

# UNOFFICIAL COPY

95192637

Loan No. 15862-05

478

FORTIS BENEFITS INSURANCE COMPANY

LA SALLE NATIONAL TRUST, NA  
not personally but as Trustee

and

JOHN B. SANFILIPPO & SONS, INC.

DEPT-01 RECORDING

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COOK COUNTY RECORDER

SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT

Dated: March 21, 1995

Location: 3001 Malmo Drive, Arlington Heights, Illinois

THIS INSTRUMENT WAS PREPARED BY AND UPON RECORDATION RETURN TO:

Michael J. Hornbrook  
Coffield Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602

95192637

**BOX 333-CTI**

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BOX 333-CL1

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (Lease)

THIS AGREEMENT made as of the 21st day of March, 1995, among FORTIS BENEFITS INSURANCE COMPANY, a Minnesota corporation having an office at 500 Bielenberg Drive, Woodbury, Minnesota 55125 (hereinafter referred to as "Mortgagee"), JOHN B. SANFILIPPO & SONS, INC., a Delaware corporation, having an office at 3001 Malmo Drive, Arlington Heights, Illinois (hereinafter referred to as "Tenant"), and La Salle National Trust, NA, not personally but as Trustee under Trust Agreement dated June 23, 1973 and known as Trust No. 44341 (hereinafter referred to as "Landlord");

### WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a certain lease (hereinafter referred to as the Lease) dated December 10, 1993 relating to the premises (hereinafter referred to as the "Premises") described in the Lease and located at 3001 Malmo Drive, Arlington Heights, Illinois as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, Mortgagee has made or has committed to make a loan (hereinafter referred to as the "Loan") to Landlord in the original principal amount of \$1,701,503.91 to be secured by a mortgage and security agreement dated on or about the date hereof, to be recorded in the real estate or mortgage records in the county and state where the Property is located (hereinafter referred to as the "Mortgage"); and

WHEREAS, as a condition to making the Loan, Mortgagee has required that Landlord assign to Mortgagee the Lease and all rents, issues and profits from the Lease and from the Property, pursuant to that certain Assignment of Leases and Rents dated on or about the date hereof, to be recorded in the real estate or mortgage records in the county and state where the Property is located (hereinafter referred to as the "Assignment"); and

WHEREAS, Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage held by Mortgagee, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement; and

WHEREAS, Mortgagee is not willing to make the Loan to Landlord unless Tenant is willing to enter into the other agreements hereinafter set forth; and

WHEREAS, the parties hereto desire to set forth their agreement as hereinafter set forth.

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NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord, Mortgagee and Tenant hereby covenant and agree as follows:

1. Lease Subordinate. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder or otherwise held by Tenant with respect to the Premises and the Property are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and to the lien thereof and to all renewals, modifications, spreaders, increases in amount, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. Mortgagee does hereby agree with Tenant that so long as (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the Premises on a rent paying basis, (c) the Lease shall be in full force and effect, and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or this Agreement on Tenant's part to be observed or performed (beyond any period expressly given Tenant under the Lease to cure any such default) in any manner which would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, then:

(i) Mortgagee will take no action which will interfere with or disturb Tenant's possession or use of the Premises or other rights under the Lease; and

(ii) In the event Mortgagee or its successor or assign (Mortgagee any such successor or assign is herein referred to as the "Successor Landlord") becomes the owner of the Property by foreclosure (judicial or nonjudicial), exercise of a power of sale or other enforcement right under the Mortgage, exercise of the rights of a mortgagee in possession pursuant to the Mortgage or the Assignment pursuant to a receivership or otherwise, conveyance in lieu of foreclosure or other exercise of Mortgagee's remedies pursuant to the Mortgage, the Assignment or any other documents exercised in connection therewith (any or all of the foregoing hereinafter referred to as a "Foreclosure"), neither the Lease nor any of Tenant's rights pursuant to the Lease shall be extinguished by reason of such Successor Landlord acquiring the interest of Landlord or coming into the possession of, or acquiring title to, the Property by reason of such Foreclosure. In any Foreclosure, unless required under applicable law, Mortgagee shall not join Tenant as a party in any action or proceeding brought pursuant to the Mortgage in any manner which would alter, disturb or invalidate Tenant's rights to possess and use the Premises pursuant to the terms of the Lease, as the terms of the Lease are amended by this Agreement. In the event of a Foreclosure, the Successor Landlord shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof, as the terms of the

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Lease are modified by this Agreement. Notwithstanding anything to the contrary hereinabove contained:

(a) Mortgagee acknowledges that the Lease contains an option to purchase the Property in favor of Tenant upon the terms and conditions therein set forth (the "Option"). Mortgagee agrees that in the event that Mortgagee acquires the Property through a Foreclosure, Tenant shall have the continuing option to purchase the Property upon the terms and conditions set forth in the Lease; provided, however, in the event that Mortgagee is unable to convey the Property to Tenant in accordance with the Option after using reasonable effort to do so as a consequence of anything beyond the reasonable control of Mortgagee (including, without limitation, exceptions to title resulting from acts done or undertaken on behalf of Landlord or Tenant), Mortgagee shall have no liability for the failure to perform and Tenant's sole remedy against Mortgagee for such failure shall be a termination of the exercise of the Option; provided, however, Tenant hereby acknowledges that the condition of title as it exists on the date hereof as reflected on that certain commitment for title insurance issued by Chicago Title Insurance Company and numbered 007536028 and dated as of November 1, 1994 is acceptable to Tenant.

(b) Mortgagee does not intend by this Agreement to waive, negate or alter any covenant or agreement in the Lease, if any, which provides Landlord an option to cancel the Lease independent of any default on the part of Tenant. Mortgagee hereby acknowledges the continuing validity of the Option and nothing herein contained is intended by Landlord and Tenant nor shall anything herein contained be construed to amend or modify the terms of the Option as between Landlord and Tenant.

(c) Nothing herein contained shall be construed as a modification, amendment, change of or to affect in any manner the rights, powers and remedies of Mortgagee under the Mortgage. The parties hereto specifically acknowledge that the conveyance of the Property by Landlord pursuant to the Option will breach the due-on sale clause contained in the Mortgage and Mortgagee shall be entitled to exercise any and all rights, powers and remedies available to Mortgagee under the Mortgage or any other loan document made or delivered in connection with the Loan upon the exercise of the Option by Tenant, including without limitation, the right to accelerate the Loan and foreclose the lien of the Mortgage in accordance with the terms thereof.

(iii) Prior to November 30, 1995, in the event that Landlord shall be in default under the Loan, Mortgagee shall provide Tenant with notice of said default and Tenant shall have the option to cure said default during any applicable grace or curative period; provided, however, Mortgagee's failure to give such notice to

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Tenant shall not be deemed to affect in any manner Mortgagee's rights, powers and remedies as against Landlord under the Loan.

3. Lease Obligations Upon Foreclosure. Upon any Foreclosure, all rights and obligations under the Lease shall continue as though the interest of Landlord had not terminated or such Foreclosure had not occurred, and, except as otherwise set forth herein, Tenant shall have the same remedies under the Lease against the Successor Landlord for the breach of the Lease that Tenant would have had against Landlord if the Successor Landlord had not succeeded to the interest of Landlord; provided, however, that the Successor Landlord shall not be:

(i) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease, all of which work has been completed to Tenant's satisfaction, or to reimburse Tenant for any construction work done by Tenant, Tenant hereby acknowledging that Landlord has no obligation to reimburse Tenant for any work done by Tenant,

(ii) liable for any accrued obligation of Landlord, or for any act or omission of Landlord, whether prior to or after such foreclosure or sale,

(iii) required to make any repairs to the Premises or to the Property required as a result of fire or other casualty or by reason of condemnation unless Mortgagee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs,

(iv) required to make any capital improvements to the Premises or to the Property which Landlord may have agreed to make but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the Premises,

(v) subject to any defenses, offsets or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which Mortgagee shall become the owner of the Property,

(vi) bound by any rent or additional rent which Tenant might have paid under the Lease to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; provided, however, Mortgagee has been advised that Tenant has deposited the sum of \$200,000.00 with the beneficiary of Landlord as a security deposit under the Lease, which is to be considered earnest money in the event Tenant exercises the Option pursuant to the terms of the Lease, nor

(vii) bound by any material amendment or modification of the Lease, or any consent or waiver granted with respect to the Lease made without the written consent of Mortgagee.

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4. Attornment. In the event that a Successor Landlord acquires title to the Property through Foreclosure or otherwise, (a) the Lease and all of the rights of Landlord pursuant to the Lease shall remain in full force and effect, (b) Tenant shall be bound to the Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if the Successor Landlord was the original landlord under the Lease, and (c) Tenant shall attorn to and recognize the Successor Landlord as its landlord under the Lease as aforesaid. Tenant further agrees to attorn to: (i) Mortgagee when in possession of the Property pursuant to Mortgagee's rights under the Mortgage or the Assignment; and (ii) any receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise pursuant to Mortgagee's rights under the Mortgage or the Assignment. These provisions of attornment and recognition shall be effective and self-operative and shall operate automatically without execution of any further instruments on the part of either of the parties hereto. Tenant agrees, however, to execute and deliver at any time, and from time to time, upon the request of Landlord, Mortgagee or any Successor Landlord, any further instrument or certificate which, Landlord, Mortgagee or such Successor Landlord, as the case may be, deems to be reasonably necessary or appropriate in any such Foreclosure proceeding or conveyance or otherwise to evidence such attornment.

5. Lease Modifications. Tenant shall not, without obtaining the prior written consent of Mortgagee, as assignee of Landlord pursuant to the terms of the Assignment, (i) enter into any agreement amending, modifying or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (iii) voluntarily surrender the Premises or terminate the Lease without cause or shorten the term thereof, or (iv) assign the Lease or sublet the Premises or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Mortgagee's prior written consent, shall not be binding upon Mortgagee.

6. Notice of Defaults: Opportunity to Cure. Tenant shall notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Mortgagee shall have received notice of the default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and to thereafter diligently pursue any action necessary to cure such default.

7. Notices. Any notice, request or demand given or made under this Agreement shall be in writing and shall be hand delivered or sent by Federal Express or other reputable nationally recognized overnight courier service or by postage prepaid registered or certified mail, return receipt requested, and shall be deemed given (a) when received at the following addresses if hand delivered or if sent by Federal Express or other reputable courier service, and (b) three (3)

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business days after being postmarked and addressed as follows if sent by postage prepaid registered or certified mail, return receipt requested:

**If to the Mortgagee:**

Fortis Benefits Insurance Company  
500 Bielenberg Drive  
Woodbury, Minnesota 55125  
Attention: General Counsel

**With a copy to:**

Fortis Private Capital, Inc.  
333 Thornall Street  
Edison, New Jersey 08837  
Attention: Senior Vice President

**If to Landlord:**

La Salle National Trust, NA  
c/o Sam Roubart  
1935 Techy Road, Unit 15  
Northbrook, Illinois 60062-5357

**With a copy to:**

Lawrence M. Freedman, Esq.  
Ash, Anos, Freedman & Logan  
77 West Washington Street  
Chicago, Illinois 60602

**If to Tenant:**

John B. Sanfilippo & Sons, Inc.  
2299 Busse Road  
Elk Grove Village, Illinois 60007

Attention: Cary Plazak

**With a copy to:**

William K. Coyle, Jr.  
Katz, Karacic, Helmin & Addis  
180 North LaSalle Street  
Chicago, Illinois 60601

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Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

8. Tenant Authorized and Directed to Pay Rents to Mortgagee. Tenant acknowledges that Landlord has executed and delivered to Mortgagee the Assignment as an inducement to Mortgagee to make the Loan, and Tenant hereby expressly consents to such assignment. Landlord hereby authorizes and directs Tenant or any other or future tenants or occupants of all or any portion of the Premises, upon receipt from Mortgagee (or Mortgagee's agent) of written notice to the effect that Mortgagee is then the holder of the Note and the Mortgage and that a default exists thereunder or under the Assignment, to pay over to Mortgagee all rents, payments, reimbursements and other amounts due, payable, arising or accruing under the Lease, and to continue so to do until otherwise notified in writing by Mortgagee. Landlord agrees that payment of such amounts to Mortgagee shall be in accordance with the terms of the Lease and that Landlord shall have no right to declare Tenant in default under the Lease on account of such payments made to Mortgagee, notwithstanding any notices or contrary instructions which Landlord or Landlord's agents may hereafter deliver to Tenant at the time of a default or otherwise. At such time as Tenant receives written notice from Mortgagee stating that Mortgagee has exercised its rights as aforesaid under the Mortgage or the Assignment to receive the rents under the Lease directly from Tenant, Tenant shall thereafter pay the rents under the Lease directly to Mortgagee.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Mortgagee, Landlord and Tenant and their respective successors and assigns. The term "Mortgagee" as used herein shall include the successors and assigns of Mortgagee and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

10. Limitation of Liability. Mortgagee shall have no personal liability, directly or indirectly, under or in connection with the Lease, the Option or this Agreement or any amendment or amendments thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability under the Lease, the Option or otherwise applicable to Mortgagee provided by law or by any other contract, agreement or instrument.

11. Modification. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

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12. Governing Law. This Agreement shall be governed by and construed under the laws of the State in which the Premises are located.

IN WITNESS WHEREOF, Mortgagee, Landlord and Tenant have duly executed this Agreement as of the date first above written, *As Amended*

GP  
3/10/95

Fortis Benefits Insurance Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

John B. Sanfilippo & Sons, Inc.

By: *Carey P. Pugh*  
Name: *Carey P. Pugh*  
Title: *Director of Purchasing*

La Salle National Trust, NA, not personally  
but as Trustee as aforesaid

By: *[Signature]*  
Name: *Carlina Fox*  
Title: *VICE PRESIDENT*

Witness: *Nancy A. Slack*  
Assistant Secretary

This instrument is executed by LASALLE NATIONAL TRUST, N.A., not personally but solely as trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, conditions, covenants, and conditions contained herein to be performed by LASALLE NATIONAL TRUST, N.A., as Trustee, as aforesaid, and all the conditions and covenants herein to be performed are made on the understanding that no personal liability shall be incurred or be attachable against LASALLE NATIONAL TRUST, N.A., by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

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IN WITNESS WHEREOF, Mortgagee, Landlord and Tenant have duly executed this Agreement as of the date first above written.

Fortis Benefits Insurance Company

By: *William J. ...*  
Name: William J. ...  
Title: Vice President

John B. Sanfilippo & Sons, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

La Salle National Trust, NA, not personally  
but as Trustee as aforesaid

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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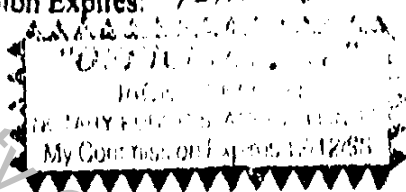
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STATE OF ILLINOIS )  
 ) ss.  
COUNTY Cook )

I, the undersigned \_\_\_\_\_, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Corinne Bak, Vice President of La Salle National Trust, NA, and Nancy A. Stack Asst. Secretary of said association, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Asst. Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 21<sup>st</sup> day of March ~~December~~, 1994.

Jacqueline L. L...  
Notary Public  
My Commission Expires: 12/12/98  
[SEAL] 

STATE OF New Jersey )  
 ) ss.  
COUNTY OF Middlesex )

I, Deborah B. Lefebvre, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Newsweek Jr., Vice President of Fortis Benefits Insurance Company, a Minnesota corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her 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 10<sup>th</sup> day of January, 1994.

Deborah B. Lefebvre  
Notary Public  
My Commission Expires:  
DEBORAH B LEFEBVRE  
A Notary Public of New Jersey  
[SEAL] My Commission Expires October 19, 1998

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STATE OF ILLINOIS )  
 ) ss.  
COUNTY )

I, \_\_\_\_\_, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ President of La Salle National Trust, NA, and \_\_\_\_\_, \_\_\_\_\_ Secretary of said association, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_\_ day of ~~December~~ <sup>March</sup>, 1995

Notary Public  
My Commission Expires:

[SEAL]

STATE OF New Jersey )  
 ) ss.  
COUNTY OF Middlesex )

I, Deborah B. Lefebvre, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Notcross Teel, Jr., Vice President of Fortis Benefits Insurance Company, a Minnesota corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her 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 10th day of January, 1995

Deborah B. Lefebvre  
Notary Public  
My Commission Expires:

[SEAL]

DEBORAH B LEFEBVRE  
A Notary Public of New Jersey  
My Commission Expires October 19, 1998

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, Lynette Powers, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Carey Plazak, \_\_\_\_\_ President of John B. Sanfillipo & Sons, Inc., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

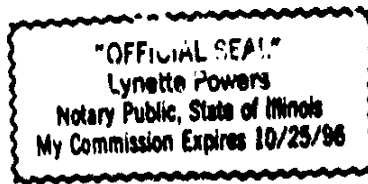
Given under my hand and notarial seal, this 17 day of March 1995.

*Lynette Powers*

Notary Public

My Commission Expires:

[Seal]



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## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1:

LOT 3 IN ELMHURST-ALGONQUIN INDUSTRIAL PARK UNIT NUMBER 1, A RESUBDIVISION OF PART OF LOT 3 IN LINNEMAN'S DIVISION OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

### PARCEL 2:

THE NORTH 100 FEET OF LOT 2 IN THE ELMHURST-ALGONQUIN INDUSTRIAL PARK UNIT NUMBER 1, BEING A RESUBDIVISION OF PART OF LOT 3 IN LINNEMAN'S DIVISION IN SECTION 23, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBER: 08-23-202-017-0000 and 08-23-202-046-0000

COMMON STREET ADDRESS: 3001 Malmo Drive, Arlington Heights,, Illinois

**THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDATION RETURN TO:**

Michael J. Hornbrook  
Coffield Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602

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