

# UNOFFICIAL COPY

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THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING MAIL TO:

Christyl Marsh  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062



Doc#: 1316349032 Fee: \$58.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/12/2013 01:49 PM Pg: 1 of 11

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, is executed as of April 1, 2013, by and among **MB Financial Bank, N.A.** ("Senior Mortgagee"), and **Szymanski Series, LLC 4001**, an Illinois series limited liability company ("Mortgagor"), for the benefit of **Oxford Bank & Trust** ("Senior Mortgagee").

### WITNESSETH:

A. Junior Mortgagee is the holder of a mortgage dated October 12, 2007 (as amended and modified from time to time, the "Junior Mortgage") and an assignment of rents dated October 12, 2007 (the "Junior Assignment of Rents") each executed by Stanislaw Szymanski and Beata Szymanski (collectively, the "Szymanskis") as security for a promissory note in the amount of \$1,550,000.00 dated as of October 12, 2007 executed by the Szymanskis and payable to the order of Junior Mortgagee. The Junior Mortgage and Junior Assignment of Rents (collectively, the "Junior Loan Documents") have been previously modified pursuant to that certain First Amendment of Mortgage and Assignment of Rents dated October 12, 2012 by and among the Szymanskis, Mortgagor and Junior Mortgagee, and by that certain Second Amendment of Mortgage and Assignment of Rents dated February 15, 2013 by and among the Szymanskis, Mortgagor and Junior Mortgagee.

B. The Junior Mortgage was recorded as Document No. 0729233128 in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") and the Junior Assignment of Rents was recorded as Document No. 0729233129 against the real property located at 4001 N. McVickers Avenue, Chicago, Cook County, Illinois, as more fully described on **Exhibit A** attached hereto and made a part hereof for all purposes, together with the buildings and improvements located thereon (the "Mortgaged Property"). The First Amendment of Mortgage and Assignment of Rents was recorded as Document No. 1302319103 and the Second Amendment of Mortgage and Assignment of Rents.

C. Senior Mortgagee previously extended to Mortgagor a term loan dated March 14, 2008 in the original principal amount of \$335,000.00 (as modified, extended or restated from time to time,

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the "Senior Loan"). which Senior Loan is secured, in part, by a mortgage encumbering the Mortgaged Property dated March 14, 2008, and recorded in the Recorder's Office as Document No. 0808855017 (the "Senior Mortgage").

D. The Junior Mortgage was previously subordinated to the lien of the Senior Loan and the Senior Mortgage pursuant to that certain subordination of mortgage dated March 14, 2008 by and among Junior Mortgagee, Mortgagor and Senior Mortgagee, recorded in the Recorder's Office as Document No. 0808855019.

E. Mortgagor has requested that Senior Mortgagee modify and extend the maturity date of the Senior Loan, and Senior Mortgagee has agreed, provided that the parties reaffirm the continued subordination of the Junior Mortgage to the Senior Mortgage and Senior Loan, as modified and extended. The Senior Mortgage, together with any and all instruments and documents executed in connection therewith, including but not limited to an assignment of rents dated March 14, 2008 and recorded in the Recorder's Office as Document No. 0808855018, are herein referred to collectively as the "First Loan Documents".

NOW THEREFORE, in consideration of Senior Mortgagee's agreement to modify and extend the maturity date of the Senior Loan, Junior Mortgagee and Mortgagor do hereby covenant and agree with Senior Mortgagee as follows:

1. As of April 1, 2013, the outstanding principal balance of the Senior Loan is \$285,299.93. Concurrent with the execution of this Subordination Agreement, the Mortgagor shall execute and deliver to Lender an amended and restated promissory note of even date herewith in the principal amount of Two Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$287,500.00), payable to the order of Lender on April 1, 2018 (the "Amended Note"). Senior Mortgagee agrees that the principal amount of the Senior Loan shall not be increased above \$287,500.00, plus Protective Advances (as hereinafter defined), without the prior written consent of the Junior Mortgagee. The Junior Loan Documents and any and all of the terms, modifications, amendments, renewals, additions, consolidations and extensions of the foregoing Junior Loan Documents shall be subject and subordinate to all liens and security interests created under the First Loan Documents for all sums which may be advanced, payable (including, without limitation, fixed, additional and contingent interest and prepayment premiums of all kinds) or secured thereunder (including without limitation, sums advanced to protect, perfect, preserve or defend such liens or security interests), without notice to the holder of the Junior Mortgage and to any and all modifications, amendments, renewals, additions, consolidations, extensions and replacements of any of the First Loan Documents.

2. Notwithstanding anything to the contrary contained in the Junior Loan Documents, so long as the Senior Loan remains outstanding or with the consent of the Senior Mortgagee:

(a) If any action or proceeding shall be brought to foreclose the Junior Mortgage, no tenant of any portion of the Mortgaged Property will be named as a party or defendant in any such foreclosure action or proceeding, nor will any other action be taken with respect to any tenant of any portion of the Mortgaged Property so long as any portion of the Senior Loan remains outstanding, the

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effect of which would be to terminate or create any lease of any portion of the Mortgaged Property, without the consent of the holder of the outstanding First Loan Documents.

(b) If any action or proceeding shall be brought to foreclose the Junior Mortgage, no portion of the rents, issues and profits of the Mortgaged Property shall be collected except through a receiver appointed by the court in which such foreclosure action or proceeding is brought, after due notice of the application for the appointment of such receiver shall have been given to the holder of the outstanding First Loan Documents, and if the First Loan Documents are also being foreclosed, then by a receiver chosen by the holder of the First Loan Documents; and that the rents, issues and profits so collected by such receiver shall be applied first to the payment of maintenance and operating charges and disbursements incurred in connection with the operation and maintenance of the Mortgaged Property, and then to the payment of the indebtedness due and owing on, or to become due and owing on, the First Loan Documents; and, if during the pendency of any such foreclosure action or proceeding, an action or proceeding shall be brought by the holder of the First Loan Documents for the foreclosure of such First Loan Documents and an application is made for an extension of such receivership for the benefit of the holder of such receivers on the date of such application shall be applied by the receiver solely for the benefit of the holder of such First Loan Documents and the holder of the Junior Mortgage shall not be entitled to any portion thereof.

(c) In the event the holder of the First Loan Documents shall release, for the purposes of restoration of all or any part of the Mortgaged Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or in and to any awards, or in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, the holder of the Junior Mortgage shall likewise for such purpose release all of its rights, title and interest, if any, in and to such insurance proceeds or awards.

(d) Any assignment of rents or leases contained in the Junior Mortgage, or in any collateral assignment thereof if separate therefrom, shall be in all respects subject and subordinate to the First Loan Documents and any collateral assignment of such rents or leases if separate therefrom.

(e) The holder of the Junior Mortgage shall not require, by subrogation or otherwise, any lien, estate, right or other interest in the Mortgaged Property which is or may be prior in right or pari passu to the First Loan Documents, including, without limitation, advances for real estate taxes and assessments or advances to cure any default under the First Loan Documents, or advances to protect, perfect, preserve or defend the Senior Loan, as provided in the Senior Loan Documents (collectively, the "Protective Advances").

(f) If Junior Mortgagee at any time amends, modifies, consolidates, extends or alters any of the Junior Loan Documents or the terms of the Junior Mortgage loan, then, Junior Mortgagee shall promptly thereafter provide executed and recorded copies thereof to Senior Mortgagor.

(g) All provisions of the Junior Mortgage relating to the rights of the holder of the Junior Mortgage to receive insurance proceeds and condemnation awards or to have such insurance proceeds and condemnation awards assigned to such holder, or to determine the application or use of such insurance proceeds and condemnation awards (whether to restoration, costs or as and to the

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extent provided in the First Loan Documents, the sums secured by such First Loan Documents) shall have no force or effect until satisfaction and discharge of all obligations under the First Loan Documents and release of the security interests set forth therein.

(h) As of April 1, 2013, the outstanding principal balance of the promissory note is \$1,416,649.77.

(i) In no event shall be the provisions of the Junior Loan Documents prohibit or restrict Mortgagor from executing, acknowledging and delivering all and every such further acts, deeds, conveyances and instruments that Mortgagor is obligated to deliver under the First Loan Document.

(j) The holder of the Junior Mortgage shall send to the holder of the outstanding First Loan Documents true copies of all default or acceleration notices, or of notices of the commencement of any action or proceeding under the Junior Loan Documents, and of all complaints filed and orders entered in any such action or proceeding, to the holder of the First Loan Documents in the manner for notices specified herein, promptly after sending or serving the same to or on Mortgagor, or entering the same in such action or proceeding.

(k) If a default shall occur beyond applicable grace periods under the Junior Note and Junior Loan Documents, the holder of the Junior Mortgage shall not accelerate the debt secured by the Junior Mortgage without notifying the holder of the First Loan Documents of such fact and giving the latter at least ten (10) days to cure the specified default (and shall accept any cure of the default tendered by or on behalf of the holder of such First Loan Documents).

(l) Within twenty (20) days after request from the holder of the First Loan Documents, the holder of the Junior Mortgage shall execute and deliver to the former an estoppel certificate stating (i) the outstanding principal balance of the Junior Mortgage loan and any accrued but unpaid interest thereon, (ii) the date to which interest and principal has been paid, (iii) that the Junior Loan Documents and note thereby secured have not been modified or amended, except as disclosed to Senior Lender from time to time, and (iv) whether a notice of default has been sent under the Junior Loan Documents, as the case may be, or the note thereby secured, which default remains uncured.

(m) Within twenty (20) days after request from the holder of the Junior Loan Documents, the holder of the Senior Mortgage shall execute and deliver to the former an estoppel certificate stating (i) the outstanding principal balance of the Senior Loan and any accrued but unpaid interest thereon, (ii) the date to which interest and principal has been paid, (iii) that the Senior Loan Documents and note thereby secured have not been modified or amended, except as set forth in the estoppel, and (iv) whether a notice of default has been sent under the Senior Loan Documents, as the case may be, or the note thereby secured, which default remains uncured.

(n) In no event shall the provisions of the Junior Loan Documents prohibit or restrict Mortgagor from executing, acknowledging and delivering any lease of the Mortgaged Property.

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(o) To further evidence the subordinations referred to in (a) through (n) above, Junior Mortgagee agrees that, within twenty (20) days after request by the holder of the First Loan Documents (which requests may be made from time to time, including, such times as future advances may be made to the Mortgagor by Senior Mortgagee) it will do, execute, acknowledge and deliver any and all such further reaffirmations of this subordination, as the holder of such First Loan Documents may reasonably request for the better assuring and evidencing of the foregoing subordinations

3. If a default shall occur beyond applicable grace periods under the Junior Loan Documents, it shall be an event of default under the First Loan Documents.

4. Mortgagor agrees to pay Senior Mortgagee all of its costs in connection with this Subordination Agreement, including but not limited to Senior Mortgagee's attorneys' fees incurred to draft this Subordination Agreement and advise Senior Mortgagee.

5. All of the foregoing subordination provisions and other agreements in this Subordination Agreement are for the express benefit of Senior Mortgagee and any future holder of the First Loan Documents.

6. In the event of any conflict between the provisions of this Subordination Agreement and any other provisions of the Junior Loan Documents, the provisions of this Subordination Agreement shall take priority and shall control and apply.

7. Any notice required or desired to be given hereunder shall be delivered personally, or by United States mail (registered or certified, postage prepaid, with return receipt requested), which shall be deemed delivered on the third (3<sup>rd</sup>) business day after deposit with the United States Postal Service, or by overnight delivery service, which shall be deemed delivered on the first (1<sup>st</sup>) business day after deposit with the overnight delivery service.

Notices to the Senior Mortgagee shall be addressed as follows:

Oxford Bank & Trust  
1111 W. 22<sup>nd</sup> Street, Suite 800  
Oak Brook, Illinois 60523  
Attn: Steven M. Frank

Notices to the Junior Mortgagee shall be addressed as follows:

MB Financial Bank, N.A.  
6111 N. River Road  
Rosemont, Illinois 60018  
Attn: Steven Gottesman

**[SIGNATURE PAGE TO FOLLOW]**

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IN WITNESS WHEREOF, Junior Mortgagee, Mortgagor and Senior Mortgagee have caused this Subordination Agreement to be executed as of the day and year first above written.

JUNIOR MORTGAGEE:

**MB Financial Bank, N.A.**

By: *[Signature]*  
Stephen Gottesman

Its: Commercial Banking Officer

MORTGAGOR:

**Szymanski Series, LLC 4001**, an Illinois series limited liability company

By: See next page for signature  
Stanislaw Szymanski

Its: Manager

SENIOR MORTGAGEE:

**Oxford Bank & Trust**

By: See next page for signature  
Steven M. Frank

Its: Vice President

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Junior Mortgagee, Mortgagor and Senior Mortgagee have caused this Subordination Agreement to be executed as of the day and year first above written.

JUNIOR MORTGAGEE:

**MB Financial Bank, N.A.**

By: See prior page for signature  
Stephen Gottesman

Its: \_\_\_\_\_

MORTGAGOR:

**Szymanski Series, LLC 4001**, an Illinois series limited liability company

By: SB Szymanski  
Stanislaw Szymanski

Its: Manager

SENIOR MORTGAGEE:

**Oxford Bank & Trust**

By: [Signature]  
Steven M. Frank

Its: Vice President

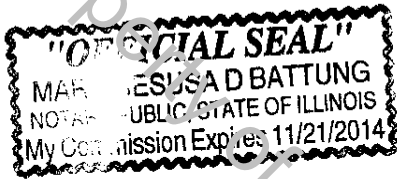
Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Stephen Gottesman, a Commercial Loan Officer of **MB Financial Bank, N.A.**, a national banking association, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal May 31, 2013.



Maria Jesusa D. Battung  
Notary Public

STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

~~I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Stanislaw Szymanski**, personally known to me as the sole Manager of **Szymanski Series, LLC 4001**, an Illinois series limited liability company, and 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 he signed, sealed and delivered the said instrument as such Manager of said series limited liability company, pursuant to authority given by the members of said series limited liability company, as his own and free and voluntary act and as the free and voluntary act of said series limited liability company, for the uses and purposes therein set forth.~~

~~GIVEN under my hand and Notarial Seal \_\_\_\_\_, 2013.~~

~~\_\_\_\_\_  
Notary Public~~



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STATE OF ILLINOIS     )  
  )  
  )     ss  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Stephen Gottesman, a \_\_\_\_\_ of **MB Financial Bank, N.A.**, a national banking association, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

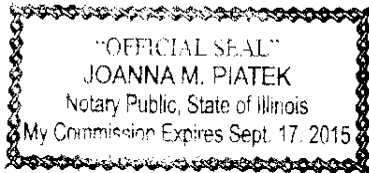
GIVEN under my hand and Notarial Seal \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
  )  
  )     ss  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Stanislaw Szymanski**, personally known to me as the sole Manager of **Szymanski Series, LLC 4001**, an Illinois series limited liability company, and 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 he signed, sealed and delivered the said instrument as such Manager of said series limited liability company, pursuant to authority given by the members of said series limited liability company, as his own and free and voluntary act and as the free and voluntary act of said series limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 4/1, 2013.



\_\_\_\_\_  
Notary Public

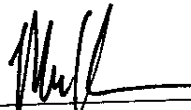
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STATE OF ILLINOIS     )  
                                   )  
 COUNTY OF DUPAGE    )

ss

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Steven M. Frank, Vice President, of **Oxford Bank & Trust**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer 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 bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 2-16-17, 2013.

  
 \_\_\_\_\_  
 Notary Public



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## EXHIBIT A

### **Legal Description**

PINS: 13-17-317-016-0000 and 13-17-317-017-0000

Address: 4001 N. McVickers Avenue, Chicago, Illinois 60634

LOT 15 (EXCEPT THE EAST 19.00 FEET THEREOF) AND ALL OF LOTS 16 AND 17 IN W.H. ELDRED'S BOULEVARD SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.