

# UNOFFICIAL COPY



Doc#: 1102419033 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/24/2011 09:47 AM Pg: 1 of 8

## TYPE OF DOCUMENT:

Subordination Non-Disturbance and Attornment Agreement

## PREPARER INFORMATION:

Moran Foods, Inc.  
Attn: Legal Department  
100 Corporate Office Drive  
Earth City MO 63045  
314/592-9508

## RETURN DOCUMENT TO:

First American Title Insurance Company  
801 Nicollet Mall, Ste 1900  
Minneapolis MN 55402  
NCS-462339-02-Mpls (JF)  
612/305-2000

Property of Cook County Clerk's Office

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SC y  
E y  
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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

### [Chicago, Illinois]

This Agreement is made by T & D PROPERTY GROUP, LLC, an Illinois limited liability company ("Lessor"), COLE TAYLOR BANK, an Illinois banking corporation ("Mortgagee") and MORAN FOODS, INC., a Missouri corporation, d/b/a Save-A-Lot, Ltd. ("Lessee") as of the 15<sup>th</sup> day of November, 2010 (the "Execution Date").

### RECITALS:

- A. Lessor is the owner of certain property (the "Shopping Center") situated in the City of Chicago, County of Cook, State of Illinois, and more particularly described in Exhibit A attached hereto;
- B. Lessor and Lessee are parties to a lease dated September 30, 2010, as amended from time to time thereafter (said lease as so amended hereinafter referred to as Lease) covering a portion of the Shopping Center ("Leased Premises"), which Leased Premises are more fully described in the Lease;
- C. The Shopping Center is encumbered by a certain Construction Mortgage dated as of June 15, 2007 as amended and modified from time to time ("Mortgage") to secure certain obligations of Lessor to Mortgagee, which Mortgage is more fully described as follows: Construction Mortgage executed by Lessor to Mortgagee dated June 15, 2007 and recorded in the office of Recorder of Deeds, County of Cook, State of Illinois as Document No. 0717303114.

### AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Mortgagee hereby gives its consent to the Lease. Mortgagee warrants and represents to Lessee that it is the owner of the Mortgage and that the Mortgage has not been assigned.
- 2. Lessee, for itself and its successors and assigns, does hereby agree that all right, title and interest which Lessee, its successors and assigns, may have in and to the Leased Premises or any part thereof, shall be, and the same hereby is made, subject and subordinate to the lien of the Mortgage, with the same force and effect as though the Mortgage had been executed, delivered and recorded prior to the date of the Lease, provided that Mortgagee hereby agrees that so long as Lessee is not in default beyond any applicable cure period in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease requiring performance on the part of Lessee, and except as otherwise provided herein, all condemnation awards and property insurance proceeds payable with respect to the Shopping Center shall be applied and paid in the manner set forth in the Lease.
- 3. So long as Lessee is not in default, beyond any applicable cure period, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease requiring performance on the part of Lessee, (a) Mortgagee will not join Lessee as a party defendant in any action or proceeding for the purpose of foreclosing the Mortgage;

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Upon recording please return to:  
First American Title Insurance Company  
801 Nicollet Mall, Suite 1900  
Minneapolis, MN 55402  
NCS 462339-03 MPLS (JF)

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- (b) any sale or transfer of the Shopping Center or of Lessor's interest in the Lease, pursuant to foreclosure of the Mortgage or voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Lessee's possession under the Lease; and (c) the Lease will continue in full force and effect according to its terms.
4. So long as Lessee is not in default, beyond any applicable cure period, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease requiring performance on the part of Lessee, if the Shopping Center shall be transferred to and owned by Mortgagee, or any assignee of Mortgagee or purchaser at judicial sale or any transferee under an action in lieu thereof, by reason of foreclosure or other remedial proceedings brought by Mortgagee or any assignee of Mortgagee or by any other similar manner, Lessee's rights to possession of the Leased Premises under the Lease shall not be terminated thereby, rather Lessee shall attorn to and be bound to Mortgagee or any such assignee, purchaser or transferee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining; and Mortgagee or any such assignee, purchaser or transferee shall be bound, as the Lessor, to Lessee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining except that neither Mortgagee nor any such assignee, purchaser or transferee shall be:
- 4.1. Bound by any rent or Additional Rent which Lessee may have paid for more than thirty (30) days in advance of its due date to any prior Lessor.
  - 4.2. Bound by any material amendment to the Lease entered into subsequent to the date of this Agreement which has not been consented to by Mortgagee which consent shall not be unreasonably withheld or delayed.
  - 4.3. Bound by any provision of the Lease restricting the use of properties owned by Mortgagee, other than the Shopping Center, for purposes which compete with Lessee.
  - 4.4. Liable for any act or omission of any prior lessor (including Lessor).
  - 4.5. Subject to any offsets or defenses which the Lessee has against any prior lessor (including Lessor) unless the Lessee shall have provided Mortgagee with (a) notice of Lessor'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 7 herein below.
  - 4.6. Liable to refund or otherwise account to Lessee for any security deposit not actually paid over to Mortgagee by Lessor.
  - 4.7. 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 lessor (including Lessor).
  - 4.8. Personally liable or obligated to perform any such term, covenant or provision, such Mortgagee's, assignee's, purchaser's or transferee's liability being limited in all cases to its interests in the Shopping Center.

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5. Subject to the provisions hereof, the Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect to the lien of the Mortgage and to any and all amendments and renewals thereof.
6. This Agreement shall be binding upon and shall inure to the benefit of Lessor, Mortgagee and Lessee, and their respective heirs, personal representatives, transferees, successors and assigns. Except as provided in Section 8, no action on the part of any party to this Agreement shall be construed to be a waiver, release or relinquishment of any rights under this Agreement unless said waiver, release or relinquishment is expressly contained in an instrument executed by the party against whom the waiver, release or relinquishment is being enforced.
7. Lessee agrees that, during the term of the Mortgage, Lessee shall furnish to said Mortgagee the same notice or notices of default by Lessor that Lessee is required to furnish to Lessor under the Lease and Mortgagee shall have the same rights and period to cure such default as Lessor has under the Lease.
8. If Lessee requests in writing that Mortgagee indicate whether the Mortgage has been released, terminated or satisfied and Mortgagee fails to provide written notice to Lessee indicating whether the Mortgage has been released, terminated or satisfied within twenty (20) days following delivery of such request, then Lessee shall no longer be required to give Mortgagee notices under Section 7 and Mortgagee shall not have the right to cure defaults as provided in Section 7 and Mortgagee's consent to material amendments to the Lease, as provided in Section 4.2, shall not be required.
9. Lessor has by a separate Assignment of Leases and Rents (hereinafter referred to as the "Assignment of Leases") assigned its interest in the rents and payments due under the Lease to Mortgagee as security for repayment of its obligations to Mortgagee described in the Mortgage. If in the future there is a default by Lessor in the performance and observance of the terms of the Mortgage, Mortgagee may, at its option under the Assignment of Leases, require that all subsequent rents and other payments due Lessor under the Lease be paid directly to it. Upon notification to that effect to Lessee by Mortgagee, Lessor hereby authorizes and directs Lessee, and Lessee agrees (provided that such agreement shall not affect or limit any of Lessee's rights under the Lease, including but not limited to any rights of offset), to pay any subsequent payments due to Lessor under the terms of the Lease to Mortgagee. Lessor represents and warrants to Lessee that there are no other collateral assignments of the Lease or rents in effect, other than the Assignment of Leases to Mortgagee.
10. This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State of Illinois.
11. Any notices required or given under this Agreement shall be in writing and shall be sent by U. S. Certified Mail, postage prepaid and shall be sent to the following addresses:

To Mortgagee: Cole Taylor Bank  
225 West Washington, Suite 800  
Chicago, Illinois 60606  
Attn: Amy Hodson

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To Lessor: T&D Property Group, LLC  
c/o Musa P. Tadros  
620 Butternut Trail  
Frankfort, IL 60423

With copy to: James V. Inendino, Esq.  
Loeb & Loeb LLP  
321 North Clark, 23<sup>rd</sup> Floor  
Chicago, IL 60654

To Lessee: MORAN FOODS, INC.  
Attn: Asset Management Group  
100 Corporate Office Drive  
Earth City, MO 63045

With copy to: MORAN FOODS, INC.  
Attn: Legal Department  
100 Corporate Office Drive  
Earth City, Missouri 63045

The addresses for such notices may be changed by written notice to the other party of at least thirty (30) days given as provided above. Notices given as provided above shall be deemed complete upon mailing.

12. This Agreement may be signed in counterparts and each counterpart shall be effective as an original when a counterpart has been signed by all parties.
13. This Agreement contains the entire agreement between the parties concerning the matters addressed herein and no representations, inducements, promises, understandings or agreements (whether express or implied and whether oral or written) made before the execution of this Agreement will change the terms of this Agreement. No covenants shall be implied into any of the terms or provisions of this Agreement. This Agreement may be changed or modified only by a writing that all parties have signed. This Agreement shall not be binding on any party until it is executed and delivered by each party hereto.

***[Signature Page Follows]***

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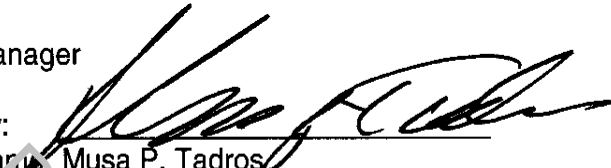
The parties hereto have executed this Agreement as of the Execution date.

LESSOR:

T&D PROPERTY GROUP, LLC., an Illinois limited liability company

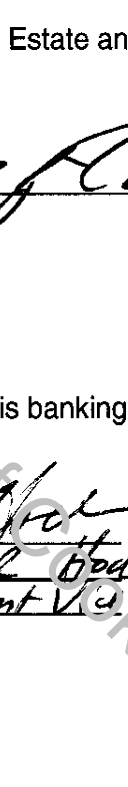
By: Crown Commercial Real Estate and Development, Inc., an Illinois corporation

Its: Manager

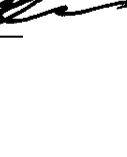
By:   
Name: Musa P. Tadros  
Its: President

MORTGAGEE:

COLE TAYLOR BANK, an Illinois banking corporation

By:   
Name: Gregory R. Hodson  
Its: Assistant Vice President

LESSEE:  
MORAN FOODS, INC.

By:   
Name: G.F. Meyer  
Its: Vice President

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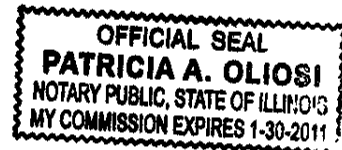
## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 10<sup>th</sup> day of November, 2010, before me, a Notary Public in and for said County, personally appeared Musa P. Tadros, to me personally known, who being by me duly sworn, did say that he is President of Crown Commercial Real Estate and Development, Inc., Manager of T & D Property Group, LLC, an Illinois limited liability company, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

[Signature]  
Notary Public

My Commission Expires:



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 15<sup>th</sup> day of November, 2010, before me, a Notary Public in and for said County, personally appeared Amy R. Hodson, to me personally known, who being by me duly sworn, did say that he/she is AVP of COLE TAYLOR BANK, an Illinois banking corporation, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

[Signature]  
Notary Public

My Commission Expires: 9/2/14

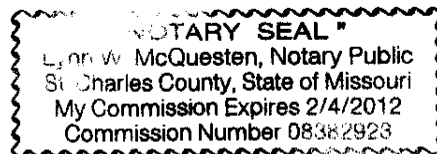


STATE OF MISSOURI )  
 ) SS.  
COUNTY OF ST. LOUIS )

On this 5<sup>th</sup> day of November, 2010, before me, a Notary Public in and for said County, personally appeared GF Meyer, to me personally known, who being by me duly sworn, did say that he/she is Vice President of Moran Foods, Inc., a Missouri corporation, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

[Signature]  
Notary Public

My Commission Expires:



Drafted By:  
MORAN FOODS, INC.  
Attn: Legal Department  
100 Corporate Office Drive  
Earth City, Missouri 63045

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## EXHIBIT A

### Legal Description to SNDA

LOTS 6 TO 15 IN SMITH'S SUBDIVISION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED JUNE 2, 1891 DOC. 1480048, IN COOK COUNTY, ILLINOIS.

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