as the same may be amended, restated or otherwise modified from time to time) are hereinafter sometimes collectively referred to as the “Second Subordinated Loan Documents, together with the First Subordinated Loan Documents, the “Subordinated Loan Documents”;

WHEREAS, pursuant to that certain Credit Enhancement Fund and Reimbursement Agreement dated as of the date hereof by and among the Senior Lender, Borrower and Subordinated Lender (as amended, modified, restated or supplemented from time to time, the “Credit Enhancement Agreement”), (i) Subordinated Lender has agreed to provide certain credit enhancements to the Senior Loan by depositing with Senior Lender an aggregate amount not to exceed Four Hundred Thousand and No/100 Dollars (\$400,000.00) which amount shall be deposited into the Debt Service Reserve Fund (as defined therein) and made available from time to time to make required debt service payments on the Senior Indebtedness as provided herein, (ii) Borrower has agreed to reimburse Subordinated Lender upon a draw by Senior Lender against the amounts on deposit in the Debt Service Reserve Fund to make required debt service payments on the Senior Indebtedness, and (iii) Senior Lender has agreed to refrain from taking certain Enforcement Actions (as defined therein) provided that certain conditions are met, as more specifically set forth herein and in the Credit Enhancement Agreement;

UNOFFICIAL COPY

WHEREAS, the obligation of Borrower to reimburse Subordinated Lender (“Borrower’s Reimbursement Obligation”) in the event of a draw by Senior Lender against the amounts on deposit in the Debt Service Reserve Fund constitutes an obligation of Borrower to Subordinated Lender under the First Subordinated Loan Documents and is secured by the First Subordinated Mortgage; and

WHEREAS, Subordinated Lender has agreed that the lien of the Subordinated Loan Documents and its right to payment in connection therewith is and shall be subordinated to the lien of the Senior Loan Documents and Senior Lender’s rights thereunder as more particularly described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. **Incorporation and Definitions**

The foregoing recitals and all exhibits hereto are hereby made a part of this Agreement, including, without limitation, the definitions set forth in the recitals hereto. The capitalized terms set forth below shall have the following meanings as used in this Agreement:

“Prohibited Senior Loan Amendment” shall mean any amendments to or modifications of the Senior Loan Documents which: (a) increases the interest rate; (b) cross defaults or cross collateralizes the Senior Loan or the Senior Collateral with or to any indebtedness other than the Senior Indebtedness, or (c) increases the principal amount of the Senior Loan except for any increase in the principal amount of the Senior Loan with respect to Protective Advances.

“Protective Advances” shall mean all sums advanced in Senior Lender’s reasonable judgment to protect the lien of the Senior Loan Documents, such as, by way of example and not limitation, advances for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums, reasonable attorneys’ fees or other items (including capital items) reasonably necessary to protect the Senior Collateral from forfeiture, casualty, loss or waste.

“Senior Collateral” shall mean the Property and any other real or personal property on or in which Senior Lender has or shall have a lien, security interest or pledge pursuant to the Senior Mortgage and the other Senior Loan Documents.

“Senior Default” shall mean the occurrence of an “Event of Default” under the Senior Loan Documents.

“Senior Default Notice” shall mean a written notice to Subordinated Lender from the Senior Lender of a Senior Default.

“Senior Indebtedness” shall mean Senior Lender’s right to receive payments from Borrower or derived from the Senior Collateral of any and all amounts owing under the Senior

UNOFFICIAL COPY

Loan Documents. The provisions of this Agreement shall apply with respect to all of the Senior Indebtedness, regardless of whether the Senior Indebtedness has already been incurred or may be incurred in the future by future advances or other financial accommodations made or extended by the Senior Lender to Borrower.

“Senior Loan Modification” shall mean any amendment or modification of the Senior Loan or the Senior Loan Documents, subject to the terms hereof.

“Subordinate Indebtedness” shall mean Subordinated Lender’s right to receive payments from Borrower or derived from the Property of any and all amounts owing under the Subordinated Loan Documents, including, without limitation, the Borrower’s Reimbursement Obligation.

2. Subordination of Subordinated Loan Documents.

Notwithstanding the date, manner or order of grant, attachment, recordation or perfection, the liens evidenced by the Subordinated Mortgages, and any other liens securing the Subordinated Loans and Borrower’s Reimbursement Obligations, and all of Subordinated Lender’s rights, remedies and privileges thereunder, are and at all times shall remain, junior, subject and subordinate to the lien on the Property evidenced by the Senior Mortgage and by the other Senior Loan Documents. Nothing contained in the Subordinated Loan Documents shall operate to defeat, render invalid, or impair the priority and seniority of the liens of Senior Lender on the Property under the Senior Mortgage and the other Senior Loan Documents. Subordinated Lender hereby acknowledges and agrees that it does not now have, nor shall it hereafter acquire, a lien, mortgage, security interest or any other interest in or on any of the Senior Collateral other than the Property.

3. Payment Subordination.

(a) Subordinated Lender hereby subordinates the Subordinate Indebtedness to the Senior Indebtedness. Notwithstanding the foregoing, however, so long as the Senior Lender has not provided a Senior Default Notice, Subordinated Lender shall have the right to collect and keep (i) any regularly-scheduled payments under the Subordinated Notes that it receives from the Borrower in accordance with the terms of the Subordinated Loan Documents, and (ii) any payment of Borrower’s Reimbursement Obligations it receives in accordance with the Credit Enhancement Agreement, free and clear of any liens or security interests securing the Senior Indebtedness. In the event the Senior Lender has provided a Senior Default Notice, and the Senior Default referenced therein is cured within any applicable notice and cure periods provided to the Subordinated Lender under the Credit Enhancement Agreement, Subordinated Lender shall also have the right to (i) collect and keep any regularly-scheduled payments under the Subordinated Notes that it receives from the Borrower in accordance with the terms of the Subordinated Loan Documents, and (ii) any payment of Borrower’s Reimbursement Obligations it receives in accordance with the Credit Enhancement Agreement, free and clear of any liens or security interests securing the Senior Indebtedness.

(b) Notwithstanding the foregoing, however, after the Senior Lender has provided a

UNOFFICIAL COPY

Senior Default Notice, and the Senior Default referenced therein remains uncured beyond any applicable notice and cure periods provided to the Subordinated Lender under the Credit Enhancement Agreement, then any payment by Borrower to Subordinated Lender under the Subordinated Notes and any payment of Borrower's Reimbursement Obligations to Subordinated Lender shall be collected, enforced and received by Subordinated Lender solely as trustee for Senior Lender and shall be promptly paid to the Senior Lender in payment of the Senior Indebtedness as the Senior Lender may direct, which obligation to remit such payments to the Senior Lender shall continue until any of the following have occurred: (i) such Senior Default is cured by the Borrower and/or Subordinated Lender as provided in the Credit Enhancement Agreement (and not as a result of being deemed cured as a result of (a) insolvency or reorganization proceeding, or (b) operation of law) and the Subordinated Lender has not received a Senior Default Notice with respect to any other Senior Default, or Subordinated Lender has received a Senior Default Notice with respect to any other Senior Default and such Senior Default referenced therein is cured within any applicable notice and cure periods provided to the Subordinated Lender under the Credit Enhancement Agreement, (ii) the Senior Lender has given written notice that it has been paid in full, or (iii) the Senior Lender has authorized the Subordinated Lender in writing to proceed with collection of the applicable Subordinated Loan.

(c) In addition to the foregoing, in the event of any distribution, division, payment, or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of Borrower, or the proceeds thereof, in whatever form, to creditors of Borrower or on any indebtedness of Borrower occurring by reason of the liquidation, dissolution or other winding up of Borrower, or by reason of any execution sale, receivership, insolvency or bankruptcy proceedings, or assignment for the benefit of creditors, or proceedings for reorganization or readjustment of Borrower or its properties, then in any such event the entire Senior Indebtedness shall first be paid fully and finally before any payment is made to Subordinated Lender. Any payment or distribution of any kind described in this Section 3(c), either in cash, property or securities which might otherwise be payable or deliverable on or in respect of the Subordinated Loans, except those distributions, divisions, payments, or applications consented to by the Senior Lender in writing, shall be paid or delivered directly to the Senior Lender for application in payment of the Senior Indebtedness unless and until the same has been paid in full.

(d) Any amounts received by Senior Lender from whatever source may be applied by the Senior Lender toward payment of the Senior Indebtedness in such order of application as the Senior Lender may in its discretion elect. Furthermore, until such time as the Senior Indebtedness has been fully and finally paid, Subordinated Lender hereby waives and releases any and all rights to subrogation it may have against the Borrower, or the Property to the extent that such subrogation would result in Subordinated Lender attaining a priority equal or superior to the priority of the Senior Lender for any funds which Subordinated Lender may from time to time advance.

4. **Document Subordination**. The Subordinated Loan Documents are hereby made and shall hereafter be subject and subordinate in all respects to the Senior Mortgage and the other Senior Loan Documents. All rights of the Subordinated Lender under the Subordinated Loan Documents in and to the Senior Collateral and the proceeds thereof, including, but not limited to

UNOFFICIAL COPY

rents, issues and profits, proceeds of sales of the Senior Collateral or any portion thereof, and proceeds of insurance and condemnation awards and settlements in lieu thereof, are and shall be subject and subordinate to and (i) subject to the terms of this Agreement, the rights of the Senior Lender in and to the Senior Collateral, and such proceeds thereof as such rights of Senior Lender are set forth in the Senior Mortgage and the other Senior Loan Documents; and (ii) subject to the terms of this Agreement, any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage and the other Senior Loan Documents.

5. **No Impairment of Subordination.** Subordinated Lender hereby expressly covenants and agrees that the effect of this Agreement, and the rights of the Senior Lender hereunder, shall be in no way impaired, affected, diminished or released by any of the following, regardless of whether the same shall occur with or without the knowledge or consent of the Subordinated Lender: by any Senior Loan Modification not prohibited hereby, by any renewal or extension of the time of payment of the Senior Indebtedness, by any delay, forbearance, failure, neglect or refusal of the Senior Lender in enforcing the payment thereof or in enforcing the lien of or attempting to realize upon the Senior Mortgage or any other security which may have been or may hereafter be given for the Senior Indebtedness to Senior Lender, or by any waiver or failure to exercise any right or remedy under the Senior Mortgage, any other Senior Loan Document, or any other document or instrument executed pursuant thereto or in connection with this transaction, or by any release or discharge of any guaranty or guarantor of the Senior Loan or by any other act or failure to act by the Senior Lender. No Prohibited Senior Loan Amendment shall be permitted without the prior written consent of the Subordinated Lender.

6. **Default Under the Senior Loan Documents.** Subordinated Lender hereby acknowledges and agrees that the intent and effect of this Agreement is and shall be to afford the Senior Lender, upon a Senior Default which is not timely cured by Borrower as provided in the Senior Loan Documents or by Subordinated Lender pursuant to the Credit Enhancement Agreement, sole discretion and control with regard to the operation of the Property, subject to the cooperation obligations set forth in the Credit Enhancement Agreement. To that end, Subordinated Lender hereby covenants and agrees that in the event of a Senior Default, Subordinated Lender shall have no right to receive any notice, except as expressly set forth in the Credit Enhancement Agreement, and no right to participate in or consent to any negotiations or settlement between the Senior Lender and Borrower except as expressly set forth in the Credit Enhancement Agreement. If any Senior Default is not timely cured, Subordinated Lender shall have no right to interfere with or impede any actions or decisions made, directed, or undertaken by the Senior Lender, with or without the involvement of the Borrower in the workout of the Senior Loan, the Senior Indebtedness, and the Property. The Senior Lender and the Subordinate Lender hereby acknowledge and agree, however, that to the extent there is a conflict between the terms of this Agreement and the terms of the Credit Enhancement Agreement concerning the rights of the Senior Lender to take any Enforcement Action, the Credit Enhancement Agreement shall govern. Without limitation of the generality of the foregoing, Subordinated Lender acknowledges and agrees that if the Senior Lender and Borrower agree on the amount of the Senior Indebtedness owing to Senior Lender, such agreement shall be binding on Subordinated Lender, and Subordinated Lender disclaims any right to question or contest or seek an accounting of the amount of the Senior Indebtedness.

UNOFFICIAL COPY

7. **Covenants of Subordinated Lender.** Subordinated Lender hereby covenants and agrees as follows:

(a) Except as expressly provided in the Credit Enhancement Agreement, Subordinated Lender hereby waives (i) notice of the existence, creation or nonpayment of all or any of the Senior Indebtedness; and (ii) all diligence in collection, protection of or realization upon the Senior Indebtedness or any security therefor.

(b) Subordinated Lender shall not, without the prior written consent of the Senior Lender, (i) modify, amend or consent to any modification or amendment of any of the Subordinated Loan Documents; (ii) except as expressly permitted in the Credit Enhancement Agreement, commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower; (iii) except as expressly permitted in the Credit Enhancement Agreement, seek to appoint a receiver for (A) the Property, (B) any part thereof or (C) the Borrower, or seek to obtain possession of the Property, or seek any accounting from the Senior Lender in respect to the proceeds of the Property, or (iv) ask, demand, take or receive any security from Borrower, for any of the Subordinate Indebtedness, except for any liens and security interest expressly provided for in the Subordinated Loan Documents which are at all times junior and subordinate to the prior liens and security interests of the Senior Lender therein. If the Subordinated Lender, in violation of this Agreement, shall commence, prosecute or participate in any suit, action or proceeding against the Borrower or shall attempt to enforce, foreclose or realize upon its security interest or lien in the Senior Collateral, which suit, action or proceeding or attempt to enforce, foreclose or realize upon its security interest or lien in the Senior Collateral is not expressly permitted by the Credit Enhancement Agreement, the Borrower or Senior Lender may interpose as a defense or plea the making of this Agreement and the Senior Lender may intervene and interpose such defense in its name or in the name of the Borrower, and the Borrower or the Senior Lender may by virtue of this Agreement restrain the enforcement thereof in the name of the Borrower or the Senior Lender.

(c) Subordinated Lender hereby agrees to give the Senior Lender, contemporaneously with the giving thereof to Borrower, copies of any notices given to Borrower regarding any default under the Subordinated Loan Documents, or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Subordinated Loan Documents. Subordinated Lender hereby agrees that except for any such action which is expressly permitted by the Credit Enhancement Agreement, the Subordinate Indebtedness shall not be accelerated, nor shall any remedies be pursued thereunder unless and until the Senior Indebtedness, including all costs, fees and expenses as above provided, has been paid in full.

(d) Subordinated Lender hereby waives any due on sale or due on refinancing provisions of the Subordinated Loan Documents as they relate to the Senior Indebtedness (subject to the sentence of Section 5 hereof).

(e) As of the date of this Agreement: (i) the Subordinated Notes, and the Subordinated Mortgages are all of the Subordinated Loan Documents, true, correct and complete

UNOFFICIAL COPY

copies of which have been delivered to the Senior Lender, and (ii) the Subordinated Loan Documents have not been modified, amended or terminated, other than as provided to the Senior Lender.

(f) Subordinated Lender acknowledges having received and reviewed copies of all of the Senior Loan Documents and consents to and approves all of the provisions of each of the Senior Loan Documents and all other agreements.

8. **Dissolution 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 Indebtedness shall first be paid in full before Subordinated Lender shall be entitled to receive and to retain any payment or distribution with respect to the Subordinated Indebtedness. For purposes hereof, the Senior Indebtedness shall include, in addition to principal indebtedness under the Senior Loan Agreement, all such other costs, fees and expenses, including attorneys' fees, incurred by the Senior Lender in connection with the Senior Loan Documents and the obligation and liabilities thereunder. Notwithstanding the foregoing, if following any such dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower or to Borrower's property, the Senior Loan is kept in place and assumed by a Subsequent Owner (as defined in the Credit Enhancement Agreement), Subordinate Lender shall be entitled to collect and keep any regularly-scheduled payments under the Subordinated Notes that it receives from the Borrower in accordance with the terms of the Subordinated Loan Documents as provided in Section 3(a) hereof and any payment of Borrower's Reimbursement Obligations that it receives from Borrower in accordance with the terms of the Credit Enhancement Agreement pursuant to Section 3(a) hereof.

9. **Casualty.** In the event of a casualty to the improvements constructed on the Property or a condemnation or taking under a power of eminent domain of the Property, the improvements thereon, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at the Senior Lender's election, by the Senior Lender, and all payments and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to the Senior Lender. Subordinated Lender hereby irrevocably assigns to the Senior Lender all of Subordinated Lender's interests in any such claims, settlements or awards (the "Award") and irrevocably grants to the Senior Lender a power of attorney, coupled with an interest, to execute any and all documents on Subordinated Lender's behalf necessary in connection with the prosecution or settlement of the Award. In the event the amount of the Award is in excess of all amounts due under the Senior Indebtedness, including all costs, fees and expenses hereinabove set forth, the Senior Lender agrees that such excess Award shall be paid to or held for the benefit of Subordinated Lender.

10. **Actions by Senior Lender.** The Senior Lender may, from time to time, in its sole discretion and without notice to Subordinated Lender, take any or all of the following actions: (a)

UNOFFICIAL COPY

retain or obtain a security interest in any property to secure any of the Senior Indebtedness; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Indebtedness; (c) extend or renew for one or more periods of time (whether or not longer than the original period), alter or modify any of the Senior Indebtedness (except for any Prohibited Senior Loan Amendment), or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Indebtedness; and (d) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Indebtedness, or extend or renew for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property (except for any Prohibited Senior Loan Amendment).

11. **Failure to Act.** Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by Borrower or Subordinated Lender, or any non-compliance of Borrower or Subordinated Lender with any agreement or obligation, regardless of any knowledge thereof which the Senior Lender may have or which the Senior Lender may be deemed to have; and no action of the Senior Lender permitted hereunder shall in any way affect or impair the rights of Senior Lender and the obligations of the Subordinated Lender under this Agreement. No delay on the part of the Senior Lender in the exercise of any rights or remedies shall operate as a waiver hereof, and no single or partial exercise by the Senior Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this agreement be binding upon Senior Lender except as expressly set forth in writing duly signed and delivered by the Senior Lender.

12. **Notices.** 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 over night courier addressed to a party at its address set forth below, or (iii) on the second (2nd) business day after being deposited in the United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below:

To Senior Lender:

MB Financial Bank, N.A.
6111 North River Road
Rosemont, Illinois 60018
Attention: John Sassaris

With a copy to:

Burke Burns & Pinelli, Ltd.
Suite 4300
70 West Madison Street
Chicago, Illinois 60602
Attention: Mary Ann Murray, Esq.

If to Subordinated Lender:

IFF

UNOFFICIAL COPY

One North LaSalle Street
Chicago, Illinois 60602
Attention: Vice-President of Lending

With a copy to:

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
Attention: John M. Rafkin, Esq.

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.

13. **Mutual Disclaimers.** Each of the Senior Lender and Subordinated Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Subordinated Loans is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Subordinated Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Subordinated Lender deem relevant. Each of Senior Lender and Subordinated Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Subordinated Loans or the Subordinated Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, affiliates or agents other than the representations and warranties of the other contained herein. Each of the Senior Lender and the Subordinated Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Subordinated Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of the Senior Lender and Subordinated Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Subordinated Loans or the Property (including, without limitation, the cash flow of the Property, the value, marketability, condition or future performance thereof, or the sufficiency of the cash flow of the Property, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Subordinated Loans). Each of the Senior Lender and Subordinated Lender acknowledges that the Senior Loan and each Subordinated Loan is distinct, separate transactions and loans, separate and apart from each other.

14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto but does not otherwise create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

15. **Modification, Waiver.** No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment, discharge or change is sought. No provision hereof shall be modified or limited by course of conduct or usage of trade except by a

UNOFFICIAL COPY

written agreement executed pursuant hereto.

16. **Severability**. In the event that any of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall not be in any way affected, prejudiced or disturbed thereby.

17. **Termination**. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Indebtedness and the full and final release of the lien of the Senior Loan Documents; provided that all rights of the Subordinated Lender hereunder shall automatically terminate at such time as the Subordinated Indebtedness has been paid in full.

18. **Entire Agreement**. This Agreement and the Credit Enhancement Agreement constitutes the entire agreement between the parties and shall supersede and cancel any prior agreements regarding the subordination of the Subordinated Loan Documents and any liens or rights created thereunder.

19. **Counterparts**. This Agreement and all acknowledgments and consents hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

20. **Due Authorization**. The persons executing this Agreement on behalf of a party hereto represent and warrant to the other party that he or she has been duly authorized by such party to so execute this Agreement.

21. **Governing Law**. This Agreement is construed by and governed in accordance with the laws of the State of Illinois.

(the balance of this page is intentionally left blank)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement pursuant to authority duly given, as of the date first above written.

SENIOR LENDER

MB FINANCIAL BANK, N.A.

By: _____
 Name: JOHN SARRAS
 Its: SVP

SUBORDINATED LENDER

IFF, an Illinois not-for-profit corporation

By: _____
 Name: Louise E. Tuck
 Its: Vice-President of Lending

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement pursuant to authority duly given, as of the date first above written.

SENIOR LENDER

MB FINANCIAL BANK, N.A.

By: _____

Name: _____

Its: _____

SUBORDINATED LENDER

IFF, an Illinois not-for-profit corporation

By: *L E Tuck*

Name: Louise E. Tuck

Its Vice-President of Lending

Property of Cook County Clerk's Office

UNOFFICIAL COPY

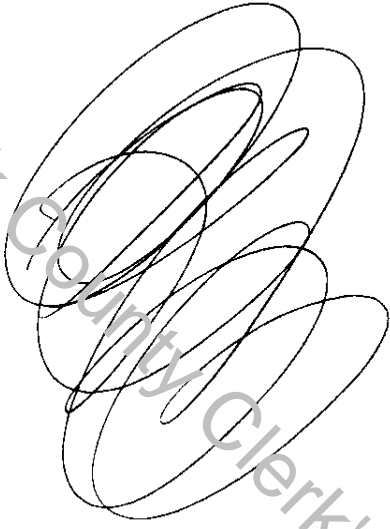
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 3737 S. Paulina, Chicago, Illinois

P.I.N.:

Property of Cook County Clerk's Office



UNOFFICIAL COPY

DESCRIPTION OF PROPERTY

Parcel 1:

The North 99.00 feet of the West 110.00 feet of Lot 1 in Wilshire's Subdivision of the South half of Block 29 in Canal Trustee's Subdivision of the East half of Section 31, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Exclusive and limited easement rights for the benefit of Parcel 1 for ingress/egress, recess area, parking spaces and open space as contained in the Unrecorded Lease effective as of July 19, 2007 made by and between Catholic Bishop of Chicago, an Illinois corporation, and Namaste Charter School, Inc., an Illinois not for profit corporation.

P.I.N. : 17-31-423-001-0000

C/K/A: 3737 South Paulina, Chicago, IL 60609

Property of Cook County Clerk's Office