



Prepared by and after recording  
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Doc#: 1021049034 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/29/2010 01:53 PM Pg: 1 of 11

Bennett L. Cohen, Esq.  
Cohen, Salk & Huvar, P.C.  
630 Dundee Road, Suite 120  
Northbrook, IL 60062

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT**

THIS AGREEMENT made this 28th day of July, 2010, among MB FINANCIAL BANK, N.A., a national banking association (hereinafter called "Lender"), CITIBANK, N.A., as successor in interest by merger to CitiBank, F.S.B. (hereinafter called "Tenant"), and SLEVIN CAPITAL INVESTMENTS, INC, an Illinois corporation (hereinafter called "Landlord").

**WITNESSETH THAT:**

WHEREAS, Lender is now the owner and holder of a Mortgage, Security Agreement and UCC Fixture Filing executed by Landlord in favor of Lender (hereinafter called the "Security Instrument") dated July 28, 2010 and recorded as Document No. 1021049032 in the Office of the Recorder of Cook County, Illinois, covering the real property described in Exhibit A attached hereto and made a part hereof and the buildings and improvements thereon (hereinafter collectively called the "Mortgaged Premises") securing the payment of Landlord's mortgage note in the stated principal amount of \$2,127,750.00, payable to the order of Lender; and

WHEREAS, Tenant is the tenant under a Ground Lease Agreement (hereinafter called the "Lease") dated April 10, 2006, by and between Landlord (as assignee of the original landlord, W2001 VHE Realty, L.L.C.) and Tenant, covering certain property (hereinafter called the "Demised Premises") consisting of all of the Mortgaged Premises; and

WHEREAS, Tenant, Landlord and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender, Landlord and Tenant hereby agree and covenant as follows:

1. **SUBORDINATION**. The Lease now is, and shall at all times and for all purposes continue to be, subject and subordinate, in each and every respect, to the Security Instrument, with the provisions of the Security Instrument controlling in all respects over the provisions of the Lease, it being understood and agreed that the foregoing subordination shall apply to any and all increases, renewals, modifications, extensions, substitutions, replacements

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and/or consolidations of the Security Instrument, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

2. **NON-DISTURBANCE**. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, (ii) the Lease is in full force and effect, and (iii) Tenant attorns to Lender or a purchaser of the Mortgaged Premises as provided in Paragraph 3, then (a) Tenant's possession, occupancy, use and quiet enjoyment of the Demised Premises under the Lease, or any extensions or renewals thereof or acquisition of additional space which may be effected in accordance with any option therefor in the Lease, shall not be terminated, disturbed, diminished or interfered with by Lender in the exercise of any of its rights under the Security Instrument, and (b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Security Instrument.

3. **ATTORNMENT**. If Lender shall become the owner of the Mortgaged Premises or the Mortgaged Premises shall be sold by reason of non-judicial or judicial foreclosure or other proceedings brought to enforce the Security Instrument or the Mortgaged Premises shall be conveyed by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct Lease between Lender or other purchaser of the Mortgaged Premises, who shall succeed to the rights and duties of Landlord, and Tenant. In such event, Tenant shall attorn to Lender or such purchaser, as the case may be, upon any such occurrence and shall recognize Lender or such purchaser, as the case may be, as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender or of any holder(s) or any of the indebtedness or other obligations secured by the Security Instrument or any such purchaser, any instrument or certificate which, in the sole reasonable judgment of the requesting party, is necessary or appropriate, in connection with any such foreclosure or deed in lieu of foreclosure or otherwise, to evidence such attornment, which instrument or certificate shall be in form and content reasonably acceptable to Tenant. Tenant hereby waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or deed in lieu of foreclosure.

4. **OBLIGATIONS AND REMEDIES**. If Lender shall become the owner of the Mortgaged Premises or the Mortgaged Premises shall be sold by reason of non-judicial or judicial foreclosure or other proceedings brought to enforce the Security Instrument or the Mortgaged Premises shall be conveyed by a deed in lieu of foreclosure, Lender or other purchaser of the Mortgaged Premises, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of Landlord. Upon attornment by Tenant as provided herein, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease and Tenant shall

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have the same remedies against Lender or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender or such purchaser had not succeeded to the interest of Landlord; provided, however, that Lender or such purchaser shall not be liable to or bound to Tenant:

(A) FOR ANY ACT OR OMISSION OF ANY PRIOR LANDLORD (INCLUDING LANDLORD) WHICH CONSTITUTES A DEFAULT OR BREACH OF THE LEASE; PROVIDED, HOWEVER, NOTHING HEREIN SHALL BE DEEMED TO BE A WAIVER OF TENANT'S RIGHTS OR REMEDIES IN THE EVENT SUCH ACT OR OMISSION IS OF A CONTINUING NATURE, SUCH AS, FOR EXAMPLE, LANDLORD'S FAILURE TO FULFILL A REPAIR OBLIGATION, AND SUCH DEFAULT IS NOT CURED BY LENDER OR SUCH PURCHASER AFTER LENDER OR SUCH PURCHASER ACQUIRES THE MORTGAGED PREMISES (HOWEVER, LENDER OR SUCH PURCHASER SHALL IN NO EVENT BE LIABLE FOR ANY TORT CLAIMS WHICH TENANT MAY HAVE AGAINST LANDLORD OR ANY CLAIMS FOR LIQUIDATED DAMAGES WHICH MAY BE OWING BY LANDLORD UNDER THE LEASE); OR

(B) FOR ANY OFFSETS OR DEFENSES WHICH THE TENANT MIGHT BE ENTITLED TO ASSERT AGAINST LANDLORD ARISING PRIOR TO THE DATE LENDER TAKES POSSESSION OF LANDLORD'S INTEREST IN THE LEASE OR BECOMES A MORTGAGEE IN POSSESSION, SUBJECT TO TENANT'S CONTINUED RIGHT OF OFFSET FOR ANY DEFAULT BY LANDLORD WHICH REMAINS UNCURED PROVIDED NOTICE OF SUCH DEFAULT HAS BEEN PROVIDED TO LENDER IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT; OR

(C) FOR OR BY ANY RENT OR ADDITIONAL RENT WHICH TENANT MIGHT HAVE PAID FOR MORE THAN THE CURRENT MONTH TO ANY PRIOR LANDLORD (INCLUDING LANDLORD) UNLESS EXPRESSLY REQUIRED BY THE TERMS OF THE LEASE; OR

(D) BY ANY AMENDMENT OR MODIFICATION OF THE LEASE MADE WITHOUT LENDER'S CONSENT THAT (I) RESULTS IN A REDUCTION OF RENT OR OTHER SUMS DUE AND PAYABLE PURSUANT TO THE LEASE, (II) REDUCES THE TERM OF THE LEASE; (III) PROVIDES FOR PAYMENT OF RENT MORE THAN ONE MONTH IN ADVANCE, OR (IV) MATERIALLY INCREASES LANDLORD'S OBLIGATIONS UNDER THE LEASE; OR

(E) FOR ANY SECURITY DEPOSIT, RENTAL DEPOSIT OR SIMILAR DEPOSIT GIVEN BY TENANT TO A PRIOR LANDLORD (INCLUDING LANDLORD) UNLESS SUCH DEPOSIT IS ACTUALLY PAID OVER TO LENDER OR SUCH PURCHASER BY THE PRIOR LANDLORD; OR

(F) FOR THE CONSTRUCTION OF ANY IMPROVEMENTS REQUIRED OF LANDLORD UNDER THE LEASE IN THE EVENT LENDER OR SUCH PURCHASER ACQUIRES TITLE TO THE MORTGAGED PREMISES PRIOR TO FULL COMPLETION AND ACCEPTANCE BY TENANT OF IMPROVEMENTS

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REQUIRED UNDER THE LEASE; PROVIDED, HOWEVER, SUCH LACK OF LIABILITY ON THE PART OF LENDER OR SUCH PURCHASER PURSUANT TO THIS SUBPARAGRAPH SHALL NOT AFFECT TENANT'S RIGHTS OF SELF-HELP AND OFFSET OR TERMINATION DESCRIBED IN THE LEASE IN THE EVENT OF SUCH FAILURE TO COMPLETE SUCH IMPROVEMENTS AS LONG AS TENANT HAS PROVIDED ALL APPLICABLE NOTICES AND CURE PERIODS AS REQUIRED UNDER THE LEASE AND THIS AGREEMENT; OR

(G) FOR THE PAYMENT OF ANY LEASING COMMISSIONS OR OTHER EXPENSES FOR WHICH ANY PRIOR LANDLORD (INCLUDING LANDLORD) INCURRED THE OBLIGATION TO PAY; OR

(H) BY ANY PROVISION OF THE LEASE RESTRICTING USE OF OTHER PROPERTIES OWNED BY LENDER, AS LANDLORD.

The person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only for matters arising during such person's or entity's period of ownership.

5. **NO ABRIDGMENT.** Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. **NOTICES OF DEFAULT TO LENDER.** Tenant agrees to give Lender a copy of any default notice sent by Tenant under the Lease to Landlord.

7. **REPRESENTATIONS BY TENANT.** Tenant represents and warrants to Lender that Tenant has validly executed the Lease; the Lease is valid, binding and enforceable and is in full force and effect in accordance with its terms; the Lease has not been amended except as stated herein; no rent under the Lease has been paid more than thirty (30) days in advance of its due date; to the best of Tenant's knowledge, there are no defaults existing under the Lease; and Tenant, as of this date, to the best of Tenant's knowledge, has no charge, lien, counterclaim or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due under the Lease.

8. **RENT PAYMENT.** If Lender shall become the owner of the Mortgaged Premises or the Mortgaged Premises shall be sold by reason of non-judicial or judicial foreclosure or other proceedings brought to enforce the Security Instrument or the Mortgaged Premises shall be conveyed by deed in lieu of foreclosure, Tenant agrees to pay all rents directly to Lender or other purchaser of the Mortgaged Premises, as the case may be, in accordance with the Lease immediately upon notice of Lender or such purchaser, as the case may be, succeeding to Landlord's interest under the Lease. Tenant further agrees to pay all rents directly to Lender immediately upon notice that Lender is exercising its rights to such rents under the Security Instrument or any other loan documents (including, but not limited to, any Assignment of Rents and of Lessor's Interest In Leases) following a default by Landlord or other applicable party. Tenant shall be under no obligation to ascertain whether a default by Landlord has occurred under the Security Instrument or any other loan documents. Landlord waives any right, claim or

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demand it may now or hereafter have against Tenant by reason of such direct payment to Lender and agrees that such direct payment to Lender shall discharge all obligations of Tenant to make such payment to Landlord.

9. **NOTICE OF SECURITY INSTRUMENT.** To the extent that the Lease shall entitle Tenant to notice of any deed of trust or security agreement, this Agreement shall constitute such notice to the Tenant with respect to the Security Instrument and to any and all other deeds of trust and security agreements which may hereafter be subject to the terms of this Agreement.

10. **LANDLORD DEFAULTS.** Tenant agrees with Lender that effective as of the date of this Agreement: (i) Tenant shall not take any steps to terminate the Lease for any default by Landlord or any succeeding owner of the Mortgaged Premises until after giving Lender written notice of such default, stating the nature of the default and giving Lender thirty (30) days from receipt of such notice to effect cure of the same, or if cure cannot be effected within said thirty (30) days due to the nature of the default, Lender shall have a reasonable time to cure provided that it commences cure within said thirty (30) day period of time and diligently carries such cure to completion; and (ii) notice to Landlord under the Lease (oral or written) shall not constitute notice to Lender. For purposes of this paragraph, actions taken by Lender to foreclose the Security Instrument or otherwise gain possession of the Mortgaged Premises shall be considered actions undertaken to cure any default. Notwithstanding the foregoing, if Landlord defaults in the performance of any of its material obligations, covenants and warranties under the Lease which substantially interferes with the ability of Tenant to reasonably implement its permitted use under the Lease or results in a real and imminent danger to the health or safety of the person or property of Tenant or any agent, employee, or invitee of Tenant, then, in such event, Tenant shall be entitled to exercise its rights of self-help and offset within the time periods set forth in the Lease provided all required notices have been given as set forth in the Lease.

11. **NOTICE.** Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery; or (c) United States mail, postage prepaid, registered or certified mail, addressed as follows:

To Lender:

MB Financial Bank, N.A.  
6111 North River Road  
Rosemont, Illinois 60018  
Attention: Maureen M. James  
First Vice President

To Tenant:

Citibank, N.A.  
c/o Citigroup Realty Services  
500 West Madison Avenue  
Chicago, Illinois 60661

Citigroup Inc.  
One Court Square, 45th Floor  
Long Island City, NY 11120  
Attn: General Counsel of Real Estate

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or to such other address or to the attention of such other person as hereafter designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

12. **MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. **SUCCESSOR LENDER.** The term "Lender" as used throughout this Agreement includes any successor or assign of Lender, any affiliate of Lender acquiring the Mortgaged Premises at foreclosure or by deed in lieu of foreclosure, and any holder(s) of any interest in the indebtedness secured by the Security Instrument.

14. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Mortgaged Premises, and their respective successors and assigns.

15. **PARAGRAPH HEADINGS.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

16. **GENDER AND NUMBER.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless the context otherwise requires.

17. **APPLICABLE LAW.** This Agreement and the rights and duties of the parties hereunder shall be governed by all purposes by the law of the state where the Mortgaged Premises is located and the law of the United States applicable to transactions within such state.

18. **WAIVER OF PURCHASE OPTION.** To the extent that the Lease contained a right of first refusal on the part of the Tenant to purchase the Mortgaged Premises, Tenant waives such right of first refusal with respect to the Landlord's purchase of the Mortgaged Premises from the original landlord, W2001 VHE Realty, L.L.C.

19. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts and by the different parties hereto in separate counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument, with the same effect as of all parties to this Agreement had signed the same signature page.

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## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1:

LOT 3 IN POPLAR CREEK CROSSING RESUBDIVISION #1, BEING A RESUBDIVISION OF LOT 2 IN POPLAR CREEK CROSSING SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED MAY 12, 2010 AS DOCUMENT NUMBER 1013244050, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR INTERNAL ACCESS AS SET FORTH ON THE PLAT OF POPLAR CREEK CROSSING RECORDED JUNE 28, 2007 AS DOCUMENT NUMBER 0717922001.

Address: 2550 N. Sutton Road, Hoffman Estates, Illinois 60192

PIN(s): 01-33-103-003

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IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

LENDER:

MB FINANCIAL BANK, N.A.

By: Maureen M. Jones  
Name: Maureen M. Jones  
Its: First Vice President

TENANT:

CITIBANK, N.A., AS SUCCESSOR IN INTEREST BY MERGER TO CITIBANK, F.S.B.

By: James W. Means  
Name: James W. Means  
Its: Vice President

LANDLORD:

SLEVIN CAPITAL INVESTMENTS, INC.

By: William A. Slevin  
Name: William A. Slevin  
Its: President

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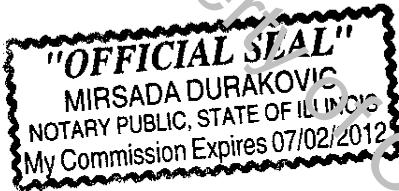
## ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS                    )  
   )  
 COUNTY OF COOK                    )

SS

I, Mirsada Durakovic, a Notary Public in and for the County and State aforesaid, do hereby certify that Maureen M. James a 1st. V.P. of MB Financial Bank, N.A., a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer appeared before me this day in person and acknowledged that he or she signed and delivered the said instrument as his or her own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26<sup>th</sup> day of July, 2010.



Mirsada Durakovic  
 Notary Public

My Commission Expires: 7/2/2012

Cook County Clerk's Office

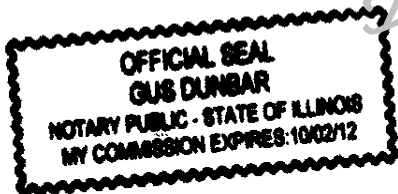
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## ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS                    )  
  )        SS  
COUNTY OF COOK                    )

I, Gus Dunbar, a Notary Public in and for the County and State aforesaid, do hereby certify that James W. Means, a Vice President of Citibank, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer appeared before me this day in person and acknowledged that he or she signed and delivered the said instrument as his or her own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24<sup>th</sup> day of June, 2010.



Gus Dunbar  
Notary Public

My Commission Expires: Oct. 2, 2012.

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## ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS                    )  
   )  
 COUNTY OF COOK                    )

SS

I, Joyce L. Mainiero, a Notary Public in and for the County and State aforesaid, do hereby certify that William A. Slevin, the President of Slevin Capital Investments, Inc., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of July, 2010.

Joyce L. Mainiero  
 Notary Public

My Commission Expires: \_\_\_\_\_

