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Doc#: 1122133099 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/09/2011 01:28 PM Pg: 1 of 10

WHEN RECORDED, MAIL TO:

April L. Butler, Esq.
Dinsmore & Shohl LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
513-977-8200

INTERCREDITOR AND
SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT ("Agreement") is made as of July 29, 2011, between Sun Life Assurance Company of Canada (U.S.), a Delaware corporation ("Senior Lender"), Barrington Bank & Trust Company, N.A., a national banking association ("Subordinate Lender"), and Five Star Group, LLC, an Illinois limited liability company ("Borrower").

RECITALS

- A. Senior Lender made a loan to Borrower in the original principal sum of \$3,500,000.00 ("Senior Loan"), evidenced by a Promissory Note dated September 2, 2004 ("Senior Note").
- B. Payment and performance of the Senior Loan are secured by a Mortgage and Security Agreement ("Senior Mortgage") encumbering real property described in the attached Exhibit A ("Real Property") dated September 7, 2004, and recorded September 10, 2004, as Document Number 0425433256 in the records of the Recorder of Deeds of Cook County, Illinois and by an Assignment of Leases and Rents dated as of September 7, 2004, and recorded on September 10, 2004, as document number 0425433257 in the records of the Recorder of Deeds of Cook County, Illinois.
- C. All documents evidencing and securing the Senior Loan (collectively, "Senior Loan Documents") are dated September 2, 2004.
- D. The Senior Loan Documents forbid subordinate liens on the Real Property.
- E. Subordinate Lender wishes to make a loan to Borrower in the original principal sum of \$789,854.98 ("Subordinate Loan"), evidenced by a Promissory Note dated July 29, 2011 ("Subordinate Note").
- F. Payment and performance of the Subordinate Loan are secured by a Mortgage, Security Agreement, Assignment of Rents and Fixture Filing encumbering the Real Property, and by an Assignment of Rents and Leases.
- G. All documents evidencing and securing the Subordinate Note (collectively, "Subordinate Loan Documents") are dated July 29, 2011.

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H. To induce Senior Lender to permit the Subordinate Loan, Subordinate Lender, Borrower and Senior Lender agree to enter this Agreement evidencing the terms of subordination and Senior Lender's consent to the Subordinate Loan.

I. For valuable consideration received, the parties agree as follows:

AGREEMENT

1. Notwithstanding anything to the contrary contained in the Senior Loan Documents, the Senior Lender acknowledges and consents to the Subordinate Loan together with the filing of the applicable Subordinate Loan Documents evidencing the liens and the security interests granted by Borrower to Subordinate Lender in the Real Property.

2. The Subordinate Loan and Subordinate Loan Documents are subordinate to the Senior Loan and Senior Loan Documents and to all amendments, modifications, extensions, replacements, renewals, and advances under the Senior Loan Documents, subject, however to the limitations set forth in Section 5 below.

3. As long as no event of default exists under the Senior Loan Documents, after giving effect to all grace and cure periods (a "Senior Event of Default"), Subordinate Lender may accept payments of amounts due and payable under the Subordinate Loan Documents. After receipt of written notice by Subordinate Lender from Senior Lender that a Senior Event of Default exists, Subordinate Lender shall accept no payments from Borrower until such Senior Event of Default is cured (which Subordinate Lender shall be permitted to cure in accordance with Section 10 hereof). Senior Lender agrees to provide prompt written notice to Subordinate Lender that a Senior Event of Default has been cured to the extent notice of such Senior Event of Default was provided to Subordinate Lender in accordance with this Section 3. If, despite the prohibition set forth in this Section 3, Borrower nevertheless directs payments to Subordinate Lender, Subordinate Lender shall hold the payments in trust for application to the Senior Loan.

4. Without prior written consent of Senior Lender, Subordinate Lender shall not commence any involuntary bankruptcy, reorganization, or insolvency proceedings against Borrower.

5. The Senior Loan may only secure the Senior Note, plus any accrued and unpaid interest and any prepayment premiums, fees, costs and expenses due under the Senior Loan Documents, and any protective advances made by the Senior Lender to preserve or protect the Real Property or the priority of its lien thereon (including, without limitation, advances made for the payment of taxes, insurance, or other amounts deemed necessary or appropriate by the Senior Lender to preserve or protect its interest in the Real Property, in each case, to the extent not in violation of this Agreement).

6. The Subordinate Loan may not exceed the outstanding principal amount of \$789,854.98, plus any accrued and unpaid interest and any prepayment premiums, fees, costs and expenses due under the Subordinate Loan Documents, and any protective advances made by the Subordinate Lender to preserve or protect the Real Property or the priority of its lien thereon (including, without limitation, advances made for the payment of taxes, insurance, or other

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amounts deemed necessary or appropriate by the Subordinate Lender to preserve or protect its interest in the Real Property, in each case, to the extent not in violation of this Agreement).

7. Because the Subordinate Loan is junior to the Senior Loan, Senior Lender at its sole discretion shall manage condemnation proceedings and insurance claims and shall have the sole right to make settlements with insurers and condemning authorities until the Senior Loan is paid and performed in full. Insurance and condemnation proceeds shall be paid either to Senior Lender or at Senior Lender's direction for use and application as allowed by the Senior Loan Documents; provided, however, all amounts of such proceeds which are in excess of the total amounts outstanding under the Senior Loan Documents shall be applied to the Subordinate Loan after the Senior Loan is paid and performed in full.

8. Subordinate Lender shall make commercially reasonable efforts to deliver to Senior Lender copies of any default notice given or received by Subordinate Lender related to the Subordinate Loan Documents.

9. Senior Lender shall make commercially reasonable efforts to deliver to Subordinate Lender copies of any default notice given or received by Senior Lender related to the Senior Loan Documents. Senior Lender's right to exercise remedies under the Senior Loan Documents, however, shall not be impaired if Subordinate Lender did not receive such a notice.

10. Prior to enforcing the lien and security interest of the Senior Mortgage, including, without limitation, the commencement of a foreclosure action or an action to appoint a receiver, the Senior Lender agrees to give the Subordinate Lender not less than 10 business days prior written notice thereof (which shall include a description of the defaults giving rise to the exercise of such remedies) and an opportunity to cure any defaults thereunder (provided however, that the Subordinate Lender has no duty or obligation to cure such defaults). Notwithstanding the foregoing, Senior Lender and Subordinate Lender agree that there may be emergency situations which require an immediate response by Senior Lender and under such circumstances (to be determined in Senior Lender's sole discretion) it shall be acceptable for Senior Lender to provide either less than 10 days' notice or no notice to Subordinate Lender. Senior Lender's right to exercise remedies under the Senior Loan Documents shall not be impaired if Subordinate Lender did not receive notice in accordance with this paragraph.

11. Any event of default which exists under the Subordinate Loan Documents after giving effect to all grace and cure periods (a "Subordinate Event of Default") shall constitute a Senior Event of Default and any Senior Event of Default shall constitute a Subordinate Event of Default.

12. Only Senior Lender shall have the right to appoint a receiver or to collect rents directly. Any funds remaining after cure of the Senior Loan shall be available for application to amounts due and payable under the Subordinate Loan.

13. Until the Senior Loan has been paid in full, Subordinate Lender waives subrogation rights that could result in Subordinate Lender's obtaining priority equal or superior to that of Senior Lender for funds Subordinate Lender may advance to cure Senior Events of

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Default under the Senior Loan Documents, to pay liens encumbering the Real Property, or to protect the lien of the Subordinate Loan Documents in any other way.

14. To Senior Lender's knowledge as of the date hereof, there is no Senior Event of Default.

15. Subordinate Lender represents and warrants to Senior Lender that Subordinate Lender is the holder of the Subordinate Loan and the security interests granted under the Subordinate Loan Documents which secure or will secure the Subordinate Loan. Subordinate Lender further represents and warrants to Senior Lender that it has full right, power and authority to enter into this Agreement. Senior Lender represents and warrants to Subordinate Lender that Senior Lender is the holder of the Senior Loan and the security interests granted under the Senior Loan Documents which secure or will secure the Senior Loan. Senior Lender further represents and warrants to Subordinate Lender that it has full right, power and authority to enter into this Agreement. The representations and warranties contained in this Section 15 shall survive execution and delivery of this Agreement.

16. This Agreement shall bind successors and assigns of each party.

17. The parties shall cooperate to execute documents and take necessary actions to carry out the intent of this Agreement.

18. Senior Lender's delay in exercising rights or remedies under the Senior Loan Documents shall not waive those rights or remedies, and partial exercise by Senior Lender of any right or remedy shall not preclude further exercise of rights or remedies.

19. Notices related to this Agreement shall be in writing and deemed given either (a) upon actual delivery by overnight courier or facsimile transmission to the parties designated below or (b) seventy-two (72) hours after deposit at a United States Post Office, certified or registered mail, postage prepaid, addressed as follows:

| | |
|----------------------|---|
| If to Senior Lender: | Sun Life Assurance Company of Canada (U.S.) One Sun Life Executive Park Wellesley Hills, Massachusetts 02481 Attention: Mortgage Investments, Mail Code SC1303 Fax Number: 781-237-0707 |
|----------------------|---|

With a copy to:

Joanne M. Schreiner, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Fax Number: 513-977-8141

| | |
|---------------------------|---|
| If to Subordinate Lender: | Barrington Bank & Trust Company, N.A. 201 South Hough Street |
|---------------------------|---|

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Barrington, Illinois 60010
Attention: George Reimnitz

With a copy to:

Ungaretti & Harris LLP
70 West Madison Street, Suite 3500
Chicago, Illinois 60602
Attention: Daniel P. Strzalka, Esq.
Fax Number: 312-977-4405

If to Borrower:

Five Star Group, LLC
1301 Carson Drive
Melrose Park, Illinois 60610

To change notice addresses, the parties shall comply with this section.

20. The laws of the State of Illinois shall govern this Agreement. Any legal action or proceeding brought by any party hereto with respect to the transactions contemplated by this Agreement shall be brought and maintained in any state or federal court located in the State of Illinois. By execution and delivery of this Agreement, each party hereto submits to and accepts the non-exclusive jurisdiction of such courts. Each party hereto waives any claims such party may have that the State of Illinois is not a convenient forum or proper venue for any such legal action or proceeding. If any provision of this Agreement is ruled invalid or illegal, the remaining provisions of this Agreement shall remain effective.

21. This Agreement shall terminate when the Senior Loan has been fully paid and performed.

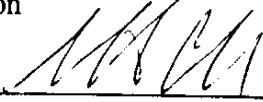
Signature Page Follows.

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Senior Lender's Signature Page to Intercreditor and Subordination Agreement

SENIOR LENDER:

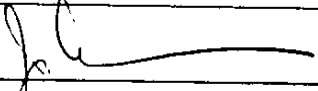
SUN LIFE ASSURANCE COMPANY OF CANADA (U.S.), a Delaware corporation

By: 

Name: Matthew Capofreddi

Title: Authorized Signer

Date: _____

By: 

Name: John Moynihan

Title: Authorized Signer

Date: _____


Property of Cook County

COMMONWEALTH OF MASSACHUSETTS)

) ss:

COUNTY OF NORFOLK)

On the 28th day of July, in the year 2011, before me, the undersigned notary public, personally appeared Matthew Capofreddi as Authorized Signer and John Moynihan as Authorized Signer for Sun Life Assurance Company of Canada (U.S.), a Delaware corporation, proved to me through satisfactory evidence of identification, being to me known to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public

My Commission Expires: June 8, 2018
[SEAL]




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Subordinate Lender's Signature Page to Intercreditor and Subordination Agreement

SUBORDINATE LENDER:

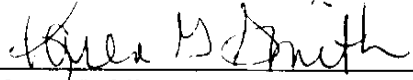
**BARRINGTON BANK & TRUST
COMPANY, N.A.**, a national banking
association

By: 
Name: George Reimnitz
Title: SVP
Date: _____

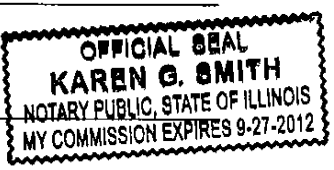
Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On the 27th day of July, in the year 2011, before me, the undersigned notary public, personally appeared George Reimnitz as SVP for Barrington Bank & Trust Company, , N.A., a national banking association proved to me through satisfactory evidence of identification, being to me known to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public

My Commission Expires: _____



[SEAL]

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Borrower's Signature Page to Intercreditor and Subordination Agreement

BORROWER:

FIVE STAR GROUP, LLC, an Illinois limited liability company

By: William M. Schutz
Name: William M. Schutz
Title: Sale Manager
Date: _____

Property of Cook County Notary Clerk's Office

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On the 27th day of July, in the year 2011, before me, the undersigned notary public, personally appeared William M. Schutz as Sale Manager for FIVE STAR GROUP, LLC, an Illinois limited liability company, proved to me through satisfactory evidence of identification, being to me known to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Sharon M Strobo
Notary Public

My Commission Expires: 10-8-2012



UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF REAL ESTATE****PARCEL 1:**

LOTS 10, 11, 12 AND 13 (EXCEPT THE EAST 250.00 FEET AS MEASURED ALONG THE SOUTH LINE) AND THAT PART OF THE RAILROAD EASEMENT DESCRIBED IN DOCUMENT NO. 16754281 AND IN DOCUMENT NO. 16549545 THAT LIES WEST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 250.00 FEET (AS MEASURED ALONG THE SOUTH LINE OF LOT 13 IN RICHARDSON INDUSTRIAL PARK SUBDIVISION, IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE NORTH 316.69 FEET (AS MEASURED ALONG THE WEST LINE OF LOT 10 AS AFORESAID) AND EXCEPT THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH 00 DEGREES 34 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 10, A DISTANCE OF 237.98 FEET TO THE SOUTH LINE OF THE NORTH 316.69 FEET (AS MEASURED ALONG THE WEST LINE OF SAID LOT 10) OF LOTS 10 AND 11, AS AFORESAID; THENCE SOUTH 89 DEGREES 56 MINUTES 20 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 15.00 FEET TO A POINT ON A LINE THAT IS 15.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 10; THENCE SOUTH 00 DEGREES 34 MINUTES 00 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 206.97 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 35.00 FEET AND BEING TANGENT TO THE LAST DESCRIBED COURSE, A DISTANCE OF 38.42 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 10; THENCE SOUTH 89 DEGREES 57 MINUTES 30 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 34.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH 316.69 FEET (AS MEASURED ALONG THE WEST LINE OF LOT 10) OF THE FOLLOWING DESCRIBED PROPERTY: LOTS 10, 11, 12 AND 13 (EXCEPT THE EAST 250.00 FEET AS MEASURED ALONG THE SOUTH LINE) AND THAT PART OF THE RAILROAD EASEMENT DESCRIBED IN DOCUMENT NO. 16754281 AND IN DOCUMENT NO. 16549545 THAT LIES WEST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 250.00 FEET (AS MEASURED ALONG THE SOUTH LINE) OF LOT 13 IN RICHARDSON INDUSTRIAL PARK SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH 00 DEGREES 34 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 10, A DISTANCE OF 237.98 FEET TO THE SOUTH LINE OF THE NORTH 316.69 FEET (AS

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MEASURED ALONG THE WEST LINE OF SAID LOT 10) OF LOTS 10 AND 11, AS AFORESAID, FOR THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 34 MINUTES 00 SECONDS WEST ALONG SAID WEST LINE, A DISTANCE OF 316.69 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE SOUTH 89 DEGREES 56 MINUTES 20 SECONDS EAST ALONG THE NORTH LINE OF SAID LOTS 10 AND 11, A DISTANCE OF 326.63 FEET TO THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 00 DEGREES 00 MINUTES 02 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 35.00 FEET TO A POINT ON A LINE THAT IS 35.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOTS 11 AND 10; THENCE NORTH 89 DEGREES 56 MINUTES 20 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 260.73 FEET; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET AND BEING TANGENT TO THE LAST DESCRIBED COURSE, A DISTANCE OF 79.09 FEET TO A POINT ON A LINE THAT IS 15.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 10; THENCE SOUTH 00 DEGREES 34 MINUTES 00 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 231.14 FEET TO SOUTH LINE OF THE NORTH 316.69 FEET (AS MEASURED ALONG THE WEST LINE OF SAID LOT 10) OF LOTS 10 AND 11, AS AFORESAID; THENCE NORTH 89 DEGREES 56 MINUTES 20 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Common Address: 1301 Carson Drive, Melrose Park, Illinois 60160

P.I.N.: 15-04-404-026-0000; 15-04-404-027-0000; 15-04-404-028-0000; 15-04-404-068-0000