

UNOFFICIAL COPY

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, (the "Agreement") is made as of this 9th day of March, 2001, between **NEW CENTURY BANK**, a _____ (the "Senior Lender") and **WEIDENHYER DEVELOPMENT COMPANY**, an Illinois corporation (the "Subordinated Lender").



RECITALS:

A. Senior Lender is the owner and holder of a certain Mortgage Note (the "Senior Note") dated March 9, 2001 in the principal amount of Six Hundred Thousand and 00/100 Dollars (\$600,000.00) made by Bank Note Place, LLC, an Illinois limited liability company (the "Borrower") payable to the order of Senior Lender.

B. Senior Lender is also the owner and holder of the following documents securing the Senior Note:

(i) a certain Construction Mortgage (the "Senior Mortgage") made by Borrower dated March 9, 2001 and recorded with the Recorder of Deeds (the "Recorder") on _____, 2001, as Document No. _____ encumbering certain property (the "Property"), located in Chicago, Illinois and legally described on Exhibit A attached hereto;

(ii) a certain Assignment of Rents made by Borrower dated March 9, 2001 and recorded on _____, 2001, as Document No. _____; and

(iii) a certain Financing Statement made by Borrower dated March 9, 2001 and recorded on _____, 2001, as Document No. _____.

The Senior Note, Senior Mortgage and all of the foregoing documents and instruments, together with all other documents and instruments evidencing and securing the Senior Note are hereinafter collectively referred to as the "Senior Loan Documents."

C. Subordinated Lender is the owner and holder of a certain Note (the "Subordinated Note") dated March 30, 1998, in the original principal amount of One Million and 00/100 Dollars (\$1,000,000.00) made by Borrower payable to the order of Subordinated Lender.

D. Subordinated Lender is also the owner and holder of the following documents securing the Subordinated Note:

(i) a certain Trust Deed Second Mortgage (the "Subordinated Mortgage") made by

1st AMERICAN TITLE order # C 9712023
400

[Handwritten signatures]

UNOFFICIAL COPY 10121185

Cosmopolitan Bank and Trust as Trustee under Trust Agreement Dated March 10, 1998 and Subordinated Lender dated March 30, 1998 and recorded with the Recorder of Deeds (the "Recorder") on April 1, 1998, as Document No. 98254912 and re-recorded as Document No. 98552538;

All documents evidencing and securing the Subordinated Note are hereinafter collectively referred to as the "Subordinated Loan Documents."

E. All obligations of Borrower to Senior Lender now existing or hereafter arising, due to or become due, under the Senior Note and the Senior Loan Documents are herein called the "Senior Liabilities."

F. All obligations of Borrower to Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Note and the Subordinated Loan Documents are herein called the "Subordinated Liabilities."

G. Senior Lender has agreed to make the loan evidenced by the Senior Note on the condition that Subordinated Lender enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and as an inducement to Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto represent, warrant and agree as follows:

1. In order to induce Senior Lender to make the loan to Borrower and, at any one or more times, as Senior Lender deems advisable, to make further loans, extension of credit, or other accommodations to or for Borrower's account, or to purchase or extend credit upon any instrument or other writing in respect of which Borrower is liable in any capacity, or to grant renewals or extensions thereof, Subordinated Lender hereby agrees that it will not ask, demand, sue for, take, or receive from Borrower, by set-off or any other manner, all or any part of any monies, principal or interest, now or hereafter owing by Borrower to Subordinated Lender, or any security therefor, until all of Borrower's existing and subsequent indebtedness and obligations to Senior Lender, whether direct or indirect, absolute or contingent, secured or unsecured, due or not due, and whether arising directly between Borrower or Senior Lender or acquired outright, conditionally, or as collateral security from another by Senior Lender, have been fully paid with interest. Notwithstanding the above or any other provision herein, however, Subordinated Lender shall have the right, so long as Borrower is not in default in any respect on any of its then existing debts and obligations to Senior Lender to receive and retain from Borrower current interest, not to exceed the legal rate, on all of Borrower's debts and obligations to Subordinated Lender.

2. Subordinated Lender agrees that if any of the events enumerated below occur, any payment or distribution of any kind or character, whether in cash, securities, or other property, which is payable or deliverable upon or with respect to any or all of Borrower's indebtedness to Subordinated Lender, shall be paid or delivered directly to Senior Lender for application on any of Borrower's indebtedness to Senior Lender, due or not due, until all of such indebtedness has been fully paid and satisfied. The enumerated events are: the distribution, division, or application, whether partial or complete, voluntary or involuntary, or by operation of law or otherwise, of all or any part of Borrower's assets or the proceeds thereof to Borrower's creditors; the liquidation, dissolution, or

UNOFFICIAL COPY 10021185

other winding up of Borrower or its business; or any sale, receivership, insolvency, or bankruptcy proceeding, assignment for the benefit of creditors, or any proceeding by or against Borrower for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions, or extensions. Subordinated Lender hereby irrevocably authorizes and empowers Senior Lender to demand, sue for, collect and receive every such payment or distribution and give acquittance therefor and to file claims and take such other proceedings in Senior Lender's own name or in the name of Subordinated Lender or otherwise, as Senior Lender deems necessary or advisable for the enforcement of this Agreement. Subordinated Lender hereby agrees to execute and deliver to Senior Lender all powers of attorney, assignments or other instruments requested by Senior Lender in order to enable Senior Lender to enforce all claims upon or with respect to any or all of Borrower's indebtedness to Subordinated Lender, and to collect and receive all payments or distributions which are payable or deliverable at any time upon or with respect to any such indebtedness of Borrower to Subordinated Lender.

3. If any payment or distribution or security or proceeds thereof (except payments of current interest received by Subordinated Lender on debts and obligations from Borrower to Subordinated Lender while Borrower is not in default in any respect on any of its indebtedness or obligations to Senior Lender) is received by Subordinated Lender upon or with respect to any of Borrower's indebtedness to Senior Lender before all such indebtedness is satisfied, Subordinated Lender will forthwith deliver the same to Senior Lender in precisely the form received (except for Subordinated Lender's endorsement or assignment where necessary), for application on any indebtedness, due or not due, of Borrower to Senior Lender, and, until so delivered, the same shall be held in trust by Subordinated Lender as property of Senior Lender. If Subordinated Lender fails to make any such endorsement or assignment, Senior Lender, or any of its officers or employees in its behalf, is hereby irrevocably authorized to make the same.

4. Subordinated Lender agrees not to assign or transfer to others any claim Subordinated Lender has or may have against Borrower while any of Borrower's indebtedness to Senior Lender remains unpaid, unless such assignment or transfer is made expressly subject to this Agreement.

5. This Agreement shall constitute a continuing agreement of subordination, and Senior Lender may continue, without notice to Subordinated Lender, to lend monies, extend credit and make other accommodations to or for the account of Borrower on the faith hereof until Senior Lender receives written notice of revocation of this Agreement by Subordinated Lender. Any such notice of revocation shall not affect this Agreement in relation to any of Borrower's existing obligations or liabilities or any obligations or liabilities created thereafter pursuant to any previous commitment of Senior Lender to Borrower, or any extensions or renewals of any such obligations or liabilities. As to all such obligations and liabilities and extensions or renewals thereof, this Agreement shall continue effective until the same have been fully discharged with interest.

6. Subordinated Lender agrees that Senior Lender, at any time and from time to time, either before or after any such notice of revocation, may enter into any agreement or agreements with Borrower that Senior Lender deems proper extending the time of payment or renewing or otherwise altering the terms of all or any of Borrower's obligations to Senior Lender or affecting any security underlying any or all of such obligations, or may exchange, sell or surrender or otherwise deal with any such security, or may release any balance of Borrower's funds with Senior Lender, without notice to Subordinated Lender or in any way impairing or affecting this Agreement.

UNOFFICIAL COPY 10121185

7. Subordinated Lender agrees that all of Borrower's obligations and liabilities to Senior Lender shall be deemed to have been made or incurred at Subordinated Lender's request and in reliance upon this Agreement. Neither the preceding provision nor any other provision herein, however, shall be deemed or construed to constitute, either directly or by implication, a guaranty by Subordinated Lender of any of Borrower's debts, obligations, or liabilities to Senior Lender.

8. Senior Lender shall not be deemed to have made a waiver of any right hereunder unless it is in writing and signed by or in behalf of Senior Lender. Each waiver shall be a waiver only with respect to the specific matter or matters covered thereby and shall in no way impair the rights of Senior Lender or Subordinated Lender's obligations to Senior Lender in any other respect at any other time.

9. All notes or other evidences of indebtedness accepted by Subordinated Lender from Borrower shall contain a specific statement therein that the indebtedness thereby evidenced is subject to the provisions of this Subordination Agreement.

10. This Agreement shall be binding upon, and inure to the benefit of, Subordinated Lender and Senior Lender and their respective heirs, executors, administrators, successors, and assigns.

11. Notice of acceptance by Senior Lender of this Agreement is hereby waived by Subordinated Lender, and this Agreement and all of its terms and provisions shall be immediately binding upon Subordinated Lender from the date of execution hereof.

12. Subordinated Lender hereby agrees that the Subordinated Liabilities are and shall be subordinate to the Senior Liabilities and that the liens and security interests created by the Subordinated Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents, and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents pursuant to the terms thereof.

13. This Agreement shall be construed according to and governed by the laws of the State of Illinois.

IN WITNESS WHEREOF the undersigned has hereunto set his hand, on the day and date first above written.

**WEIDENHYER DEVELOPMENT
COMPANY, an Illinois corporation**

By: 

Kevin P. Gallagher

Its: Vice President

UNOFFICIAL COPY

1185

Assented to:

BANK NOTE PLACE, LLC
by its Manager:

CHRYSALIS LLC,
an Illinois Limited Liability Company

By: *Ann Marie Gallagher*
Ann Marie Gallagher, Manager

State of Illinois)
)
County of Cook)

I, the undersigned Notary Public, DO HEREBY CERTIFY that Kevin P. Gallagher, vice president of Weidenhyer Development Company, 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 foregoing instrument as his free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 9th day of March, 2001.

Lawrence G. Staat
NOTARY PUBLIC

My commission expires *August 1, 2003*

This instrument was prepared by:
Lawrence G. Staat
Attorney at Law
Shaheen Novoselsky Staat & Filipowski, P.C.
20 North Wacker Drive, Suite 2900
Chicago, IL 60606



Mail to:



Send Subsequent Tax Bills To:

UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1:

LOT 12 AND LOT 13 (EXCEPT THE NORTH 15 5/12 FEET THEREOF) IN BLOCK 3, IN WILLIAM JONES' ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOT "A" IN PLAT OF PARTITION OF 49-90/100 ACRE TRACT, BOTH IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING OF LOTS 53 AND 54 IN BLOCK 10; LOTS 59 AND 60 IN BLOCK 9; LOTS 65 AND 66 IN BLOCK 8; LOTS 71 AND 72 IN BLOCK 7; LOTS 77 AND 78 IN BLOCK 6; LOT 1 IN BLOCK 11; LOTS 1 AND 2 IN BLOCK 12; LOTS 1 AND 2 IN BLOCK 13; LOTS 1 AND 2 IN BLOCK 14; LOTS 1 AND 2 IN BLOCK 15 AND LOTS 1 AND 2 IN BLOCK 16, IN ASSESSOR'S DIVISION OF SAID SOUTHWEST FRACTIONAL 1/4 OF AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 4 IN BLOCK 14 (EXCEPT SO MUCH AS HAS BEEN TAKEN FROM THE REAR THEREOF FOR AN ALLEY) IN THE ASSESSOR'S DIVISION OF THE FRACTIONAL SOUTHWEST 1/4 OF FRACTIONAL SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 1 IN BLOCK 3 IN GEORGE SMITH'S ADDITION TO CHICAGO IN THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, INCLUDING FROM THE AFORESAID SOUTH 70.00 FEET OF SAID TRACT PART LYING ABOVE AN ELEVATION OF 15.50' (CITY OF SOUTH DATUM) DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTH 70.00 FEET; THENCE SOUTHERLY, ALONG THE WEST LINE OF SAID TRACT, 19.51 FEET TO THE NORTH FACE OF A BRICK BUILDING; THENCE EASTERLY, ALONG SAID NORTH FACE, 19.94 FEET; THENCE NORTHERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 9.37 FEET; THENCE EASTERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 11.12 FEET, THENCE NORTHERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 9.00 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 29.13 FEET; THENCE NORTHERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 1.19 FEET TO THE NORTH LINE OF SAID SOUTH 70.00 FEET (THE PRECEDING 5 COURSES ARE INTENDED TO FOLLOW THE FACE OF A PROPOSED BUILDING); THENCE, WESTERLY 60.19 FEET MORE OR LESS TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

10211185

PARCEL 4:

THE SOUTH 23 FEET OF THAT CERTAIN TRACT OF LAND DESCRIBED AS FOLLOWS: LOT 13 (EXCEPT THE SOUTH 12 FEET 3-1/2 INCHES), ALL OF LOTS 14 AND 15 AND THE SOUTH 20 FEET OF LOT 16 IN BLOCK 3 IN WILLIAM JONES' ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOT "A" IN THE PLAT OF PARTITION OF A 79.34 ACRE TRACT, AND OF LOT 7 IN THE PLAT OF PARTITION OF A 49.9 ACRE TRACT, BOTH IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING OF LOTS 53 AND 54 IN BLOCK 10, LOTS 59 AND 60 IN BLOCK 9, LOTS 65 AND 66 IN BLOCK 8, LOTS 71 TO 72 IN BLOCK 7, LOTS 77 AND 78 IN BLOCK 6, LOT 1 IN BLOCK 11, LOTS 1 AND 2 IN BLOCK 13, LOTS 1 AND 2 IN BLOCK 14, LOTS 1 AND 2 IN BLOCK 15, AND LOTS 1 AND 2 IN BLOCK 16 IN THE ASSESSOR'S DIVISION OF SAID SOUTHWEST FRACTIONAL 1/4, IN COOK COUNTY, ILLINOIS.

P.I.N. 17-22-307-044
17-22-307-043
17-22-307-054

Common Address: 1910 South Indiana Avenue, Chicago, Illinois.

Property of Cook County Clerk's Office