

# UNOFFICIAL COPY



Doc#: 0409144075  
Eugene "Gene" Moore Fee: \$42.50  
Cook County Recorder of Deeds  
Date: 03/31/2004 10:29 AM Pg: 1 of 10

Prepared By:  
Rock, Fusco & Garvey, Ltd.  
350 North LaSalle Street Suite 900  
Chicago, Illinois 60610

Mail to:  
GreatBank a National Association  
3300 West Dempster Street  
Skokie, Illinois 60076

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made as of the 3<sup>rd</sup> day of March, 2004, between GREATBANK, a National Association (the "Senior Lender") and THOMAS BABB, an individual (the "Junior Lender").

### RECITALS:

A. Senior Lender, at the request of WESTERN SPRINGS NATIONAL BANK AND TRUST, as Trustee, under Trust Agreement dated December 5, 1996 and known as Trust No. 3564, and SKS & ASSOCIATES, INC., an Illinois corporation, (for purposes hereunder, collectively the "Borrower"), has agreed to make a loan to Borrower in the principal amount of THREE HUNDRED TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$325,000.00) for the purposes of acquiring the mortgaged premises commonly known as 4219 Harlem Avenue, Stickney, Illinois, secured by a Mortgage and Security Agreement executed in conjunction with the loan.

B. Senior Lender is the owner and holder of (a) a certain Mortgage and Security Agreement dated October 23, 2003, in the original principal amount of Three Hundred Twenty Five Thousand and 00/100 Dollars (\$325,000.00) made by Borrower and payable to the order of Senior Lender (hereinafter referred to as the "Senior Note").

C. Senior Lender is also the owner and holder of the following document, among others, securing or relating to the Senior Note: a certain Mortgage and Security Agreement (the "Senior Mortgage") made by Borrower dated as of October 23, 2003, and recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder") on December 29, 2003, as Document No. 0336320121 encumbering certain property (the "Property"), located in Cook County, Illinois and legally described on Exhibit A attached hereto:

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The Mortgage and Security Agreement, together with all other documents and instruments evidencing and securing or relating to the Senior Note are hereinafter collectively referred to as the "**Senior Loan Documents.**"

D. Junior Lender is the owner and holder of a certain Secured Promissory Note (the "**Secured Promissory Note**") dated October 23, 2003 in the original principal amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) made by Borrower payable to the order of Junior Lender.

E. Junior Lender is also the owner and holder of the following documents, among others, securing or relating to the Secured Promissory Note: a certain Junior Mortgage (the "**Junior Mortgage**") made by Borrower dated as of October 23, 2003, and recorded with the Recorder of Deeds of Cook County, Illinois on December 29, 2003, as Document No.0336320125 encumbering the Property.

The Secured Promissory Note, Junior Mortgage, together with all documents and instruments evidencing, securing or relating to the Junior Note are hereinafter collectively referred to as the "**Junior Loan Documents**".

F. All obligations of Borrower to Senior Lender now existing, due or to become due, under the Senior Note and the Senior Loan Documents are herein called the "**Senior Liabilities.**"

G. All obligations of borrower to Junior Lender now existing, due or to become due, under the Junior Note and the Junior Loan Documents are herein called the "**Junior Liabilities.**"

H. In order to induce Senior Lender to enter into the Senior Loan Documents, Borrower and Junior Lender have agreed to execute and deliver this Subordination Agreement in order to subordinate the Junior Loan Documents and the Junior Liabilities, and all other debt between Junior Lender and Borrower to the Senior Loan Documents, the Senior Liabilities and all debt between Senior Lender and borrower existing now or hereafter.

I. The Junior Lender acknowledges that the loan or advances of monies or other extensions of any financial accommodation or credit to the Borrower by the Senior Lender are of value to the Junior Lender.

J. The Borrower has requested that the Junior Lender enter into this Agreement with Senior Lender as a condition precedent to advancing funds under the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and as an inducement to Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto represent, warrant and agree as follows:

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1. Recitals. The Recitals set forth above are incorporated herein as if fully set forth and are made a part of this Agreement.

2. Subordination of Liens and Payments. Junior Lender hereby agrees that the Junior Liabilities are and shall be subordinate to the Senior Liabilities and that the liens, security interests and rights of the Junior Lender created by the Junior Loan Documents are and shall be subordinate to the liens, security interests and rights of the Senior Lender created by the Senior Loan Documents and to any and all advances made under the Senior Loan Documents pursuant to the terms thereof, so that until the Senior Note and the Senior Liabilities are paid in full, Senior Lender will have first claim, lien and priority over Junior Lender in all collateral (including the Property) held under the Senior Loan Documents.

Junior Lender agrees that so long as there are any Senior Liabilities outstanding, Junior Lender shall not take or receive, directly, indirectly, by setoff or otherwise, any payment, in full or in part, of principal, or any prepayment, in full or in part, of interest under the Junior Note or take or receive the final payment due under the Junior Note. Junior Lender further agrees not to take or receive payment with respect to all or any part of the Junior Liabilities (including interest) at any time after Senior Lender shall have advised Junior Lender via a "Default Notice" that Borrower is in default under any one or more of the Senior Loan Documents unless and until any and all of the Senior Liabilities which are then due and owing have been paid in full or such default has been cured. The issuance of a Default Notice by the Senior Lender shall not create any obligation on the part of the Senior Lender to accelerate or demand payment of the Senior Liabilities or to initiate any action against the Borrower or its assets. The Senior Lender may waive any Event of Default giving rise to the issuance of a Default Notice without waiving such Event of Default as it relates to the Subordinated Lender.

Any property received by Junior Lender in violation of the foregoing undertaking, whether by way of direct payment, as proceeds of collateral or otherwise, shall be held in trust by Junior Lender for the benefit of Senior Lender, and shall be payable immediately to Senior Lender by Junior Lender.

It is understood and agreed by the Junior Lender that the Junior Note may not be modified or amended without the prior written consent of the Senior Lender. The Junior Lender, prior to the payment in full in cash of the Senior Liabilities and the termination of all financing arrangements between the Borrower and the Senior Lender, shall have no right to enforce payment of any of Borrower's obligations under the Junior Note or any of the Junior Loan Documents, or any other payment with respect to the Junior Liabilities without the prior written consent of the Senior Lender.

3. Covenants of Junior Lender. Junior Lender, represents, warrants, covenants and agrees that:

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(a) Junior Lender shall not under any circumstance or at any time challenge the Senior Loan Documents or the Senior Lender's priority with respect to the collateral (including the Property) held under the Senior Loan Documents and the proceeds thereof;

(b) Junior Lender shall notify Senior Lender in writing of any default under the Junior Loan Documents within five (5) business days of the occurrence of any default thereunder;

(c) Junior Lender will not take any action affecting any lease of the Property, the Property or any collateral held under the Senior Loan Documents as long as any of the Senior Liabilities remain outstanding;

(d) Junior Lender will not, without the prior written consent of the Senior Lender, commence, or join with any other creditor in commencing any bankruptcy or insolvency proceeding or seek to appoint a receiver for the Property;

(e) Junior Lender will not, without the prior written consent of the Senior Lender, modify, amend or consent to any modification of any document evidencing or securing the Junior Liabilities;

(f) upon the request of the Senior Lender, Junior Lender will provide a partial release of the Junior Mortgage at the same time that Senior Lender provides a partial release of the Senior Mortgage with respect to the sale of any Unit, if applicable. Junior Lender understands that it is not entitled to any payment of any of the Junior Liabilities as a condition to the delivery of such partial release until and unless all of the Senior Liabilities have been paid in full.

(g) Junior Lender has not previously assigned any interest in the Junior Note; no other party owns an interest in the Junior Note other than Junior Lender the entire Junior Note is owing only to such Junior Lender.

4. Extension of Senior Liabilities. It is further understood and agreed that Senior Lender may at any time, in its sole discretion, renew, modify or extend the time of payment of all or any portion of the Senior Liabilities without the consent of Junior Lender and without in any manner impairing or affecting this Agreement or any of Senior Lender's rights hereunder.

5. Assignment by Senior Lender. Senior Lender may, from time to time, assign or transfer any or all of the Senior Liabilities or any interest therein; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the

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benefits of this Agreement to the same extent as if such assignee or transferee were Senior Lender.

6. Assignment by Junior Lender. Junior Lender may, only upon the prior written consent of Senior Lender, assign or transfer all, but not less than all, of the Junior liabilities provided that such assignment is expressly subject to the terms of this Agreement in form and substance reasonably satisfactory to Senior Lender.

7. Power of Attorney. Junior Lender does hereby irrevocably appoint Senior Lender the attorney-in-fact for Junior Lender, with full power of substitution, to sign, execute and deliver any and all instruments and documents and do all acts and things to the same extent as Junior Lender could do with respect to executing and delivering one or more partial releases of the Junior Mortgage upon the sale of any Unit.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Senior Lender, Junior Lender and their respective successors and assigns whether immediate or remote.

9. Notice. Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing, and shall be deemed given (i) if and when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth below, or (iii) on the second (2nd) business day after being deposited in the United States, registered or certified mail, postage prepaid, addressed to a party at its address set forth below:

If to Senior Lender: GreatBank, NA  
3300 W. Dempster Street  
Skokie, Illinois 60076  
Attn: Mr. Donald Berg - Executive Vice President

If to Junior Lender: Mr. Thomas Babb  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party hereto may change the address at which notices hereunder are required to be given to such party by notice to the other parties in accordance herewith.

10. Construction and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each

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provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Junior Lender consents to the exercise of jurisdiction over its person and property by any court of competent jurisdiction situated in the State of Illinois (whether it be a court of such State, or a court of the United States of America) and in connection therewith, agrees to submit to, and be bound by the jurisdiction of such court upon the mailing of process by registered or certified mail, return receipt requested, postage prepaid to Junior Lender's address for receipt of notice. Junior Lender hereby knowingly, voluntarily and intentionally waives the right to trial by jury in respect of any litigation based hereon, arising out of, or in connection with this Agreement.

11. Termination. This Agreement is a continuing agreement of subordination and shall continue effective until the payment in full of all Senior Liabilities under the Senior Loan Documents and all extensions, modifications and renewals thereof.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first written above.

SENIOR LENDER:

JUNIOR LENDER:

GREATBANK, N.A.

By: Jacob

X Thomas Babb  
THOMAS BABB

Its: VP.

Attest: [Signature]

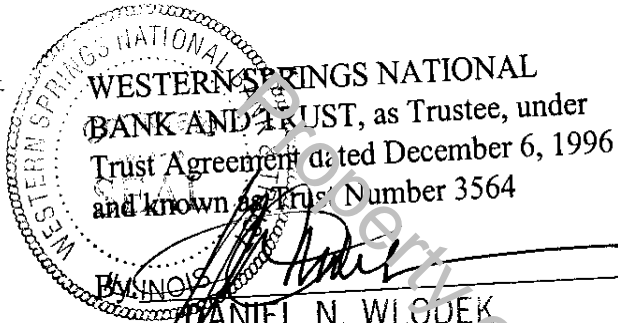
Its: VP

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## ASSENT BY BORROWER

The above named Borrower assents to the foregoing Subordination Agreement and agrees in all respects to be bound thereby and to keep, observe and perform the several matters and things therein intended of it to be done, and particularly agrees not to make any payment contrary to the foregoing.

BORROWER:



This instrument is executed by the Western Springs National Bank and Trust, Western Springs, Illinois, not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by the Western Springs National Bank and Trust, Western Springs, Illinois, shall be performed solely as Trustee, as aforesaid, and no trust or trust agreement or facility shall be created or be enforceable against the Western Springs National Bank and Trust, Western Springs, Illinois, by reason of any of the covenants, statements, representations or warranties contained in the instrument.

Daniel N. Wlodek  
Its: DANIEL N. WLODEK  
TRUST OFFICER

Vance E. Halvorson  
Attest: VANCE E. HALVORSON  
Its: VANCE E. HALVORSON  
ASSISTANT TRUST OFFICER

SKS & ASSOCIATES, INC., an Illinois corporation  
By: [Signature]

Its: president

Attest: [Signature]

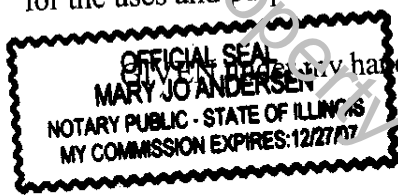
Its: [Signature]

Deputy Clerk of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Mary Jo Andersen, a Notary Public in and for said County in the State aforesaid, DO  
HEREBY CERTIFY that Donald A. Berg, Executive Vice President of  
GREATBANK, NA, and Tim Crowe, ADP, Assistant Secretary, of said  
GREATBANK, NA, personally know to me to be the same persons whose name 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 the said instrument  
as their own free and voluntary acts, and as the free and voluntary act of said GREATBANK, NA,  
for the uses and purposes therein set forth.



GIVEN under my hand and notarial seal this 3rd day of March, 2004.

Mary Jo Andersen  
Notary Public

My Commission Expires:

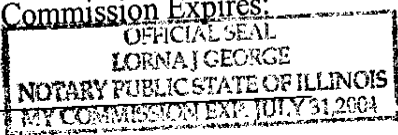
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Lorna J. George, a Notary Public in and for said County in the State aforesaid, DO  
HEREBY CERTIFY that DANIEL N. WLODEK, TO ~~XXXXXX~~ of  
~~Secretary~~ Western Springs National Bank and Trust and VANCE E. HALVORSON, Assistant TO  
persons whose names are subscribed to the foregoing instrument as such TO President and  
ATO Secretary, respectively, appeared before me this day in person and acknowledged that  
they signed and delivered the said instrument as their own free and voluntary acts, and as the free  
and voluntary act of said Western Springs National Bank and Trust, as Trustee under Trust No. 3564  
for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of March, 2004.

Lorna J. George  
Notary Public

My Commission Expires:





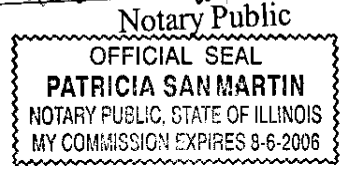
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Patricia San Martin, a Notary Public in and for said County in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, the \_\_\_\_\_ President of SKS  
& ASSOCIATES, INC., an Illinois corporation, and \_\_\_\_\_, the \_\_\_\_\_ Secretary,  
of said SKS & ASSOCIATES, INC., personally know to me to be the same persons whose name 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 the said  
instrument as their own free and voluntary acts, and as the free and voluntary act of SKS &  
ASSOCIATES, INC. for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15<sup>th</sup> day of March, 2004.

Patricia San Martin



My Commission Expires:

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Patricia San Martin, a Notary Public in and for said County in the State aforesaid, DO  
HEREBY CERTIFY that THOMAS BABB, personally know 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 signed and delivered the said instrument as his own free and voluntary act, for  
the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15<sup>th</sup> day of March, 2004.

Patricia San Martin  
Notary Public



My Commission Expires:

\_\_\_\_\_

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 29 AND 30 IN BLOCK 4 IN GOSS, JUDD AND SHERMAN'S FIRST ADDITION TO FOREST MANOR, A SUBDIVISION OF LOTS 30 AND 31 IN CIRCUIT COURT PARTITION IN SECTION 6, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN NO.(s): 19-06-118-011-0000 and 19-06-118-012-0000

COMMONLY KNOWN AS: 4219 S. HARLEM AVENUE, STICKNEY, ILLINOIS

Property of Cook County Clerk's Office