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2000-08-31 15:35:32  
Cook County Recorder 31.00



Prepared By and  
When Recorded Mail To:

Eric M. Roberson  
Chapman and Cutler  
111 West Monroe  
Chicago, Illinois 60603

SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE ONLY

**SUBORDINATION AGREEMENT**

This SUBORDINATION AGREEMENT (this "*Subordination Agreement*") is made as of August 14, 2000, between the JOSEPH FREED AND ASSOCIATES LLC, an Illinois limited liability company ("*Developer*") and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation ("*Lender*"). All capitalized terms utilized in this Subordination Agreement which are defined in the Loan Agreement and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement (as defined below).

**RECITALS**

A. Arlington Block 349, L.L.C., an Illinois limited liability company (the "*Borrower*") and the Lender entered into that certain Loan Agreement dated as of even date herewith (such agreement, together with any amendments or modifications to it from time to time, shall be referred to herein as the "*Loan Agreement*"), whereby the Lender made available to Borrower a loan in the amount of \$15,000,000 (the "*Loan*"),

B. The Loan is evidenced by two (2) Notes dated as of even date herewith aggregating \$15,000,000 (collectively, the "*Notes*").

C. The Notes are secured by that certain Mortgage and Security Agreement dated as of even date herewith (as may be amended and supplemented from time to time, the "*Mortgage*") encumbering the real property described on *Exhibit A* attached hereto and the improvements thereon (the "*Premises*").

D. The Developer, pursuant that certain Development Agreement dated as of April 30, 1998 (as may be amended and supplemented from time to time, the "*Development Agent*") is owed a fee equal to approximately \$1,554,948.30 (the "*Fee*") payable by the Borrower.

**BOX 333-CTV**

7868754 or 307-3

Handwritten initials

E. The Lender has agreed to make the Loan to the Borrower conditioned upon, among other things, the Developer's agreement to execute and deliver this Subordination Agreement and to establish the subordination of the lien of the Fee to the lien of the Mortgage.

NOW, THEREFORE, in consideration of these background recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the Lender agree as follows:

*Section 1. Liens.* At all times, whether before, after, or during the pendency of any bankruptcy, reorganization, or other insolvency proceeding of the Borrower, and notwithstanding the priorities which would ordinarily result from the order of granting or attaching or the order of filing or recording any financing statement, deed, or other instrument, the lien of the Mortgage shall be senior to and have priority over any lien of the Developer. The Developer's lien for payment of the Fee is hereby expressly subordinated to the lien of the Mortgage.

*Section 2. Modification.* No modification, rescission, waiver, release, or amendment of any provision of this Subordination Agreement shall be made except by a written agreement signed by the Developer and a duly authorized officer of the Lender.

*Section 3. Applicable Law.* This Subordination Agreement and the transactions evidenced hereby shall be governed by and construed under the laws of the State of Illinois.

*Section 4. Successors and Assigns.* "Lender" and "Developer" as used herein shall include the successors and assigns of those parties.

*Section 5. Severability.* The provisions of this Subordination Agreement are independent of and separable from each other, and no such provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other such provision may be invalid or unenforceable in whole or in part. If any provision of this Subordination Agreement is prohibited or unenforceable in any jurisdiction, such provision shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor render prohibited or unenforceable such provision in any other jurisdiction.

*Section 6. Headings.* Section headings used in this Subordination Agreement are for convenience only and shall not affect the construction of this Subordination Agreement.

*Section 7. Counterparts.* This Subordination Agreement may be executed in any number of counterparts and by the Lender and the Developer on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same Subordination Agreement.

[SIGNATURE PAGES TO FOLLOW]

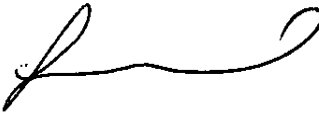
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IN WITNESS WHEREOF, the Developer has caused this Subordination Agreement to be executed by a duly authorized officer, as of the date first above written.

JOSEPH FREED AND ASSOCIATES LLC

ATTEST:

By   
Name Laurance H. Freed  
Title Manager

By   
Name Thomas J. Fraerman  
Title Secretary

ACKNOWLEDGED AND ACCEPTED:

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

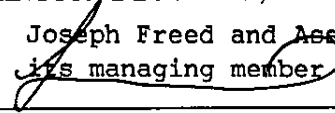
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## BORROWER'S ACKNOWLEDGMENT

The undersigned acknowledges the foregoing terms and conditions of this Subordination Agreement and agrees that: (A) the undersigned will not make any payment or distribution or otherwise take any action which would result in a breach or violation hereof or a default hereunder and (B) a breach or violation hereof or default hereunder shall, at the option of the Lender, constitute an event of default under the Lender Documents and shall entitle the Lender to declare all or any part of the Senior Indebtedness immediately due and payable and to otherwise exercise all of the rights and remedies available to the Lender under the Lender Documents.

ARLINGTON BLOCK 349, L.L.C.

By: Joseph Freed and Associates LLC,  
its managing member

By   
Name Laurance H. Freed  
Title Manager

IN WITNESS WHEREOF, the Developer has caused this Subordination Agreement to be executed by a duly authorized officer, as of the date first above written.

JOSEPH FREED AND ASSOCIATES LLC

ATTEST:

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ACKNOWLEDGED AND ACCEPTED:

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

By: Lincoln Investment Management, Inc.,  
Its Attorney-In-Fact

By Karen L. Surguine  
Name Karen L. Surguine  
Title Vice President

**BORROWER'S ACKNOWLEDGMENT**

The undersigned acknowledges the foregoing terms and conditions of this Subordination Agreement and agrees that: (A) the undersigned will not make any payment or distribution or otherwise take any action which would result in a breach or violation hereof or a default hereunder and (B) a breach or violation hereof or default hereunder shall, at the option of the Lender, constitute an event of default under the Lender Documents and shall entitle the Lender to declare all or any part of the Senior Indebtedness immediately due and payable and to otherwise exercise all of the rights and remedies available to the Lender under the Lender Documents.

ARLINGTON BLOCK 349, L.L.C.

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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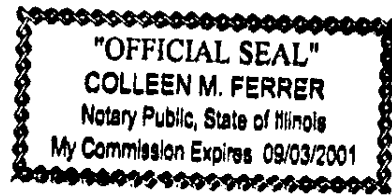
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On 8/14, 2000, before me, a Notary Public in and for the County and State aforesaid, personally appeared Laurance H. Freed, a duly authorized officer of Joseph Freed and Associates LLC, an Illinois limited liability corporation, who acknowledged the execution of the foregoing Subordination Agreement as his/her own free and voluntary act for and on behalf of such corporation and stated that the representations herein contained are true and that his execution on behalf of such corporation was duly authorized and approved by all appropriate action of such corporation.

Colleen M. Ferrer  
Notary Public

My commission expires:

09/03/2001



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## EXHIBIT A

LOTS 3, 4 AND 6 IN THE ARLINGTON TOWN SQUARE SUBDIVISION, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

P.I. No.: 03-29-349-025-0000  
03-29-349-026-0000  
03-29-349-028-0000

Address: Arlington Town Square  
Arlington Heights, Illinois