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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/29/2009 03:10 PM Pg: 1 of 9

This Document Prepared by  
and after Recording Return to:

Tishler & Wald, Ltd.  
ATTN: David A. Kallick  
200 S. Wacker Drive, Suite 3000  
Chicago, IL 60606

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the 5th day of March, 2009, by and between **HAMM FAMILY ENTERPRISES, INC.**, an Illinois corporation ("Tenant"), **PHIL STEFANI**, as beneficiary of Mortgage ("Landlord"), and **MIDWEST BANK AND TRUST COMPANY** ("Mortgagee").

**RECITALS:**

A. Tenant is the Tenant under that certain lease agreement (such lease agreement hereinafter being referred to as "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "Lease") originally dated September 17, 2008 pursuant to which Tenant leased certain premises ("Leased Premises") on the parcel of land ("Land") legally described in Exhibit A attached hereto.

B. Mortgagee is the holder of 1.) a certain Real Estate Mortgage dated March 5, 2007, recorded on March 14, 2007 with the Cook County Recorder of Deeds as document number 0707342224 (as amended from time to time "Mortgage") executed by **CHICAGO TITLE LAND TRUST COMPANY**, as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, as successor trustee to Bank of Ravenswood, Corporation of Illinois, not personally, but as Trustee under the Trust Agreement dated December 19, 1975 and known as Trust Number 1791 (the "Mortgagor") encumbering the Land and securing an original principal indebtedness in an amount equal to Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00); and 2.) a certain Junior Real Estate Mortgage dated March 5, 2007, recorded on March 14, 2007 with the Cook County Recorder of Deeds as document number 0707342226 (as amended from time to time "Junior Mortgage") executed by Mortgagor encumbering the Land and securing a revolving credit note in an amount equal to Three Million and No/100 Dollars (\$3,000,000.00) (the "Mortgage" and the "Junior Mortgage" collectively the "Mortgages").

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**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

2. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the Section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Land and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 3, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

3. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgages and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgages had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Land, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Land, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Mortgagee.

5. Mortgagee agrees that so long as Tenant is not in default under the Lease:

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(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgages or the enforcement of any rights under the Mortgages (unless Tenant is a necessary party under applicable law); and

(b) The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgages or the enforcement of any rights under the Mortgages, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgages;

6. If Mortgagee or any future holder of the Mortgages shall become the owner of the Land by reason of foreclosure of the Mortgages or otherwise, or if the Land shall be sold as a result of any action or proceeding to foreclose the Mortgages or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Land as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) that is not then continuing under the Lease; provided, however, that Tenant's sole remedy against Mortgagee with respect to any act or omission of any prior landlord (including Landlord) that is then continuing under the Lease shall be to assert against Mortgagee any offsets of rent or other defenses which Tenant has against any landlord under the Lease (including Landlord) (subject to the limitation set forth in clause (ii) below);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 4 above;

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(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Land.

7. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: Christopher A. Ebert  
Senior Vice President  
MIDWEST BANK AND TRUST COMPANY  
1001 Johnson Drive  
Buffalo Grove, Illinois 60089

To Tenant: HAMM FAMILY ENTERPRISES, INC.  
3700-04 N. Clark Street  
Chicago, Illinois 60613

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

8. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

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9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

10. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

**[SIGNATURE PAGE TO FOLLOW]**

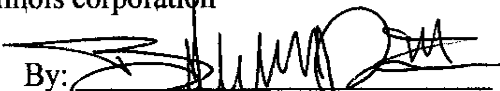
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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

**Tenant:**

**HAMM FAMILY ENTERPRISES, INC.,**  
An Illinois corporation

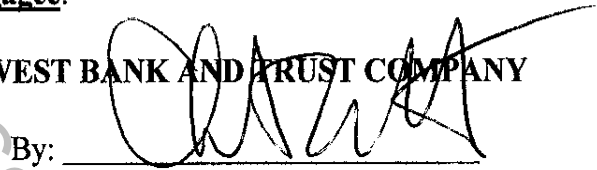
By:   
Its: President

**Landlord:**

By:   
**PHIL STEFANI**

**Mortgagee:**

**MIDWEST BANK AND TRUST COMPANY**

By:   
Its Senior Vice President

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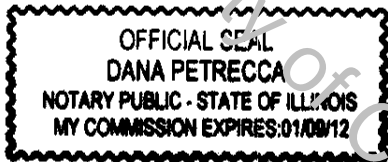
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, Dana Petrecca, a Notary Public in and for said County in the State aforesaid, do hereby certify that William M. Rice III, an officer of HAMM FAMILY ENTERPRISES, INC., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on MARCH 23, 2009.

Dana Petrecca  
Notary Public

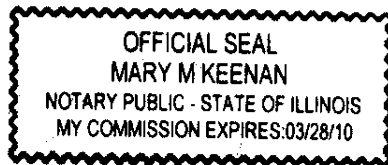


STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, MARY KEENAN, a Notary Public in and for said County in the State aforesaid, do hereby certify that PHIL STEFANI, who is personally known to be 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 such instrument as his own free and voluntary act for the uses and purposes set forth therein.

Given under my hand and notarial seal on Mar 24, 2009.

Mary M. Keenan  
Notary Public





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STATE OF ILLINOIS )  
COUNTY OF Lake ) SS.

I, Denise M Lawrenz, a Notary Public in and for said County in the State aforesaid, do hereby certify CHRISTOPHER A. EBERT, a Senior Vice President of MIDWEST BANK AND TRUST COMPANY, who is personally known to be 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 such instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes set forth therein.

Given under my hand and notarial seal on 30 March, 2009.

Denise M Lawrenz  
Notary Public



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## EXHIBIT "A"

### LEGAL DESCRIPTION:

LOT 19 IN EMILY E. FORDYCE'S SUBDIVISION OF BLOCK 8, LYING EAST OF RACINE AVENUE OF EDSON SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**ADDRESS:** 3700-04 N. Clark Street  
Chicago, IL 60613

**P.I.N.** 14-20-215-017-0000

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