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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

FOR RECORDER'S USE ONLY

**Prepared By: KARIE HOSCH, DUBUQUE BANK AND TRUST, 1398 CENTRAL AVENUE, DUBUQUE, IA 52004-0778, (563) 589-2000**

**RECORDATION REQUESTED BY:**
**DUBUQUE BANK & TRUST, FARLEY BRANCH, 309 1ST ST SE, FARLEY, IA 52046**

**WHEN RECORDED MAIL TO:**
**DUBUQUE BANK & TRUST, FARLEY BRANCH, 309 1ST ST SE, FARLEY, IA 52046**

*1125*

**NOTICE: THIS SUBORDINATION OF MORTGAGE RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

## SUBORDINATION OF MORTGAGE

The names of all Grantors (sometimes "Borrower") can be found on page 1 of this Subordination. The names of all Grantees (sometimes "Lender") can be found on page 1 of this Subordination. The property address can be found on page 1 of this Subordination. The legal description can be found on page 1 of this Subordination. The parcel identification number can be found on page 1 of this Subordination. The related document or instrument number can be found on page 1 of this Subordination.

***THIS SUBORDINATION OF MORTGAGE* dated April 30, 2010, is made and executed among DUANE F GIBBS and VICTORIA L GIBBS ("Borrower"); DUBUQUE BANK & TRUST ("Mortgagee"); and DUBUQUE BANK & TRUST ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Mortgagee has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

**CREDIT AGREEMENT IN THE AMOUNT OF $50,000.00 DATED AUGUST 16, 2005.**

**SUBORDINATED MORTGAGE.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a mortgage dated August 16, 2005 from DUANE F GIBBS and VICKI L GIBBS ("Mortgagor") to DUBUQUE BANK & TRUST ("Mortgagee") (the "Subordinated Mortgage") and recorded in DELAWARE County, State of Iowa as follows:

**MORTGAGE DATED AUGUST 16, 2005 FILED AUGUST 24, 2005 AND RECORDED AS DOCUMENT 2005 2956.**

**REAL PROPERTY DESCRIPTION.** The Subordinated Mortgage covers the following described real property (the "Real Property") located in DELAWARE County, State of Iowa:

See EXHIBIT "A", which is attached to this Subordination and made a part of this Subordination as if fully set forth herein. (page 6)

The Real Property or its address is commonly known as 302 LAKE ST, DELHI, IA 52223. The Real Property tax identification number is 490-000-310-100. The Real Property parcel identification number is 490-000-310-100.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described

financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**PROMISSORY NOTE IN THE AMOUNT OF $70,149.00 DATED APRIL 30, 2010.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, dated April 30, 2010, from Borrower to Lender (the "Lender's Lien") and recorded in DELAWARE County, State of Iowa as follows:

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Mortgage.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Mortgagee, who may or may not be the same person or entity as Mortgagor, and Borrower each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Borrower and Mortgagee each represent and acknowledge to Lender that Mortgagee will benefit as a result of these financial accommodations from Lender to Borrower, and Mortgagee acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Mortgage and the Subordinated Indebtedness secured by the Subordinated Mortgage is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Mortgage. Mortgagee also subordinates to Lender's Lien all other Security Interests in the Real Property held by Mortgagee, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**MORTGAGEE'S REPRESENTATIONS AND WARRANTIES.** Mortgagee represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Mortgagee which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Mortgagee as to the creditworthiness of Borrower; and (D) Mortgagee has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Mortgagee agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Mortgagee's risks under this Subordination, and Mortgagee further agrees that Lender shall have no obligation to disclose to Mortgagee information or material acquired by Lender in the course of its relationship with Mortgagee.

**MORTGAGEE WAIVERS.** Mortgagee waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Mortgagee, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender

chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**DEFAULT BY BORROWER.** If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. In the event of a corporate reorganization or corporate arrangement of Borrower under the provisions of the Bankruptcy Code, as amended, this Subordination shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination provided under this Subordination in approving any such plan of reorganization or arrangement. Any default by Borrower under the terms of the Subordinated Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** What is written in this Subordination is Mortgagee's entire agreement with Lender concerning the matters covered by this Subordination. To be effective, any change or amendment to this Subordination must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Mortgagee also will pay any court costs, in addition to all other sums provided by law.

**Authority.** The person who signs this Subordination as or on behalf of Mortgagee represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Mortgagee's security interests in Mortgagee's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

***Governing Law. This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Iowa without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of Iowa.***

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Mortgagee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**No Waiver by Lender.** Mortgagee understands Lender will not give up any of Lender's rights under this Subordination unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Mortgagee will not have to comply with the other provisions of this Subordination. Mortgagee also understands that if Lender does consent to a request, that does not mean that Mortgagee will not have to get Lender's consent again if the situation happens again. Mortgagee further understands that just because Lender consents to one or more of Mortgagee's requests, that does not mean Lender will be required to consent to any of Mortgagee's future requests. Mortgagee waives presentment, demand for payment, protest, and notice of dishonor. Mortgagee waives all rights of exemption from execution or similar law in the Property, and Mortgagee agrees that the rights of Lender in the Property under this Subordination are prior to Mortgagee's rights while this Subordination remains in effect.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED APRIL 30, 2010.**

**MORTGAGEE ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS SUBORDINATION OF MORTGAGE AND ALL OTHER DOCUMENTS RELATING TO THIS DEBT.**

**BORROWER:**

X _____
**DUANE F GIBBS, Individually**

X _____
**VICTORIA L GIBBS, Individually**

**MORTGAGEE:**

**DUBUQUE BANK & TRUST**

By: _____
**Authorized Signer for DUBUQUE BANK & TRUST**

By: _____
**Authorized Signer for DUBUQUE BANK & TRUST**

**LENDER:**

**DUBUQUE BANK & TRUST**

X _____
**Authorized Officer**

## INDIVIDUAL ACKNOWLEDGMENT

**STATE OF** Iowa )
) **SS**
**COUNTY OF** Dubuque )

On this 30th day of April, A.D., 20 10, before me, a Notary Public in and for said County and State, personally appeared **DUANE F GIBBS and VICTORIA L GIBBS, HUSBAND AND WIFE, AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON**, to me known to be the persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

NOTARIAL SEAL IOWA
KARIE S. HOSCH
Commission Number 706935
My Commission Expires
11-16-2012

_____
**Notary Public in the State of**

_____

## CORPORATE ACKNOWLEDGMENT

STATE OF Iowa )
) SS
COUNTY OF Dubuque )

On this 30th day of April, A.D., 20 10, before me, the undersigned Notary Public in said County and State, personally appeared Thomas A. Baumhover, Vice President

(Insert title(s) of executing officer(s)) to me personally known, who, being by me duly sworn did say these/that person(s) is/are (an) **authorized signer(s)** of said corporation, that no seal has been procured by said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of directors and that said Thomas A. Baumhover, VP

acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

April Lehmann
**Notary Public in the State of** Iowa

APRIL LEHMANN
Commission Number 753884
My Commission Expires
7-23-2011

## LENDER ACKNOWLEDGMENT

STATE OF Iowa )
) SS
COUNTY OF Dubuque )

On this 30th day of April, A.D., 20 10, before me, the undersigned Notary Public in said County and State, personally appeared Karie S Hosch and known to me to be the Loan Officer, authorized agent for **DUBUQUE BANK & TRUST** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **DUBUQUE BANK & TRUST,** duly authorized by **DUBUQUE BANK & TRUST** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **DUBUQUE BANK & TRUST**.

**By** Barbara A Nauman **Residing at** Farley

**Notary Public in and for the State of** IA **My commission expires** 3-26-13

BARBARA A NAUMAN
Commission Number 727604
My Commission Expires

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Exhibit A

RE: PARCEL #490-000-310-100

THAT PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION SIXTEEN (16), TOWNSHIP EIGHTY EIGHT (88) NORTH, RANGE FOUR (4), WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN DELAWARE COUNTY, IOWA, DESCRIBED AS COMMENCING AT A POINT TWENTY ONE (21) RODS THREE AND ONE-HALF (3 1/2) FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION SIXTEEN (16), RUNNING THENCE NORTH ONE HUNDRED SIXTEEN AND ONE-HALF (116 1/2) FEET, THENCE EAST ONE HUNDRED TWENTY (120) FEET, THENCE SOUTH ONE HUNDRED SIXTEEN AND ONE-HALF (116 1/2) FEET, THENCE WEST ONE HUNDRED TWENTY (120) FEET TO THE POINT OF BEGINNING.