

Jim Ryan

From: "Craig Eberle" <ceberle@sendd.org>
To: "Ann Jansky" <AJansky@fmbmilligan.com>; "Jim Ryan" <jamesjryan@windstream.net>;
<m_stutzman@hotmail.com>
Sent: Friday, October 23, 2009 10:11 AM
Attach: Stutzman Intercreditor Subordination Agreement (Filed 10-15-09).pdf
Subject: Stutzman Filed Intercreditor Agreement - Hardwood Artisan, L.L.C.

Yesterday I received the filed Intercreditor and Subordination Agreement from the Saline County Clerk's office. I have attached a copy of this document, along with all acquired signatures/notaries to this e-mail. You may all keep this as a record for your files.

By working together, following the process and maintaining good dialogue SENDD was able to proceed to closing of the Hardwood Artisan, L.L.C. SENDD IRP-RLF loan last week. Thank you all for your cooperation in this process.

Wishing you all a good (and hopefully dry) weekend!!

Craig Eberle
Business Loan Officer
Southeast Nebraska Development District (SEND D)
2631 "O" Street
Lincoln, NE 68510-1398
Phone: (402) 475-2560
Fax: (402) 475-2794
E-Mail: ceberle@sendd.org

No.	Gen.	Num.	Paged	
#7	✓	✓	✓	
dk				Register of Deeds

STATE OF NEBRASKA } ss 2009-00816
SALINE COUNTY
Entered in numerical index and filed on
record, the 15th day of October
2009 at 1:29 o'clock P.M. and recorded
in Book 69 of Misc. Page 363-368

OCT 22 2009

From and Return to:
SENDD
ATTN: Craig Eberle
2631 "O" Street
Lincoln, NE 68510-1398
Fee: \$33.50

RESOLUTION NUMBER 09-12

Christa Kastanek
County Clerk

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS AGREEMENT is dated for reference October 15, 2009, and is between Mark D. Stutzman and Gretta L. Stutzman, owners of the land described in the Security Instruments referenced below and described in Exhibit "A", which is attached hereto, (hereinafter referred to as "OWNER"), Hardwood Artisan L.L.C. (hereinafter referred to as "HARDWOOD"), Farmers and Merchants Bank of Milligan, Nebraska, (hereinafter referred to as "F&M Bank"), The City of Friend, Nebraska (hereinafter referred to as "City of Friend") and the Southeast Nebraska Development District, (hereinafter referred to as "SENDD").

RECITALS

A. F&M Bank is the present holder and beneficiary of that/those certain deeds of trust or mortgages dated April 7, 2008 to secure a guaranty by OWNER of an interim note or notes in the sum of \$500,000.00 from HARDWOOD to F&M Bank (F&M Bank Security Instruments). The F&M Bank's Security Instruments were recorded on April 9, 2008 in Book 361, Page 881 with the Register of Deeds of Saline County, State of Nebraska.

B. City of Friend is the present holder and beneficiary of a deed of trust executed by OWNER as Trustor to the City of Friend, Nebraska as Trustee and Beneficiary, said Deed of Trust being recorded with the Register of Deeds of Saline County, Nebraska on December 26, 2008, in Book 366, Page 135 to secure a guaranty by OWNER of a note or notes in the sum of \$50,000.00 from HARDWOOD to City of Friend (City of Friend Security Instruments).

C. SENDD will be the holder and beneficiary of a deed of trust executed by OWNER as Trustor to SENDD as beneficiary, and Brad Roth as trustee, and which will be recorded with the Register of Deeds of Saline County, Nebraska to secure a guaranty by OWNER of a note or notes in the sum of \$100,000.00 from HARDWOOD to SENDD (SENDD's Security Instruments).

D. OWNER is the guarantor of notes signed by Hardwood Artisan, L.L.C. to F&M Bank, City of Friend, and SENDD.

E. SENDD has agreed to extend the above credit to HARDWOOD and OWNER on the condition that a portion of F&M Bank's Security Instruments are subordinated to SENDD's Security Instruments as set forth herein.

In consideration of the mutual benefits of the parties and to induce SENDD to make a loan to HARDWOOD, it is hereby agreed as follows:

1. Subordination. The parties wish to establish the priority of liens of their respective security instruments with respect to the indebtedness of HARDWOOD and OWNER, notwithstanding the date or time of the attachment, perfection or recording of such liens. The parties, and each of them, do hereby subordinate the liens of their respective security instruments to the liens of the security instruments of each of the other parties to the extent necessary to establish the following priorities:

- a. F&M Bank's Security Instruments shall constitute a first lien on the property listed on Exhibit A to secure \$200,000.00 of OWNERS guaranty to F&M Bank, not to exceed the aggregate principal balance of \$200,000.00 together with interest on said amount;
- b. City of Friend's Security Instruments shall constitute a second priority lien on the property listed on Exhibit A to secure the guaranty of OWNER to City of Friend not to exceed the principal sum of \$50,000.00 together with interest thereon;
- c. SENDD's Security Instruments shall constitute a third lien on the property listed on Exhibit A to secure the guaranty of OWNER to SENDD not to exceed the aggregate principal amount of \$100,000.00 together with interest thereon;
- d. Any additional principal amounts of F&M Bank's Security Instruments shall constitute a fourth lien on the property listed on Exhibit A to secure the guaranty of OWNER, in addition to any future advances made by F&M Bank to HARDWOOD.

2. Binding Effect. This Intercreditor and Subordination Agreement shall be binding upon and enure to the benefit of the parties and the respective successors and/or assigns, and shall be governed by the laws of the State of Nebraska.

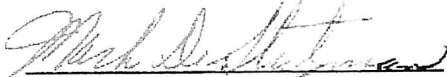
3. Other Covenants and Agreements. All parties to this agreement further covenant and agree, each with the other, as follows:

- a. F&M Bank's Security Instruments, City of Friend's Security Instruments, and SENDD's Security Instruments and any renewals or extensions thereof shall be a lien on the property in the order set forth above.
- b. City of Friend shall not make any future advances on its deed of trust without the written approval of all parties to this agreement.

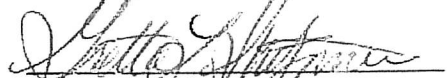
- c. SENDD would not make its loans without this Intercreditor and Subordination Agreement.
- d. This agreement shall be the whole and only instrument with regard to the subordination of the documents set forth herein.
- e. Except as expressly provided herein, this agreement shall not operate or be construed to alter the priorities of the listed security instruments with regard to any legal or equitable interest in the property listed on Exhibit A.
- f. The lenders hereto acknowledge and agree that they are not acting hereunder as partners or joint venturers but are individual lenders to OWNER and HARDWOOD and each lender acknowledges that it will, independently and without reliance upon any other lender, based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under its Security Instruments.

IN WITNESS WHEREOF, the above and foregoing have hereunto subscribed their names the year and date set forth herein.

Mark D. Stutzman and Gretta L. Stutzman



Mark D. Stutzman



Gretta L. Stutzman

Farmers and Merchants Bank

By:

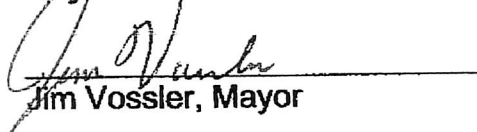


Melvin Taylor

President

City of Friend

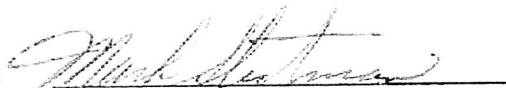
By:



Jim Vossler, Mayor

Hardwood Artisan, L.L.C.

By:



Mark Stutzman

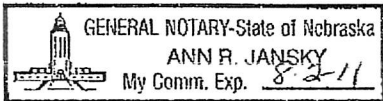
Manager and Member

**Southeast Nebraska
Development District**

By: George W. Frye
George Frye, Executive Director

STATE OF NEBRASKA)
)ss.
COUNTY OF Fillmore)

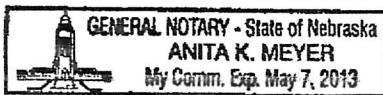
On this 15th day of October, 2009, before me, a Notary Public, personally appeared Mark D. Stutzman, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Ann R. Jansky
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Saline)

On this 15th day of October, 2009, before me, a Notary Public, personally appeared Gretta L. Stutzman, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

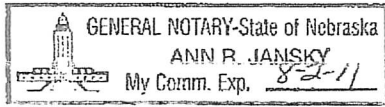


Anita K. Meyer
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Fillmore)

On this 15th day of October, 2009, before me, a Notary Public, personally appeared Melvin Taylor, as President of Farmers and Merchants Bank of Milligan, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me

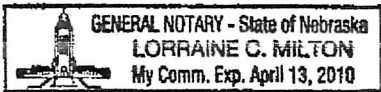
that he executed the same in his authorized capacity.



Ann R. Jansky
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Saline)

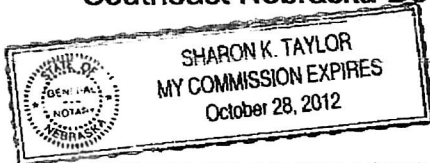
On this 7th day of October, 2009, before me, a Notary Public, personally appeared Jim Vossler as the Mayor of the City of Friend, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity.



Lorraine C. Milton
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Lancaster)

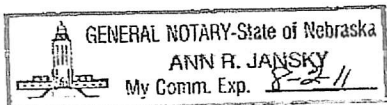
On this 14th day of October, 2009, before me, a Notary Public, personally appeared George Frye, as Executive Director of Southeast Nebraska Development District, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of Southeast Nebraska Development District.



Sharon K. Taylor
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Fillmore)

On this 15th day of October, 2009, before me, a Notary Public, personally appeared Mark Stutzman, as Manager and Member of Hardwood Artisan, L.L.C., personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in her authorized capacity of Hardwood Artisan, L.L.C.



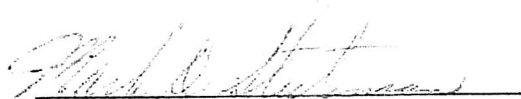
Ann R. Jansky
Notary Public

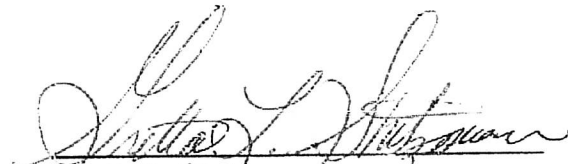
EXHIBIT "A"

ATTACHMENT TO INTERCREDITOR AND SUBORDINATION AGREEMENT

Legal Description of the Land Owned by Mark D. Stutzman and Gretta L. Stutzman,
Husband and Wife, as Joint Tenants:

**Lots Thirty-Six (36), Thirty Seven (37) and Thirty-Eight (38), except the East 18 feet of
Lot Thirty-Eight (38), Thirty-Nine (39) and the East 18 feet of Lot Thirty-Eight (38),
and Lots Forty (40), Forty-One (41) and Forty-Two (42), E. Whitcomb's First Addition
to Friend, Saline County, Nebraska**


Mark D. Stutzman


Gretta L. Stutzman

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS AGREEMENT is dated for reference _____, and is between Mark D. Stutzman and Gretta L. Stutzman, owners of the land described in the Security Instruments referenced below and described in Exhibit "A", which is attached hereto, (hereinafter referred to as "OWNER"), Hardwood Artisan L.L.C. (hereinafter referred to as "HARDWOOD"), Farmers and Merchants Bank of Milligan, Nebraska, (hereinafter referred to as "F&M Bank"), The City of Friend, Nebraska (hereinafter referred to as "City of Friend") and the Southeast Nebraska Development District, (hereinafter referred to as "SEND").

RECITALS

A. F&M Bank is the present holder and beneficiary of that/those certain deeds of trust or mortgages dated April 7, 2008 to secure a guaranty by OWNER of an interim note or notes in the sum of \$500,000.00 from HARDWOOD to F&M Bank (F&M Bank Security Instruments). The F&M Bank's Security Instruments were recorded on April 9, 2008 in Book 361, Page 881 with the Register of Deeds of Saline County, State of Nebraska.

B. City of Friend is the present holder and beneficiary of a deed of trust executed by OWNER as Trustor to the City of Friend, Nebraska as Trustee and Beneficiary, said Deed of Trust being recorded with the Register of Deeds of Saline County, Nebraska on December 26, 2008, in Book 366, Page 135 to secure a guaranty by OWNER of a note or notes in the sum of \$50,000.00 from HARDWOOD to City of Friend (City of Friend Security Instruments).

C. SENDD will be the holder and beneficiary of a deed of trust executed by OWNER as Trustor to SENDD as beneficiary, and Brad Roth as trustee, and which will be recorded with the Register of Deeds of Saline County, Nebraska to secure a guaranty by OWNER of a note or notes in the sum of \$100,000.00 from HARDWOOD to SENDD (SEND's Security Instruments).

D. OWNER is the guarantor of notes signed by Hardwood Artisan, L.L.C. to F&M Bank, City of Friend, and SENDD.

E. SENDD has agreed to extend the above credit to HARDWOOD and OWNER on the condition that a portion of F&M Bank's Security Instruments are subordinated to SENDD's Security Instruments as set forth herein.

In consideration of the mutual benefits of the parties and to induce SENDD to make a loan to HARDWOOD, it is hereby agreed as follows:

1. Subordination. The parties wish to establish the priority of liens of their respective security instruments with respect to the indebtedness of HARDWOOD and OWNER, notwithstanding the date or time of the attachment, perfection or recording of such liens. The parties, and each of them, do hereby subordinate the liens of their respective security instruments to the liens of the security instruments of each of the other parties to the extent necessary to establish the following priorities:

- a. F&M Bank's Security Instruments shall constitute a first lien on the property listed on Exhibit A to secure \$200,000.00 of OWNERS guaranty to F&M Bank, not to exceed the aggregate principal balance of \$200,000.00 together with interest on said amount;
- b. City of Friend's Security Instruments shall constitute a second priority lien on the property listed on Exhibit A to secure the guaranty of OWNER to City of Friend not to exceed the principal sum of \$50,000.00 together with interest thereon;
- c. SENDD's Security Instruments shall constitute a third lien on the property listed on Exhibit A to secure the guaranty of OWNER to SENDD not to exceed the aggregate principal amount of \$100,000.00 together with interest thereon;
- d. Any additional principal amounts of F&M Bank's Security Instruments shall constitute a fourth lien on the property listed on Exhibit A to secure the guaranty of OWNER, in addition to any future advances made by F&M Bank to HARDWOOD.

2. Binding Effect. This Intercreditor and Subordination Agreement shall be binding upon and enure to the benefit of the parties and the respective successors and/or assigns, and shall be governed by the laws of the State of Nebraska.

3. Other Covenants and Agreements. All parties to this agreement further covenant and agree, each with the other, as follows:

- a. F&M Bank's Security Instruments, City of Friend's Security Instruments, and SENDD's Security Instruments and any renewals or extensions thereof shall be a lien on the property in the order set forth above.
- b. City of Friend shall not make any future advances on its deed of trust without the written approval of all parties to this agreement.

- c. SENDD would not make its loans without this Intercreditor and Subordination Agreement.
- d. This agreement shall be the whole and only instrument with regard to the subordination of the documents set forth herein.
- e. Except as expressly provided herein, this agreement shall not operate or be construed to alter the priorities of the listed security instruments with regard to any legal or equitable interest in the property listed on Exhibit A.
- f. The lenders hereto acknowledge and agree that they are not acting hereunder as partners or joint venturers but are individual lenders to OWNER and HARDWOOD and each lender acknowledges that it will, independently and without reliance upon any other lender, based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under its Security Instruments.

IN WITNESS WHEREOF, the above and foregoing have hereunto subscribed their names the year and date set forth herein.

Mark D. Stutzman and Gretta L. Stutzman

Mark D. Stutzman

Gretta L. Stutzman

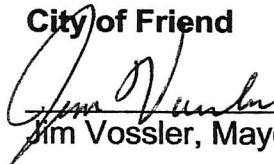
Farmers and Merchants Bank

By:

Melvin Taylor
President

City of Friend

By:



Jim Vossler, Mayor

Hardwood Artisan, L.L.C.

By:

Mark Stutzman
Manager and Member

**Southeast Nebraska
Development District**

By: _____
George Frye, Executive Director

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, a Notary Public, personally appeared Mark D. Stutzman, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, a Notary Public, personally appeared Gretta L. Stutzman, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, a Notary Public, personally appeared Melvin Taylor, as President of Farmers and Merchants Bank of Milligan, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me

that he executed the same in his authorized capacity.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Saline)

On this 7th day of October, 2009, before me, a Notary Public, personally appeared Jim Vossler as the Mayor of the City of Friend, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity.



Lorraine C. Milton
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, a Notary Public, personally appeared George Frye, as Executive Director of Southeast Nebraska Development District, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of Southeast Nebraska Development District.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, a Notary Public, personally appeared Mark Stutzman, as Manager and Member of Hardwood Artisan, L.L.C., personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in her authorized capacity of Hardwood Artisan, L.L.C.

Notary Public

EXHIBIT "A"

ATTACHMENT TO INTERCREDITOR AND SUBORDINATION AGREEMENT

Legal Description of the Land Owned by Mark D. Stutzman and Gretta L. Stutzman,
Husband and Wife, as Joint Tenants:

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Lot Thirty-Eight (38), Thirty-Nine (39) and the East 18 feet of Lot Thirty-Eight (38),
and Lots Forty (40), Forty-One (41) and Forty-Two (42), E. Whitcomb's First Addition
to Friend, Saline County, Nebraska**

Mark D. Stutzman

Gretta L. Stutzman

Fax Cover Sheet

City of Friend
235 Maple Street
Friend, NE 68359

402-947-2711

402-947-9041

Send to: SENDD	From: Debbie Gilmer
Attention: Craig Ebbrie	Date: 10-07-09
Office Location:	Office Location:
Fax Number: 475-2794	Phone Number: 947-2711

- Urgent
- Reply ASAP
- Please comment
- Please Review
- For your Information

Total pages, including cover: 2



CITY OF FRIEND

"From a friend
in Friend"

NEBRASKA
68359

235 Maple Street

Phone (402) 947-2711

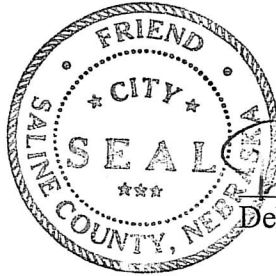


CERTIFICATION

STATE OF NEBRASKA)
)
COUNTY OF SALINE) SS.

I, Debbie Gilmer, City Clerk of the City of Friend, Saline County, Nebraska, being first duly sworn, hereby certify that the following is a true and correct copy of proceedings that took place at the October 6, 2009 Friend City Council Meeting.

ATTEST:



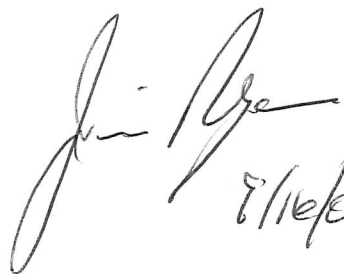
Debbie Gilmer
Debbie Gilmer, City Clerk

=====

On behalf of the Friend Industrial Development Corporation, Jim Ryan attended the October 6, 2009 Friend City Council meeting to request the Mayor and Council consider a proposed resolution (Resolution Number 09-12) to approve an agreement relating to a loan by Southeast Nebraska Development District (SENDD) to Hardwood Artisans LLC. After discussion, motion was made by Councilman Schrock, seconded by Councilman Drake, to accept the unanimous recommendation from the Friend Industrial Development Corporation to agree to the "Intercreditor and Subordination Agreement" between Hardwood Artisans LLC, Farmers and Merchants Bank of Milligan, the City of Friend, and SENDD, for a loan by SENDD to Hardwood Artisans, and to authorize Mayor Vossler to sign this Agreement on behalf of the City of Friend, and to approve Resolution Number 09-12. On roll call voting aye, Krause, Drake, Schrock. Nays none. Lawver absent. Resolution Number 09-12 was passed and approved this 6th day of October 2009.

Proposed resolution to City Council

The Friend Industrial Development Corporation unanimously recommends to the Friend City Council to pass a resolution to agree to the "Intercreditor and subordination agreement" between Hardwood Artisans LLC, Farmers and Merchants Bank of Milligan, The City of Friend, and Southeast Nebraska Development District (SEND), for a loan by SEND to Hardwood Artisans and authorizes the Mayor to sign this agreement on behalf of the City of Friend.



8/16/08