

Chicago Title Insurance Company

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

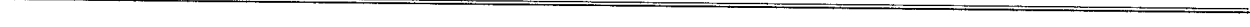
RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

2005 003943

2005 JAN 20 AM 10:00

Christopher J. Goluba, P.C.  
399 Wall Street, Unit H  
Glendale Heights, IL 60139

MICHAEL J. LEON  
RECORDER



**SUBORDINATION, NON-DISTURBANCE & ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE & ATTORNMENMENT AGREEMENT (the "**Agreement**") is made and entered into this the 22nd day of November, 2004 (the "**Effective Date**"), by and between STEVE MATARIYEH d/b/a JJ. FISH ("**Tenant**") and HEIDNER PROPERTIES, INC. ("**Landlord** ") and PARKWAY BANK & TRUST CO. ("**Lender**").

**RECITALS:**

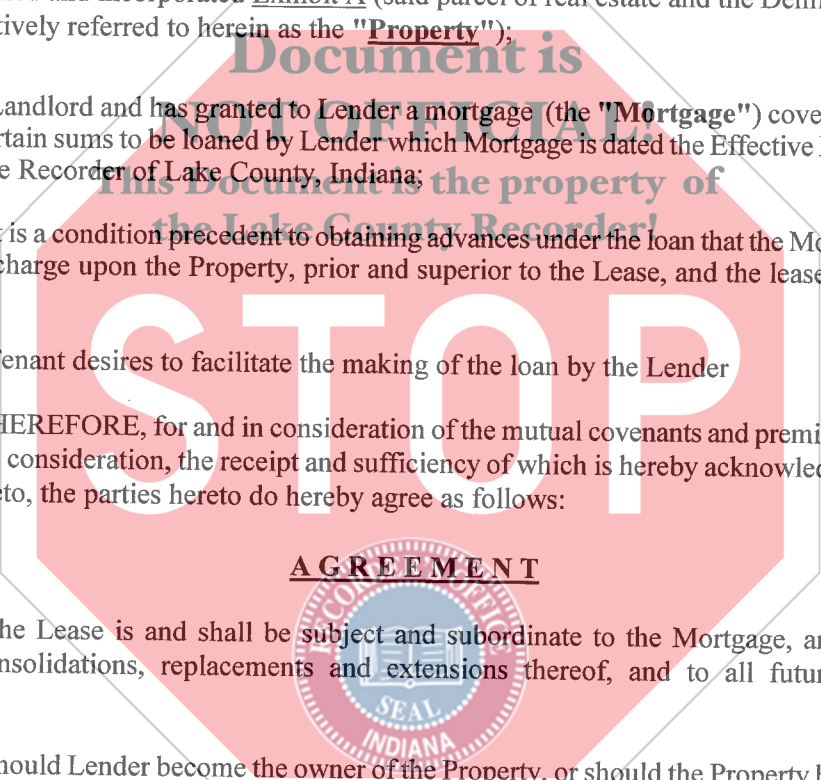
- A. Tenant is now the lessee under a certain lease dated June 4, 2003 in favor of Landlord (the "**Lease**") covering certain Demised Premises therein described located on certain real property legally described in attached and incorporated Exhibit A (said parcel of real estate and the Demised Premises being sometimes collectively referred to herein as the "**Property**");
- B. Landlord and has granted to Lender a mortgage (the "**Mortgage**") covering the Property in order to secure certain sums to be loaned by Lender which Mortgage is dated the Effective Date and being filed for record with the Recorder of Lake County, Indiana;
- C. It is a condition precedent to obtaining advances under the loan that the Mortgage shall be, and remain, a lien or charge upon the Property, prior and superior to the Lease, and the leasehold estate created thereby; and
- D. Tenant desires to facilitate the making of the loan by the Lender

NOW, THEREFORE, for and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

**AGREEMENT**

1. The Lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.
2. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property covered by the Mortgage and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided. Tenant

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does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.

3. Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord), except that Lender agrees to cure any default of Landlord that is continuing as of the date Lender forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender diligently and continuously proceeds to cure such default; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Landlord under the Lease; (c) bound by any Rent that Tenant may have paid under the Lease more than one month in advance; (d) bound by any amendment or modification of the Lease which reduces the term of the Lease or Tenant's monetary obligations thereunder hereafter made without Lender's prior written consent; (e) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.

4. If Lender sends written notice to Tenant to direct its Rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver Rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any Rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by first-class certified U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

If to Lender:

PARKWAY BANK & TRUST CO.  
4800 North Harlem Avenue  
Harwood Heights, IL 60656

If to Tenant:

Steve Matariyeh  
d/b/a J.J. Fish  
11124 S. Leamington  
Alsip, Illinois 60803

If to Landlord:

Heidner Properties, Inc.  
399 Wall Street, Unit - H  
Glendale Heights, Illinois 60139  
Attention: Mr. Rick Heidner

6. Said Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Demised Premises. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the lease.

7. This Non-Disturbance Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Non-Disturbance Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

9. Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason or under any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the parties hereto have caused this Subordination, Non-Disturbance and  
Attornment Agreement to be executed as of the Effective Date.

**LENDER:**

**PARKWAY BANK & TRUST CO.**

By: Marianne L. Wagener  
Name: Marianne L. Wagener  
Title: Vice President

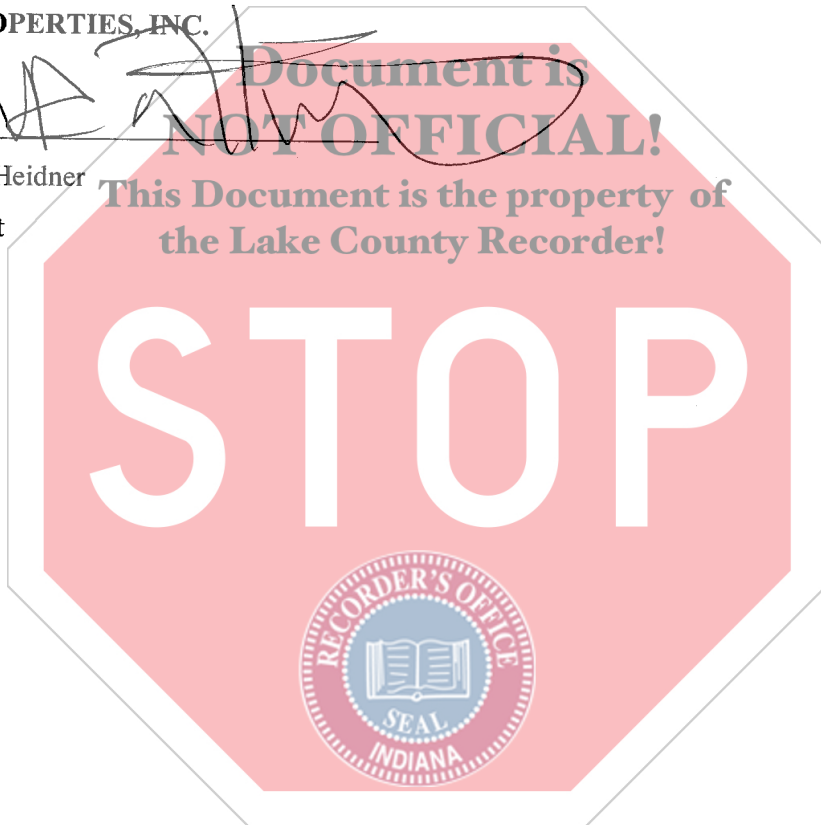
**TENANT:**

Steve Matariyeh  
STEVE MATARIYEH

**LANDLORD:**

**HEIDNER PROPERTIES, INC.**

By: Rick E. Heidner  
Name: Rick E. Heidner  
Title: President



**[Acknowledgment of Lender]**

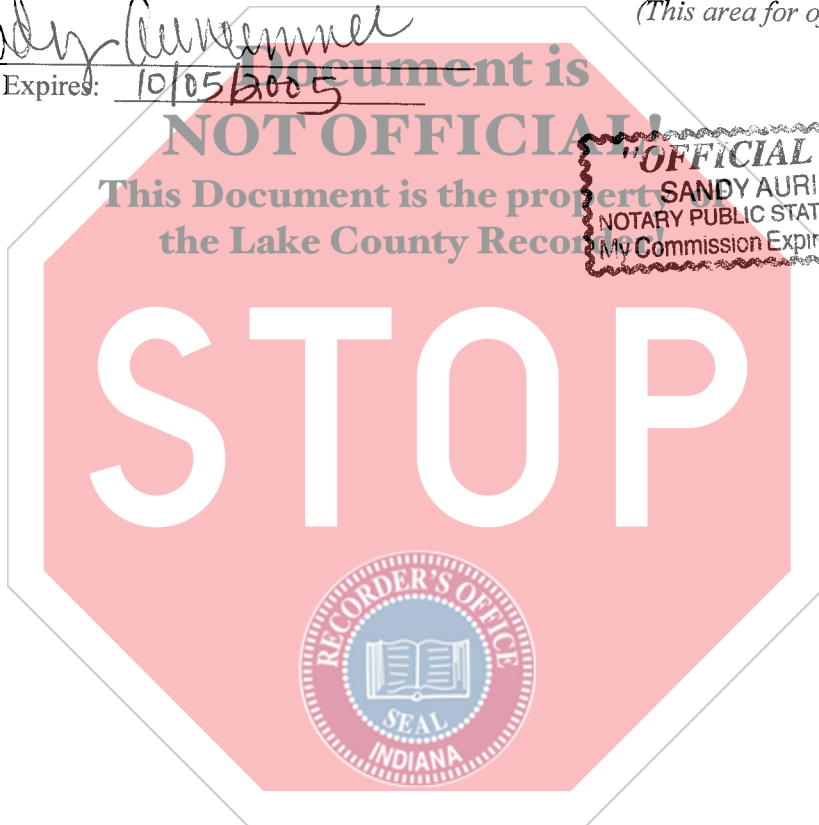
STATE OF ILLINOIS }  
CITY/COUNTY OF COOK } SS.

On Nov 22, 2004 before me, the undersigned, personally appeared Mariann L. Wagner, as Vice President of Parkway Bank & Trust Co., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sandy Auriemma  
My Commission Expires: 10/05/2005

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**[Acknowledgment of Tenant]**

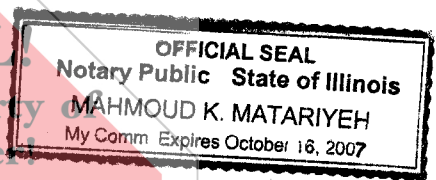
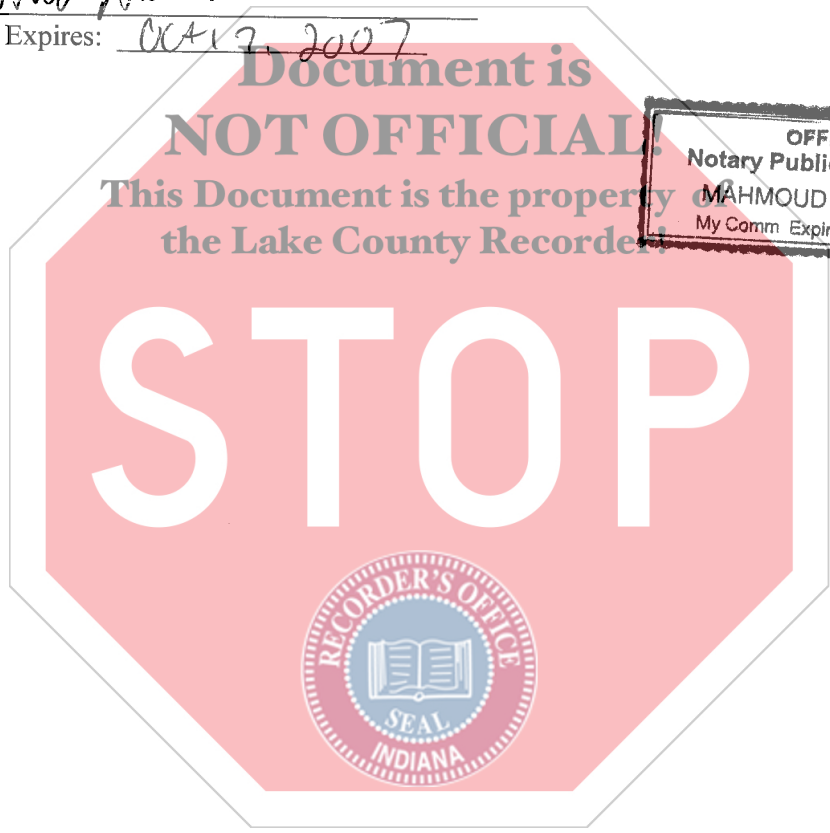
STATE OF ILLINOIS            }  
  }  
COUNTY OF COOK            } SS.

On Nov. 17, 2004 before me, the undersigned, personally appeared STEVE MATARIYEH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Mahmoud Matariyeh*  
My Commission Expires: Oct 16, 2007

*(This area for official notarial seal)*



**[Acknowledgment of Landlord]**

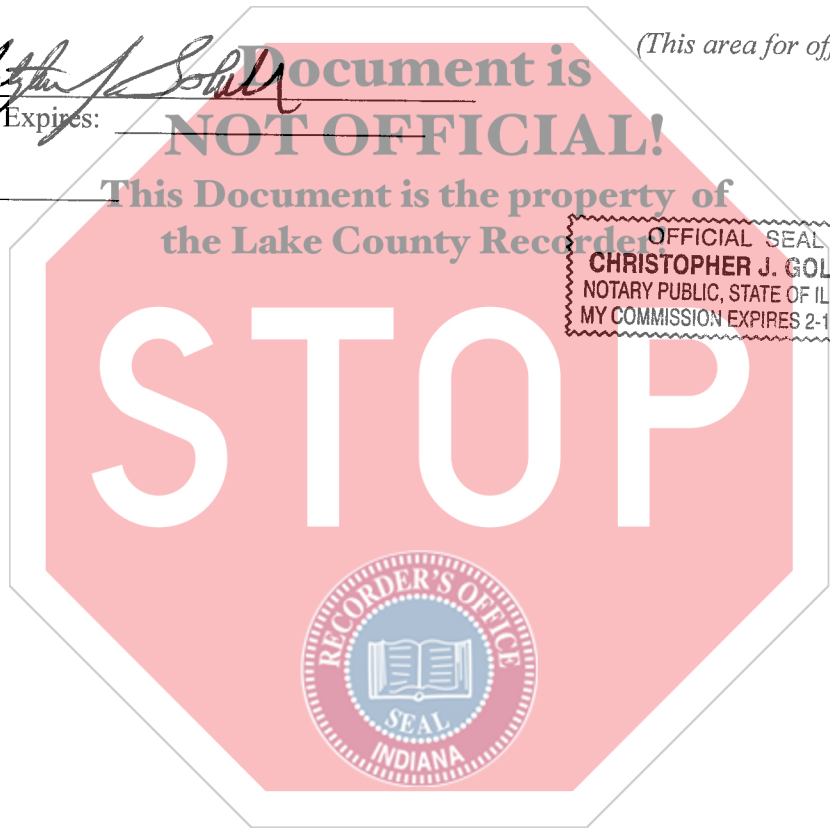
STATE OF ILLINOIS            }  
  }  
COUNTY OF DUPAGE        } SS.

On November 22nd 2004 before me, the undersigned, personally appeared RICK E. HEIDNER, as President of HEIDNER PROPERTIES, INC., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Christopher J. Goluba*  
My Commission Expires: \_\_\_\_\_

*(This area for official notarial seal)*





**EXHIBIT "A"**

Legal Description

The South 17 feet of Lot 34 and all of Lots 35, 36 and 37 in Oak Lawn 2nd Addition, as per plat thereof, recorded in Plat Book 23 page 76, in the Office of the Recorder of Lake County, Indiana, except the Westerly part thereof taken for street purposes as conveyed in Warranty Deed recorded February 17, 1950, in Deed Record 855, page 424, as Document No. 452476; in Warranty Deed recorded December 15, 1949, in Deed Record 851, page 557, as Document No. 441123, and in Warranty Deed recorded January 5, 1950, in Deed Record 852, page 541, as Document No. 444296, and in Condemnation Cause No. 45D04-9706-CP-0499, recorded as Agreed Finding and Judgement on July 28, 2003 as Document No. 2003 077698.

