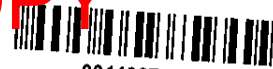


UNOFFICIAL COPY



0011027605

0011027605

3709/0181 30 001 Page 1 of 4
2001-11-01 15:59:49
Cook County Recorder 27.50

STATE OF ILLINOIS)
COUNTY OF COOK)

**SUBORDINATION
AGREEMENT**

This Space Reserved for Recorder

JNT

This is an Agreement, dated as of October 31, 2001 among James ^{N.} Allans ("Allans"), and Associated Bank ("Associated").

WITNESSETH:

WHEREAS, James V. Daffada and Ralph Dynek ("JVD/RD") and Associated have entered into an agreement pursuant to which Associated has extended credit to JVD/RD (the "First Party Indebtedness");

WHEREAS, in order to secure the First Party Indebtedness, JVD/RD have executed and delivered to Associated a mortgage in favor of Associated granting a lien on and security interest in certain property described therein (the "Collateral"). The legal description of the Collateral is attached hereto as Exhibit A;

WHEREAS, JVD/RD and Allans have entered into a mortgage pursuant to which, among other things, Allans has extended credit to JVD/RD (the "Second Party Indebtedness");

WHEREAS, in order to secure the Second Party Indebtedness, JVD/RD have executed and delivered to Allans a mortgage granting a lien on a security interest in the Collateral for the benefit of Allans;

WHEREAS, the parties desire to enter into this Agreement to establish priorities among the liens on and security interests in the Collateral granted to the parties;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

SECTION I. Status of Security Interests

SECTION 1.1 Seniority. Allans hereby agrees that all of Associated's security interests, liens, and other collateral interests in the Collateral and all of Associated's rights and remedies, under law, agreement and otherwise, exercisable pursuant thereto ("First Rights") shall be senior and superior to all of Allans' security interests, liens and other collateral interests in the collateral

JNT

UNOFFICIAL COPY 0011027605

and all of Allans' rights and remedies, under law, agreement or otherwise, exercisable pursuant thereto ("Second Right").

SECTION 1.2 Definition of Senior and Superior. As used in Section 1.1, the phrase "senior and superior" shall mean that Associated shall possess the right, in its absolute discretion,

(i) to make all decisions on the disposition of any of its Collateral (including, without limitation, foreclosing on such Collateral or refraining from foreclosing), notwithstanding that any or all of the Stipeks' obligations to Allans (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due and herein call the "Second Liabilities") may be due and owing or that the Stipeks may be in default in any other manner with regard to the Second Liabilities;

(ii) to exercise or not exercise all rights granted to Associated with regard to all or any of such Collateral, whether or not pursuant to any of the security agreements of Associated or Allans (herein collectively call the "Collateral Agreements");

(iii) to apply all proceeds, obtained from the Collateral on account of the First or Second Rights, as the case may be, to JVD/RD's obligations to Associated in connection with the First Party Indebtedness, absolute or contingent, or now or hereafter existing, or due or to become due (the "First Liabilities").

Associated shall have the power to hold all Collateral which either of the Second Parties are entitled to hold, including, without limitation, insurance policies and proceeds obtained from the sales of Collateral to satisfy its indebtedness.

(iv) Nothing in this Agreement shall affect any rights of Allans with respect to its indebtedness and security interest other than the subordination of Allans' security interest to the security interest of Associated.

SECTION 2. Standards of Decisions

Allans acknowledges that it may disagree over the proper course of action to pursue in particular situations that arise pursuant to the transactions contemplated by Section 1 hereof and agrees that Associated may, in such party's absolute discretion, make decisions and pursue actions or refrain from action from time to time solely on the basis of Associated's own evaluations of its own best interests, whether or not Associated is acting on behalf of itself alone or on behalf of both Secured Parties as provided in Section 1 hereof, and Allans consents to the taking or not taking of action by Associated on such a basis; provided, however, that this Section 2 shall be subject to the provisions of the following Section 3. Associated may confer with Allans prior to making any decision provided for in this Section 2 so that Associated may evaluate Allans' estimation of its own best interests before making any decision; provided,

JWA

UNOFFICIAL COPY

however, that such option to confer with Allans shall not impose an obligation to confer and shall not restrict the standards for the making of any such decision by Associated previously provided in this Section 2.

SECTION 3. Standards of Actions by Associated

In the event of a foreclosure by Associated as provided herein, it shall have no obligations to Allans other than to proceed in accordance with Associated's customary practices, provided that in no event shall Associated or any of its directors, officers, employees or agents be liable to Allans for any action or failure to act in connection with any such foreclosure or proposed foreclosure other than on account of its gross negligence or willful misconduct (provided that Associated's acting in accordance with its own estimation of its own best interests as described in Section 2, hereof shall not be deemed to constitute gross negligence or willful misconduct).

SECTION 4. Continuing Obligations and Rights

Associated may from time to time, whether before or after discontinuance of this Agreement, at its sole discretion and without notice of Allans, take any or all of the following actions without affecting any of Associated's rights hereunder: (a) retain or obtain a security interest in any property to secure any of the First Liabilities, (b) retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to any of the First Liabilities, (c) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the First Liabilities, or release or compromise any obligations of any nature of any obligor with respect to any of the First Liabilities and (d) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the First Liabilities, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property. The First Secured Party may from time to time, without notice to the Second Secured Party, and without affecting any of the First Secured Party's rights hereunder, assign or transfer any or all of the First Liabilities or any interest therein. The first Secured shall not be prejudiced in its rights under this Agreement by any act or failure to act of JVD/RD or Allans or any non-compliance of JVD/RD or Allans with any agreement or obligation, regardless of any knowledge thereof which Associated may have or with which Associated be charged; and no action of Associated permitted hereunder shall in any way affect or impair the rights of Associated and the obligations of Allans under this Agreement.

SECTION 5. Miscellaneous

SECTION 5.1 Waiver. No delay on the part of Associated in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by Associated of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

SECTION 5.2 Notices. Any notice hereunder shall be in writing and, if by facsimile shall be deemed to have been given when sent and, if mailed, shall be deemed to have been given

JWA

UNOFFICIAL COPY

three days after the date when sent by registered or certified mail, postage prepaid, and addressed to the applicable party at its address shown below its signature hereto, or at such other address as it may, by written notice received by the other party to this Agreement, have designated as its address for such purpose.

SECTION 5.3 Controlling Contract. In the case of any conflict between this Agreement and any Collateral Agreement, this Agreement shall control.

SECTION 5.4 Transfer of Indebtedness. Each transferee of any debt owed to any party which constitutes First Liabilities or Second Liabilities shall take such debt subject to the provisions of this Agreement and to any request made, waiver or consent given or other action taken hereunder, prior to the receipt by the other party hereto of written notice of such transfer, by each previous holder of such debt.

SECTION 5.5 Governing Law. This Agreement shall be a contract made under and governed by the internal laws of the State of Illinois without regard to principles of conflicts of law.

SECTION 5.6 Successors and Assigns. Except as herein otherwise specifically provided, this Agreement shall be binding upon each party and their respective successors and assigns, and shall inure to the benefit of each party and the respective successors and assigns of each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized respective officers thereunto to the day and year first above written.

ASSOCIATED BANK CHICAGO

By: _____
Title: _____

JAMES ALLANS

By: James N. Allans
Title: _____