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6063/0128 07 001 Page 1 of 10  
2001-07-06 10:42:10  
Cook County Recorder 39.00



This instrument was prepared by and should be mailed to:

Francis L. Keldermans  
McBride Baker & Coles  
500 West Madison Street  
40th Floor  
Chicago, Illinois 60661

#79-30-352-D1  
LMA#

2 of 3

SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is executed and entered into by **Guy G. Gardner** (hereinafter referred to as the "Second Lender"), for the benefit of **CIB Bank**, an Illinois banking corporation (hereinafter referred to as the "First Lender").

RECITALS:

WHEREAS, First Lender desires to make a loan (the "First Loan") to **1000 South Michigan Avenue, L.L.C.**, an Illinois limited liability company (the "Company") and **Chicago Title Land Trust Company**, not individually, but as Trustee under Trust Agreement dated September 9, 1998 and known as Trust Number 1166328 ("Trustee") (hereinafter the Company and the Trustee are jointly referred to as the "Borrower"), evidenced by that certain Mortgage Note (the "First Note"), dated June \_\_, 2001 in the original principal amount of ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00) (the "First Loan"), executed by Borrower and payable to the order of First Lender, and secured by, among other things, that certain Construction Mortgage and Assignment of Leases and Rents and Security Agreement of even date therewith (the "First Mortgage"), covering the real property more particularly described on Exhibit "A" attached hereto and incorporated herein, together with all improvements thereon and rights associated therewith (the "Mortgaged Property") (the First Note, First Mortgage, the Construction Loan Agreement dated of even date with the First Note by and between Lender and Borrower ("Loan Agreement"), the Guaranty, and any and all other documents evidencing or securing the First Loan are hereinafter collectively referred to as the "First Loan Documents"); and

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WHEREAS, the Trustee executed a mortgage dated September 9, 1998 in favor of **Bottlewerks Molding, Inc.**, an Illinois corporation ("Bottlewerks") which mortgage was recorded in the Office of the Cook County, Illinois Recorder of Deeds on September 14, 1998 as document number 98818357 ("Second Mortgage"). The Second Mortgage secures a promissory note dated September 9, 1998 made by the Trustee in favor of the Second Lender in the original principal amount of \$5,500,000.00 (the "Second Note"). The Second Lender is the owner and holder of the Second Mortgage and Second Note by virtue of an Assignment of Mortgage from

BOX 333-CTI

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Bottleworks to Second Lender dated September 10, 1998 and recorded in the Office of the Cook County, Illinois Recorder of Deeds on March 4, 1999 as document number 99212250 (the "Assignment of Second Mortgage") (hereinafter the Second Note, the Second Mortgage, the Assignment of Second Mortgage and any and all other documents evidencing or securing the Second Note are hereinafter collectively referred to as the "Second Loan Documents"); and

WHEREAS, as a condition to First Lender's consummation of the transactions described in the First Loan Documents, First Lender has required and Second Lender has agreed to execute this Agreement to limit certain of Second Lender's rights and remedies afforded under the Second Loan Documents;

NOW, THEREFORE, for and in consideration of TEN AND NO/100 Dollars (\$10.00) and the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Effectiveness of Agreement/Definitions. This Agreement shall be effective immediately upon the execution hereof by the parties hereto. All capitalized terms used in this Agreement that are not specifically defined herein shall have the meaning specified in the Loan Agreement.

2. Certifications by Second Lender. Second Lender hereby certifies, represents and warrants to First Lender that the following information is true, correct and complete as of the date hereof:

(a) The Second Loan Documents constitute all of the Second Loan Documents and there are no other documents, agreements or instruments in effect between the Borrower or other parties and the Second Lender amending, modifying or being in effect relative thereto;

(b) Second Lender is the present holder of the Second Note and has never assigned any interest (whether collateral or otherwise) in or to the Second Note or any of the Second Loan Documents;

(c) The current unpaid balance of the Second Loan is not greater than \$5,500,000.00 plus all accrued and unpaid interest;

(d) There are no past due payments under the Second Note, nor does there exist any breach of any of the terms and provisions of any of the Second Loan Documents; and

(e) Second Lender has provided to First Lender true, correct and complete copies of the Second Loan Documents and such instruments have not been amended, modified, assigned or superseded whatsoever.

3. Subordination, Priority of Mortgage, and Payments. The Second Lender agrees that:

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(a) All rights of Second Lender under the Second Loan Documents in and to the Mortgaged Property and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds, development rights, governmental approvals, options, and condemnation awards) shall be expressly SUBJECT and SUBORDINATE to the rights of First Lender in and to the Mortgaged Property and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds, development rights, governmental approvals, options, and condemnation), and to any other expenses incurred under and as permitted in the First Mortgage. expressly SUBJECT and SUBORDINATE to the rights of First Lender in and to the Mortgaged Property and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds, development rights, governmental approvals, options, and condemnation).

(b) The Second Lender hereby expressly waives any equitable rights Second Lender might have, as a result of any release of all or any portion of the Mortgaged Property by the First Lender under the First Mortgage, to require that the First Lender marshal the Mortgaged Property in favor of the Second Lender, and further, in the event of any foreclosure, the Second Lender hereby expressly consents to and authorizes, at the option of the First Lender, the sale, whether separately or together, of all or any portion of the Mortgaged Property;

(c) The Second Lender hereby expressly consents to and authorizes, at the option of the First Lender, the amendment, extension, restatement, refinance, or other modification, in whole or in part, of all or any of the First Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of the First Note, increasing or decreasing the interest rate payable under the First Note or altering any other payment terms under the First Note;

(d) If the Second Lender shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Mortgaged Property, that lien, estate, right or other interest shall be subordinate to the First Mortgage as provided herein;

(e) The Second Lender hereby agrees that Second Lender shall not agree to, and the Second Loan Documents shall not be deemed to evidence approval by the First Lender of, any encumbrance on the Mortgaged Property whatsoever or any increases in the amount evidenced by the Second Note; and

(f) Second Lender shall give First Lender copies of any written notice whatsoever provided by Second Lender to Borrower relative to any of the Second Loan, the First Loan or any interest therein.

4. Certain Actions Regarding Second Loan. Until such time as the First Loan (or any refinancing thereof by Lender) shall have been paid in full, together with any and all other amounts which shall be due and payable under the terms of the First Loan Documents, the Second Lender shall not take any of the following actions with respect to the Second Loan without the prior written consent of the First Lender, which consent shall not be unreasonably withheld:

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(a) Following a Default under the Second Loan Documents, exercise any of its rights or remedies under the Second Loan Documents without first obtaining First Lender's written consent (which consent shall be within the sole discretion of the First Lender);

(b) Commence any legal proceedings against the Borrower or the Mortgaged Property without first obtaining First Lender's written consent (which consent shall be within the sole discretion of the First Lender);

(c) Commence or consent to any bankruptcy, insolvency, reorganization or similar proceeding by or against the Borrower; or

(d) Sell, convey, transfer, assign, pledge, hypothecate, mortgage or grant a security interest in the Second Loan, the Second Note or any other Second Loan Documents, or any portion thereof; before providing written notice to First Lender and, in connection therewith obtaining the written acknowledgement of such assignee or pledgee, as applicable, to be bound by the terms and conditions of this Agreement.

## 5. Bankruptcy Issues.

(a) For purposes of this Section 4, the following terms shall have the meanings indicated:

(i) "Bankruptcy Code" means Title 11, United States Code, as amended from time to time, any successor statute thereto, and any rules promulgated pursuant thereto.

(ii) "Enforcement Action" means the commencement of any foreclosure proceeding, the exercise of any statutory power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any remedies with respect to, the Mortgaged Property or any portion thereof.

(b) This Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case by or against the Borrower under the Bankruptcy Code and all references herein to the Borrower shall be deemed to apply to the Borrower as a debtor-in-possession and to any trustee in bankruptcy for the estate of the Borrower.

(c) In the event the First Lender is required under any bankruptcy or other law to return to the Borrower, the estate in bankruptcy thereof, any third party or any trustee, receiver or other similar representative of the Borrower any payment or distribution of assets, whether in cash, property or securities, including without limitation any Mortgaged Property or any proceeds of the Mortgaged Property previously received by the First Lender on account of the First Mortgage (a "Reinstatement Distribution"), then to the maximum extent permitted by law, this Agreement and the waiver, release and discharge of all rights of Second Lender in and to the Mortgaged Property (including, to the extent applicable, any and all subordination as to the Mortgaged Property) shall be reinstated with respect to any such Reinstatement Distribution.

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The First Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

6. Reliance. First Lender would not make the First Loan to Borrower without this Agreement. Accordingly, Second Lender intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the First Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

7. Further Assurance. The Second Lender hereby agrees that, within three (3) days after request by the First Lender, the Second Lender shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as the First Lender may request for the better assuring and evidencing of the foregoing agreements.

8. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

9. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

10. Notices. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

To First Lender:

CIB Bank  
161 N. Clark, Suite 165  
Chicago, Illinois 60601  
Attn: David E. Nick, Vice President  
(312) 580-0313 (fax)

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With copy to:

Francis L. Keldermans  
McBride Baker & Coles  
500 West Madison Street  
40<sup>th</sup> Floor  
(312) 715-0839 (fax)

To Second Lender:

Guy G. Gardner  
303 W. Madison Suite 1850  
Chicago, Illinois 60606  
Attn: Louis Williams

With copy to:

Ronald Delmenico  
Thirty North LaSalle Street, Suite 3400  
Chicago, Illinois 60602

or to such other addresses as any party hereto may request by notice served as required hereunder.

11. Changes to this Agreement. This Agreement may not be changed, terminated or modified except by an agreement in writing, signed by each of the parties hereto.

12. No Third Party Beneficiaries. It is expressly agreed and understood that each and every representation, waiver, certificate and agreement of Second Lender in this Agreement are for the sole and exclusive benefit of First Lender and subsequent owners or holders of the First Loan Documents. No third party shall be entitled to rely on any agreements or certifications provided herein to any extent whatsoever.

13. Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Second Lender and the successors and assigns of Second Lender, and shall inure to the benefit of First Lender, its directors, officers, shareholders, employees and agents and their respective successors and assigns. All references in this Agreement to Second Lender or the First Lender shall be deemed to include all such parties' successors and assigns, and the term "First Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the indebtedness secured hereby.

14. Multiple Counterparts/Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart. For purposes of this Agreement, each of the parties hereto agrees that a facsimile copy of the signature of the person executing this Agreement on either party's behalf shall be effective as an original signature and legally binding and effective as an execution counterpart hereof. Each of the undersigned parties authorizes the assembly of one or more original copies of this Agreement through the combination of several executed counterpart signature pages with one or more bodies of this Agreement, including the Exhibits, if any, to this Agreement, such that this Agreement, shall consist of the body of this Agreement, counterpart

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signature pages which collectively will contain the signatures of the undersigned parties hereto, and the Exhibits to this Agreement. Each such compilation of this Agreement shall constitute one original of this Agreement. Each party hereto is hereby authorized to rely upon and accept as an original of this Agreement which is signed and sent by facsimile, telegraphic or other electronic transmission.

15. Jurisdiction and Venue. The parties hereto hereby agree that all actions, litigation, or proceedings arising directly or indirectly of this Agreement or the Second Loan Documents shall be litigated in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois Eastern Division. The parties hereto hereby expressly submit and consent in advance to such jurisdiction in any action or proceeding commenced in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois Eastern Division. The parties hereto waive any claim that Cook County Illinois, or the Federal District Court for the Northern District of Illinois, Eastern Division, is an inconvenient forum or an improper forum based on lack of venue.


16. Attorneys' Fees. In the event any dispute, actions, proceedings, or litigation arises directly or indirectly of this Agreement ("Proceeding"), the prevailing party shall be entitled to recover in a Proceeding its reasonable attorneys' fees and expenses from the non-prevailing party.

17. WAIVER OF RIGHT TO JURY TRIAL. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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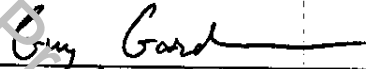
IN WITNESS WHEREOF, First Lender and Second Lender have executed this Agreement effective as of this 28th day of June, 2001.

SECOND LENDER:



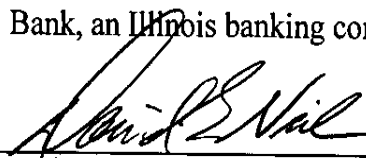
\_\_\_\_\_  
Guy G. Gardner

Bottlewerks Molding, Inc.

By:   
Name: Guy Gardner  
Title: President

FIRST LENDER:

CIB Bank, an Illinois banking corporation

By:   
Name: David E. Nick  
Title: Vice President

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On June 28, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared GUY CORADINO personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the foregoing Agreement as the of the Second Lender and acknowledged to me that the execution thereof was HIS free and voluntary act and deed as for the uses and purpose mentioned in the Agreement.

WITNESS my hand and official seal.

(SEAL)



*[Signature]*  
Notary Public in and for the State of Illinois

My commission expires:

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On June 28, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared **David E. Nick** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the foregoing Agreement as the Vice President of the First Lender and acknowledged to me that the execution thereof was his free and voluntary act and deed as for the uses and purpose mentioned in the Agreement.

WITNESS my hand and official seal.

(SEAL)



*[Signature]*  
Notary Public in and for the State of Illinois

My commission expires:

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STREET ADDRESS: 920 S. MICHIGAN  
CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 17-15-307-001-0000  
" " " -002 - "

17-15-307-011-0000

17-15-307-005-0000

LEGAL DESCRIPTION:

" " " -017 - "

17-15-307-006-0000

PARCEL 1:

" " " -018 - "

(AFFECTS EASEMENT PCL.)

" " " -023 - "

" " " -024 - "

THE NORTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, (EXCEPTING THEREFROM: LOT 1, LOT 4 EXCEPT THE SOUTH 1/3 THEREOF, THE EAST 60 FEET OF LOT 2, THE EAST 60 FEET OF LOT 3 EXCEPT THE SOUTH 1/3 THEREOF, AND EXCEPTING THEREFROM A STRIP OF LAND 1.33 FEET WIDE NORTH OF AND ADJOINING LOT 10 IN C.L. HARMON'S SUBDIVISION OF THE SOUTH 1/3 OF SAID BLOCK 20) IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

AIR RIGHTS AS DESCRIBED IN CONTRACT DATED ~ AND RECORDED -- AS DOCUMENT -- OVER THE FOLLOWING PARCEL:

LOTS 6 AND 7 IN C.L. HARMON'S SUBDIVISION OF LOTS 10 TO 14 OF C.L. HARMON'S SUBDIVISION OF THE SOUTH 1/3 OF BLOCK 20 AND ALSO THE 1.33 FEET NORTH AND ADJOINING AFORESAID LOT 10 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING ABOVE A HORIZONTAL PLANE 14.50 FEET ABOVE THE EXISTING GRADE OF THE CONCRETE WALK ALONG SOUTH WABASH AVENUE, IN COOK COUNTY, ILLINOIS.

From Cook County Clerk's Office

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