

# UNOFFICIAL COPY



Doc#: 0902729029 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/27/2009 12:19 PM Pg: 1 of 10

THIS DOCUMENT WAS PREPARED BY,  
AND AFTER RECORDING, RETURN TO:

Daniel P. Strzalka  
Ungaretti & Harris, LLP  
3500 Three First National Plaza  
Chicago, Illinois 60602

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## SUBORDINATION AND ATTORNMENT AGREEMENT

This SUBORDINATION AND ATTORNMENT AGREEMENT dated as of December 2, 2008 (this "Agreement"), is executed by and among **2470 NORTH MILWAUKEE CORP.**, an Illinois corporation (the "Landlord"), **LOGAN SQUARE ALUMINUM SUPPLY, INC.**, an Illinois corporation (the "Tenant"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation, together with its successors and assigns (the "Lender").

### WITNESSETH.

**WHEREAS**, the Lender is the mortgagee under that certain Mortgage, Security Agreement Assignment of Rents and Fixture Filing dated as of even date herewith, to be recorded concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (hereinafter defined) and secures a maximum principal indebtedness in the amount of Twenty-Six Million, Six Hundred Two Thousand, Eight Hundred and Eighty-One and 00/100 Dollars (\$26,602,881.00); and

**WHEREAS**, as of January 1, 2005, the Tenant has entered into that certain lease agreement with the Landlord (the "Lease Agreement", the Lease Agreement, together with all amendments, extensions and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 32,510 rentable square feet of space in the building(s) ("Building") on the parcel(s) of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit A attached hereto and made a part hereof.

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

1. Landlord and Tenant each represents and warrants to the Lender that (a) the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises, (b) the Lease is in full force and effect, (c) no default by Landlord or Tenant exists with respect to any provision of the Lease, (d) the term of the Lease commenced on July 1, 2005, and ends on June 30, 2015, (e) the current monthly base rental payable by Tenant under the Lease is \$20,000.00, (f) if applicable, the current estimated monthly payments made by the Tenant under the Lease in respect of common area maintenance costs and real estate taxes are \$ N/A respectively, (g) the security deposit under the Lease is currently: none, and (h) the Tenant does not have any outstanding options or rights of first refusal to purchase the Leased Premises, or any part thereof, or to purchase or lease any other part of the Building, except: none.

2. Landlord and Tenant each covenant with the Lender that the Lease, and the respective rights of Landlord and Tenant thereunder, 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 now or hereafter secured thereby 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, Landlord and Tenant hereby agree that any of their respective 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 Leased Premises, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

3. Landlord covenants not to exercise any right which Landlord now has or hereafter may have, under the laws of the State of Illinois, or by virtue of the Lease, or any renewals, extensions, amendments, modifications, substitutions or replacements thereof or by virtue of Tenant's occupation of the Leased Premises, to levy or distrain upon, for rent, in arrears, in advance or both or for any monetary obligation arising by reason of default under the Lease, or to claim or assert any lien, right, claim or title to any or all of Tenant's personal property, which now is or hereafter may be located, on the Leased Premises until such time as the Obligations (as defined in the Mortgage) are paid in full to Lender.

4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Leased Premises, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all

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subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid to the Lender.

5. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "**Landlord's Default**"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Leased Premises and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this **Section 4**, 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 the Landlord having effectuated a cure thereof.

6. If the Lender or any future holder of the Mortgage shall become the owner of the Leased Premises by reason of foreclosure of the Mortgage or otherwise, or if the Leased Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease, at the sole and exclusive election of the Lender, shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Leased Premises as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The 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 the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the 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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(i) liable for any act or omission of any prior landlord (including the Landlord);

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Leased Premises.

7. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To the Lender

THE PRIVATEBANK AND TRUST COMPANY  
70 West Madison Street, Suite 200  
Chicago, Illinois 60602  
Attention: Alison Murphy

With a copy to:

UNGARETTI & HARRIS, LLP  
3500 Three First National Plaza  
Chicago, Illinois 60602  
Attention: Daniel P. Strzalka

To the Landlord:

2470 NORTH MILWAUKEE CORP.  
2500 North Pulaski Road  
Chicago, Illinois 60639  
Attention: Louis Silver

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With a copy to:                   KNABE, KRONING & MAINZER  
 20 South Clark Street, Suite 2301  
 Chicago, Illinois 60602  
 Attention:     Robert M. Knabe

To the Tenant:                   LOGAN SQUARE ALUMINUM SUPPLY, INC.  
 2500 North Pulaski Road  
 Chicago, Illinois 60639  
 Attention:     Louis Silver

With a copy to:                   KNABE, KRONING & MAINZER  
 20 South Clark Street, Suite 2301  
 Chicago, Illinois 60602  
 Attention:     Robert M. Knabe

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 section 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.

**8.**     Landlord and Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of Landlord and Tenant contained herein and that any default by Landlord or Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against Landlord or Tenant.

**9.**     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 the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

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

***[Remainder of Page Intentionally Left Blank—Signature Pages Follows]***

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination and  
Attornment Agreement the day and year first above written.

**LANDLORD:**

**2470 NORTH MILWAUKEE CORP.**, an  
Illinois corporation

By: 

Name: Louis Silver

Title: President

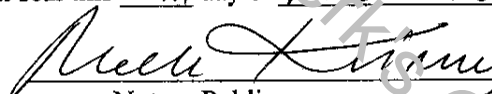
STATE OF ILLINOIS )

) ss.

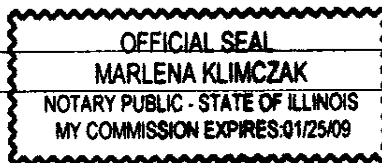
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DO HEREBY CERTIFY** that Louis Silver, the President of **2470 NORTH MILWAUKEE CORP.** an Illinois corporation, who is 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 signed and delivered the said instrument as his 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 25TH day of NOVEMBER, 2008.

  
Notary Public

My Commission Expires: 01/25/2009



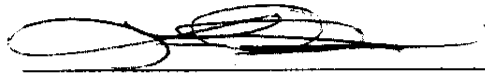
*[Signatures Continue on Following Page]*

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**TENANT:**

**LOGAN SQUARE ALUMINUM SUPPLY, INC.**, an Illinois corporation

By: 

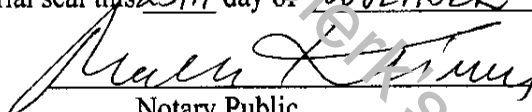
Name: Louis Silver

Title: President

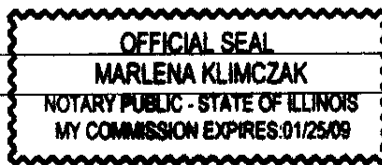
STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DO HEREBY CERTIFY** that Louis Silver, the President of **LOGAN SQUARE ALUMINUM SUPPLY, INC.**, an Illinois corporation, who is 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 signed and delivered the said instrument as his 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 25TH day of NOVEMBER, 2008.

  
Notary Public

My Commission Expires: 01/25/2009



*[Signatures Continue on Following Page]*

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*[Signatures Continued from Preceding Page]*

**LENDER:**

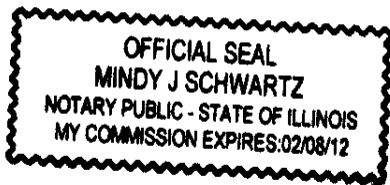
**THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation

By: *Alison Murphy*  
Name: Alison Murphy  
Title: Associate Managing Director

STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK    )

The undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Alison Murphy, the Associate Managing Director of **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation, who is 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 as such Associate Managing Director, she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this *2nd* day of *December*, 2008.



*[Signature]*  
Notary Public

My Commission Expires:

*2/8/12*



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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

THAT PART OF THE SOUTH 315 FEET OF THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF A LINE 100 FEET NORTHEASTERLY OF AND PARALLEL WITH THE ORIGINAL RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF WEST FULLERTON AVENUE WITH THE WEST LINE OF NORTH PULASKI ROAD; THENCE NORTH 0 DEGREES 17 MINUTES WEST A DISTANCE OF 113.84 FEET; THENCE WEST 31.92 FEET; THENCE 60 DEGREES 14 MINUTES WEST 16.16 FEET FOR A POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUING SOUTH 60 DEGREES 14 MINUTES WEST 25.62 FEET TO A POINT; THENCE CONTINUING SOUTH 69 DEGREES 47 MINUTES WEST 42 FEET MORE OR LESS TO A POINT ON THE INTERSECTION WITH A LINE 100 FEET NORTHEASTERLY OF AND PARALLEL WITH THE ORIGINAL NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE NORTH 20 DEGREES, 13 MINUTES WEST ALONG SAID PARALLEL LINE 198.50 FEET TO THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 27 AFORESAID; THENCE EAST ALONG THE NORTH LINE OF THE SOUTH 315 FEET OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27 AFORESAID 175.19 FEET MORE OR LESS TO THE WEST LINE OF NORTH PULASKI ROAD; THENCE SOUTH ALONG THE WEST LINE OF NORTH PULASKI ROAD 74.97 FEET TO A POINT; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 27, 46 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF NORTH PULASKI ROAD 84.21 FEET TO THE POINT OF BEGINNING

ALSO

THAT PART OF THE SOUTH 315 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF NORTH PULASKI ROAD 113.84 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE, SAID POINT BEING 163.84 FEET NORTH OF THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27 AFORESAID, THENCE WEST 31.92 FEET TO A POINT; THENCE SOUTH 60 DEGREES 14 MINUTES WEST 16.16 FEET TO A POINT; THENCE NORTH PARALLEL WITH THE WEST LINE OF NORTH PULASKI ROAD 84.21 FEET, MORE OR LESS, TO A POINT WHICH IS 74.97 FEET SOUTH OF THE NORTH LINE OF THE SOUTH 315 FEET OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27; THENCE EAST PARALLEL WITH THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTHEAST 1/4 OF THE

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SOUTHEAST 1/4 OF SAID SECTION 27, 46 FEET TO THE WEST LINE OF NORTH PULASKI ROAD; THENCE SOUTH ALONG THE WEST LINE OF NORTH PULASKI ROAD 75.19 FEET MORE OR LESS TO THE POINT OF BEGINNING;

ALSO

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF NORTH PULASKI ROAD, SAID POINT BEING 265.0 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE AND RUNNING THENCE WEST PARALLEL WITH SAID NORTH LINE OF FULLERTON AVENUE, A DISTANCE OF 175.19 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 100 FEET EASTERLY OF THE ORIGINAL 100 FOOT RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE NORTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 162.49 FEET TO AN INTERSECTION WITH THE EXTENSION WEST OF THE SOUTH MAIN FACE OF A BRICK WALL; THENCE EAST ALONG SAID SOUTH FACE OF SAID WALL AND THE EXTENSION OF THE SOUTH FACE OF WALL, A DISTANCE OF 230.46 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH PULASKI ROAD, SAID INTERSECTION BEING 418.83 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE; THENCE SOUTH ALONG THE WEST LINE OF NORTH PULASKI ROAD A DISTANCE OF 153.83 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**PROPERTY ADDRESS OF REAL ESTATE:**

2424 NORTH PULASKI, CHICAGO, ILLINOIS 60659

**PERMANENT TAX INDEX NUMBERS:**

13-27-415-055-0000