

# UNOFFICIAL COPY

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DEPT-01 RECORDING \$33.00  
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#2532 # JB #-95-665600  
COOK COUNTY RECORDER

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT IS made and entered into as of the day of August 25, 1995, by and between Floyd M. Phillips & Co., Inc., ("Tenant"), and FIRST EAGLE NATIONAL BANK, a national banking association ("Mortgagee").

### RECITALS:

A. Mortgagee is the holder of a certain Mortgage dated January 8, 1993 and recorded on January 14, 1993 as document no. 93036928 (the "Mortgage"), encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to \$2,000,000.00.

B. Landlord (as hereinafter defined) has requested Mortgagee to to, among other things, extend the Maturity Date of the Loan and to modify the amortization schedule of the Loan. Accordingly, Landlord and Mortgagee are entering into a certain Amendment of Note, Mortgage, Guaranty and Other Loan Documents dated on or about the date hereof (the "Loan Amendment").

C. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as the "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred "Lease") dated April 28, 1995, with (the "Landlord"), pursuant to which Tenant leased certain premises (the "Leased Premises") consisting of approximately 3,000 rentable square feet of space designated as 1-West in the building (the "Building") on the parcel of land (the "Land") legally described in Exhibit A attached hereto and commonly known as 900 Maple Road, Homewood, Illinois (the Land and Building herein being collectively referred to as the "Real Estate"). The Lease is for a term of Eighty-Nine (89) months, commencing on June 15, 1995 and expiring on November

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30, 2000 provided that Tenant has the right to extend said lease term for no additional years.

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

1. Tenant represents and warrants to Mortgagee that the lease is the only document or agreement governing the tenancy of Tenant with respect to the leased Premises.

2. Tenant has executed and delivered to Mortgagee a certain Tenant Estoppel Certificate (the "Estoppel Certificate") dated on or about the date hereof. The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and Tenant acknowledges that Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to enter into the Loan Amendment secured by the Mortgage and whether to enter into this Agreement.

3. 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, or term of the Lease or any other agreement or instrument relating to the lease (any such failure is 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 sixty 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 sixty day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need 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.

4. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts secured hereby and with the same force and effect as if the Mortgage 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 Real

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Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

5. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents due and payable under such leases. In connection therewith, Tenant agrees that, upon demand of a mortgagee or a demand by a lender or other assignee of the mortgagee, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee.

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

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage; and

(b) The possession by Tenant of the Leased Premises and Tenant's rights hereto 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 Mortgage or the enforcement of any rights under the Mortgage, 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 Mortgage;

7. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity of executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate 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;

(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:

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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.

9. 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 join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. 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.

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

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

**Tenant:**

Floyd M. Phillips & Co., Inc.

By: [Signature]

Title: Chairman

**Mortgagee:**

FIRST EAGLE NATIONAL BANK, a national banking association

By: [Signature]

Title: LO

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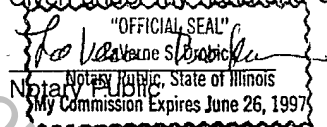
3/11/11

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Ronald A. Richmond 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/she signed, sealed, and delivered said instrument as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Official Seal this 7<sup>th</sup> day of Sept, 1995

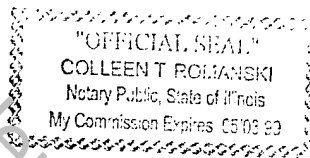
  
"OFFICIAL SEAL"  
Valerie Strickland  
Notary Public, State of Illinois  
My Commission Expires June 26, 1997

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that ERIC MISSIL 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/she signed, sealed, and delivered said instrument as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Official Seal this 11<sup>th</sup> day of September, 1995

Colleen T. Romanowski  
Notary Public

  
"OFFICIAL SEAL"  
COLLEEN T. ROMANSKI  
Notary Public, State of Illinois  
My Commission Expires 08/08/00

**This instrument prepared by and should be returned to:**

Eric Missil  
FIRST EAGLE NATIONAL BANK  
1040 W. LAKE STREET  
Hanover Park, IL 60103



345-1B

905-0000

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EXHIBIT A

LEGAL DESCRIPTION

Lot 1 IN THE PROPOSED PLAT OF MAPLE AVENUE SUBDIVISION, BEING PART OF THE NORTH EAST 1/4 OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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8/20/2013