

THIS INSTRUMENT PREPARED  
BY AND SHOULD BE RETURNED  
TO:

File Review Department  
American Chartered Bank  
20 N. Martingale, Suite 600  
Schaumburg, IL 60173

ABOVE SPACE FOR RECORDER'S USE ONLY

### SUBORDINATION AGREEMENT

Kevin Miske ("General Contractor") understands that American Chartered Bank ("Bank") is providing and has agreed to continue to provide certain financing to Humboldt Investments, LLC ("Borrower") pursuant to the Loan Documents dated of even date herewith between the Bank and Borrower and all other financing agreements now or hereafter existing between Bank and Borrower, together with all amendments, modifications, and supplements to any one or more of the foregoing, and together with all renewals, extensions and restatements of any one or more of the foregoing (the "Loan Documents").

General Contractor understands that Bank will only make the financing arrangements enumerated in the Loan Documents available to Borrower, so long as General Contractor executes and delivers this Agreement to Bank. Therefore, in order to satisfy such condition precedent, General Contractor agrees to the following terms and conditions.

1. General Contractor hereby agrees to subordinate, and does hereby subordinate to the payment in full of the Senior Debt (as hereinafter defined) and evidenced by Mortgage recorded on January 27, 2014 as Doc # 1402735087 that certain Contract with Borrower dated 04/15/2014 and any and all lien rights the General Contractor may have or may obtain or have in the future pursuant to the Illinois Mechanics Lien Act (770 ILCS 60/0.01 et seq.) (collectively, the "Subordinated Contract"), as well any part of Borrower's obligations, liabilities and indebtedness which may now or hereafter be owing by Borrower to General Contractor pursuant to its Subordinated Contract or otherwise and all costs and expenses (including attorneys' fees) owing by Borrower to General Contractor (and all of the obligations, liabilities and indebtedness described or to which reference is made in this clause). For purposes hereof, "Senior Debt" means all obligations, including, without limitation: (i) principal and interest on loans, advances, accommodations or other extensions of credit by Bank to Borrower

# UNOFFICIAL COPY

now or hereafter made and howsoever evidenced to or on behalf of Borrower, (ii) accrued interest, attorneys' fees and expenses incurred in enforcing Bank's rights in the event of default by Borrower under its obligations to Bank, (iii) all other indebtedness for which Borrower is now or at any time hereafter liable to Bank in any manner, whether primarily or secondarily, absolutely or contingently, directly or indirectly, jointly, severally or jointly and severally, and whether matured or unmatured, including all indebtedness arising directly out of transactions between Borrower and Bank or acquired by Bank outright, conditionally or as collateral security from another person or entity, and (iv) all other "Obligations," as that term is defined in the Loan Documents (and, in the case of all of the foregoing, any and all renewals and extensions of all or any part thereof). Regardless of whether a default or an event of default (however defined) exists under the Subordinated Contract, General Contractor further agrees not to: (x) accept, retain, request or take any security for the Subordinated Contract without Bank's prior written consent, (y) amend or modify the Subordinated Contract, without Bank's prior written consent, (z) take any action to enforce its rights in any collateral securing payment thereof, unless and until all Senior Debt shall have been paid in full.

2. General Contractor hereby waives any rights it has or may have in the future to require Bank to marshal its collateral, and agrees that Bank may, in addition to other rights hereunder, proceed against its collateral in any order that it deems appropriate in the exercise of its absolute discretion.

3. General Contractor agrees that it will advise each future holder of all or any part of the Subordinated Contract that the Subordinated Contract is subordinated to the Senior Debt in the manner and to the extent set forth herein.

4. General Contractor agrees that it will not at any time directly or indirectly contest the validity, perfection, priority or enforceability of any lien, security interest, encumbrance or claim granted to Bank in or on the assets of the Borrower, and hereby agrees not to hinder Bank or take a position adverse to Bank in the defense of any action contesting the validity, perfection, priority or enforceability of any such liens, security interests, encumbrances or claims. General Contractor further agrees that the provisions of this Agreement shall remain in full force and effect notwithstanding a successful challenge to the validity, perfection, priority or enforceability of all or any of the Senior Debt or the liens and security interests securing the Senior Debt.

5. If, in order to protect its rights against third parties under the Illinois Mechanic Lien Act (the "Act"), the General Contractor records a notice of lien as required by the Act (the "Notice"), then the General Contractor shall cause said Notice to include language which refers to this Agreement and the subordination of the Subordinated Contract to the Senior Debt.

6. (a) This Agreement shall be governed by Illinois law. This Agreement contains the entire agreement between General Contractor and Bank with respect to this subject, and may only be modified by a writing signed by both General Contractor and Bank.

(b) Bank's failure to exercise any right hereunder shall not be

# UNOFFICIAL COPY

construed as a waiver of the right to exercise the same or any other right at any other time and from time to time thereafter and such rights shall be cumulative and not exclusive.

(c) Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable 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.

(d) This Agreement shall continue in full force and effect until payment in full of the Senior Debt and shall be binding upon General Contractor and its successors and permitted assigns, and shall inure to the benefit of Bank and its successors and assigns, including, without limitation, any future holder of all or any part of the Senior Debt, it being expressly acknowledged that Lender's rights under this Agreement may be assigned by Bank in connection with any assignment or transfer of all or any portion of Senior Debt and that each holder of any portion of Senior Debt shall be equally and ratably entitled to the benefits of this Agreement. References herein to the Borrower shall include any successor to, or assign of, the Borrower, including without limitation any debtor-in-possession or trustee for the Borrower in any proceeding under the United States Bankruptcy Code.

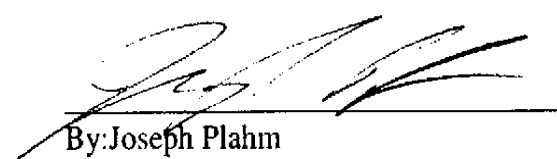
(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof and submissible in evidence and all of which together shall be deemed to be a single instrument.

IN WITNESS WHEREOF, General Contractor has executed this Agreement as of the date first written above.

GENERAL CONTRACTOR:

  
 \_\_\_\_\_  
 KEVIN MISKE

ACCEPTED AND AGREED TO AS OF  
 THE DATE FIRST ABOVE WRITTEN BY  
 AMERICAN CHARTERED BANK:

  
 \_\_\_\_\_  
 By: Joseph Plahm  
 Title: Vice President

# UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF Illinois, DuPage

)  
)  
) ss.



I, Melissa Lopez, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Kevin Miske, the \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 15 day of April, 2014

Melissa Lopez  
Notary Public  
My Commission Expires: 07/18/16

(Seal)

STATE OF ILLINOIS

COUNTY OF DuPage

)  
)  
) ss.



I, Melissa Lopez, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joseph Plahn, the Vice President of American Chartered Bank, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 15 day of April, 2014

Melissa Lopez  
Notary Public  
My Commission Expires: 07/18/16

(Seal)

# UNOFFICIAL COPY

## CONSENT

The undersigned Borrower acknowledges receipt of a copy of the foregoing Subordination Agreement, consents to all of the terms and conditions thereof. In the event of any breach of the provisions of this Agreement, Borrower agrees that, in addition to any other rights and remedies which Bank may have under the documents, agreements and instruments evidencing the financing arrangements, all of the Senior Debt shall, without notice or demand, become immediately due and payable unless Bank shall otherwise elect.

Humboldt Investments, LLC

By: [Signature]  
Its: MEMBER, KEVIN MISKE

STATE OF ILLINOIS

COUNTY OF DuPage

I, Melissa Lopez, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Kevin Miske, the Member of Humboldt Investments, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 15 day of April, 2014

Melissa Lopez  
Notary Public  
My Commission Expires: 07/18/16



# UNOFFICIAL COPY

## EXHIBIT A

### SUBORDINATED CONTRACT

Contract between Kevin Miske and Humboldt Investments, LLC dated 4/11/14 on file with American Chartered Bank at 20 N. Martingale, Suite 600, Schaumburg, IL 60173.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## **EXHIBIT B**

### **LEGAL DESCRIPTION**

The South Half of Lot 18 in Block 4 in Hansbrough and Hess Subdivision of the East Half of the Southwest Quarter of Section 36, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 13-36-304-010-0000

Commonly known as: 1927 North Humboldt Boulevard, Chicago, IL 60647