

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:

Bruce A. Salk
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

0020762260

9329/0098 81 001 Page 1 of 9
2002-07-12 09:24:29
Cook County Recorder 37.00

AND AFTER RECORDING MAIL TO:

Maribel Velasquez
Community Bank Of Ravenswood
2300 W. Lawrence Avenue
Chicago, IL 60625



0020762260

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the 28th day of June, 2002, by and between CLEAR CHANNEL OUTDOOR, a Delaware Corporation ("Tenant"), whose address is 4000 S. Morgan St., Chicago, IL 60609 and FOUNDATION GROUP, LLC, an Illinois Corporation (hereinafter referred to as the "Borrower"), whose address is 10 Melbourne Court, Lake In The Hills, 60156, and Community Bank Of Ravenswood, ("Lender"), whose address is 2300 W. Lawrence Avenue, Chicago, Illinois 60625.

PRELIMINARY STATEMENT OF FACTS:

- A. Lender has agreed to make a first mortgage loan (the "Loan") to Borrower, which is to be evidenced by a Mortgage Note ("Note") and secured by a Mortgage and Security Agreement ("Mortgage") on certain real estate as more fully described in Exhibit "A" attached hereto and the improvements thereon ("Premises").
- B. The Mortgage is to be recorded in the County of Cook, State of Illinois.
- C. The Tenant is the present lessee under a lease dated 9/13/94 and Addendum dated 2/3/95 made by Borrower, as landlord, demising a portion of the Premises (the "Leased Premises") (said lease and all amendments thereto being referred to as the "Lease"). c/k/a 300 Roselle Rd., Roselle, IL
- D. As a condition precedent to Lender's disbursement of Loan Proceeds, Lender has required that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage.
- E. In return, the Lender is agreeable to not disturbing the Tenant's possession of the Premises.
- F. The Lender is disbursing the Loan proceeds in reliance upon the agreements contained in this instrument, but for which it would not disburse the Loan.

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, it is hereby agreed as follows:

5076
8031422

22000016

20

g
SW

UNOFFICIAL COPY

1. **SUBORDINATION.** The Lease, and the rights of Tenant in, to or under the Lease and in and to the Premises, are hereby subjected and subordinated and shall remain in all respects and for all purposes subject, subordinate and junior to the lien of the Mortgage, and to the rights and interest of the from time to time holder of the Mortgage, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Premises by Tenant, or its predecessors in interest.

2. **PURCHASE OPTIONS.** Any options or rights contained in said Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of the Lender under the Mortgage, and any acquisition of title to the Premises made by Tenant during the term of the Mortgage shall be made subordinate and subject to the Mortgage.

3. **TENANT NOT TO BE DISTURBED.** So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof.

4. **TENANT NOT TO BE JOINED IN FORECLOSURE.** So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

5. **TENANT TO ATTORN TO LENDER.** If the interests of Borrower shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of this Borrower under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of the Borrower under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of the Borrower under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

6. **LENDER NOT BOUND BY CERTAIN ACTS OF BORROWER.** If Lender shall succeed to the interest of Borrower under the Lease, Lender shall not be liable for any act or omission of any prior landlord (including Borrower); nor subject to any offsets or defenses which Tenant might have against any prior landlord (including Borrower); nor bound by any rent or additional rent which Tenant might have paid for more than the then current installment; nor bound by any amendment or modification of the Lease made without its consent. In the event

20762260

UNOFFICIAL COPY

of a default by Borrower under the Lease or an occurrence that would give rise to an offset against rent or claim against Borrower under the Lease, Tenant will use its best efforts to set off such defaults or occurrence and prior to terminating the Lease, Tenant will send written notice of such defaults or an occurrence to Lender at the address of Lender as set forth above and will give Lender such time as is reasonably required to cure such default or rectify such occurrence, provided Lender uses reasonable diligence to correct the same. Tenant agrees that notwithstanding any provision of the Lease to the contrary, it will not be entitled to cancel the Lease, or to abate or offset against the rent, or to exercise any other right or remedy until Lender has been given notice of default and opportunity to cure such default as provided herein.

7. PROCEEDS OF INSURANCE AND CONDEMNATION AWARDS. That Tenant, its successors or assigns shall agree to assign and release unto Lender:

(a) All of its right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Premises for application upon the indebtedness secured by or other disposition thereof in accordance with the provisions of the Mortgage; and

(b) All of its right, title and interest or claim, if any, in and to all awards or other compensation made for any taking of any part of the Premises to be applied upon the indebtedness secured by or disposed of in accordance with the provisions of the Mortgage.

In the event that following any such application and disposition of the insurance proceeds and condemnation award and other compensation, any balance remains, then such excess shall be made payable to Borrower or Tenant, as their interests may appear.

8. ASSIGNMENT OF LEASE. Borrower will by a separate Assignment of Rents and Leases ("Assignment") assign its interest in the rents and payments due under the Lease to Lender as security for repayment of the Loan. If in the future there is a default by the Borrower in the performance and observance of the terms of the Mortgage, the Lender may, at its option under the Assignment, require that all rents and other payments due under the Lease be paid directly to it. Upon notification to that effect by the Lender, the Borrower hereby authorizes and directs Tenant, and the Tenant agrees, to pay any payments due under the terms of the Lease to Lender. The Assignment does not diminish any obligations of the Borrower under the Lease or impose any such obligations on the Lender.

9. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and every from time to time holder of the Lease or any other person having an interest therein and shall inure to the benefit of the Lender and its successors and assigns.

10. CHOICE OF LAW. This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State where the Premises are situate.

11. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

12. NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent,

20762260

UNOFFICIAL COPY

to the addresses as set forth above, or to such other places any party hereto may by notice in writing designate shall constitute service of notice hereunder.

13. **IMPROVEMENTS.** Neither the Lender nor any of its successors or assigns shall have any obligation to construct or to complete any construction or to perform any work on the Premises or to prepare the Leased Premises or any part thereof for occupancy. Neither shall the Lender or its successors or assigns be obligated to repair, replace, rebuild or restore the Leased Premises and/or the Premises in the event of damage or destruction thereto. Tenant agrees that any improvements made by it to the Leased Premises pursuant to the Lease will be without obligation on the part of Lender, its successors or assigns, to assume any cost or expense relative thereto and that no such improvements(s) shall occur unless satisfactory arrangements are made to ensure that no mechanic's lien, materialmen's lien or other lien shall arise against or attach to the Premises by reason thereof and to ensure that the lien of the Mortgage shall at all times be prior in right to any such lien.

This Agreement is executed by Borrower solely in the exercise of the authority conferred upon it as Trustee as aforesaid, and no personal liability or responsibility shall be assumed by, not at any time be asserted or enforced against it, its agents or employees on account hereof, or on account of any promises, covenants, undertakings or agreements herein or in said Note contained, either express or implied; all such liability, if any, being expressly waived and released by the mortgagee or holder or holders of said Note and by all persons claiming by, through or under said Mortgage or the holder or holders, owner or owners of said Note and by every person now or hereafter claiming any right or security thereunder. It is understood and agreed that Borrower, individually or as Trustee, shall have no obligation to see to the performance or non-performance of any of the covenants or promises herein contained, and shall not be liable for any action or non-action taken in violation of any of the covenants herein contained.

The parties agree that a facsimile of this Agreement bearing the facsimile signature of the parties hereto, shall be deemed to be of the same force and effect as an original of a manually signed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

TENANT:

CLEAR CHANNEL OUTDOOR, a Delaware Corporation

By: *Ken J. Wahn*

Its: Vice President/Assistant to the President

ATTEST:

By: _____

Its: _____

20762260

UNOFFICIAL COPY

BORROWER:

THE FOUNDATION GROUP, L.L.C., an Illinois Limited Liability Company

By: [Signature]
Joel M. Schnell, Sr., Member

By: [Signature]
Alexandros Matsas, Member

LENDER:

COMMUNITY BANK OF RAVENSWOOD

By: [Signature]
Its: Community Bank of Ravenswood

ATTEST:

By: [Signature]
Its: VICE PRESIDENT

Property of Cook County Clerk's Office

20762260

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Jeannie A Marischler, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas J. Walsh and _____, the Vice President Asst to the President and _____, respectively, of CLEAR CHANNEL OUTDOOR, a Delaware Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of JUNE, 2002.

Jeannie A Marischler

Notary Public

My Commission Expires: _____



20762260

UNOFFICIAL COPY

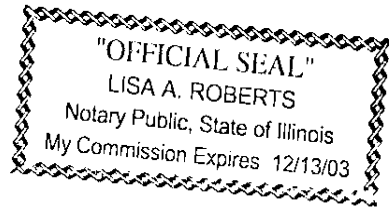
STATE OF IL)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Joel M. Schnell, Sr., and Alexandros Matsas, personally known to me as members of **THE FOUNDATION GROUP, L.L.C.**, a Limited Liability Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, 2002

Lisa A. Roberts
Notary Public

My Commission Expires: 12/13/03



Property of Cook County Clerk's Office

20762260

UNOFFICIAL COPY

EXHIBIT "A"

Pin: 07-34-402-020-0000

Address: 300 North Roselle Road, Roselle, Illinois

THE LAND REFERRED TO IN THIS EXHIBIT IS DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, 474.0 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ALONG THE WEST LINE OF THE SOUTHWEST 1/4 AFORESAID, A DISTANCE OF 181.56 FEET; THENCE EAST PARALLEL TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, A DISTANCE OF 400.00 FEET; THENCE NORTH PARALLEL TO THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, A DISTANCE OF 181.56 FEET; THENCE WEST PARALLEL TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, TO THE POINT OF BEGINNING (EXCEPT THE WEST 50 FEET THEREOF FALLING IN ROSELLE ROAD; AND ALSO EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, DISTANT SOUTH 00 DEGREES 21 MINUTES 02 SECONDS WEST, BEARING BASED ON ILLINOIS STATE PLANE COORDINATES EAST ZONE, 474.00 FEET FROM THE NORTHWEST CORNER THEREOF; THENCE NORTH 86 DEGREES 46 MINUTES 39 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT OF LAND, PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST 1/4, 287.05 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 86 DEGREES 46 MINUTES 39 SECONDS EAST ALONG SAID NORTH LINE 112.95 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00 DEGREES 21 MINUTES 02 SECONDS WEST ALONG THE EAST LINE OF SAID TRACT 55.50 FEET; THENCE NORTH 66 DEGREES 23 MINUTES 20 SECONDS WEST 122.70 FEET TO THE POINT OF BEGINNING; AND ALSO EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AFORESAID, DISTANT SOUTH 00 DEGREES 21 MINUTES 02 SECONDS WEST, BEARING BASED ON ILLINOIS STATE PLANE COORDINATES EAST ZONE 474.00 FEET FROM THE NORTHWEST CORNER THEREOF; THENCE NORTH 86 DEGREES 46 MINUTES 39 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST 1/4, 50.10 FEET TO THE POINT OF BEGINNING, BEING ALSO THE NORTHWEST CORNER OF SAID TRACT OF LAND AND A POINT IN THE EASTERLY RIGHT OF WAY LINE OF ROSELLE ROAD; THENCE CONTINUING NORTH 86 DEGREES 46 MINUTES 39 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT 36.72 FEET; THENCE SOUTH 03 DEGREES 03 MINUTES 54 SECONDS WEST 182.30 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 86 DEGREES 46 MINUTES 41 SECONDS WEST ALONG SAID SOUTH LINE 28.06 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID ROSELLE ROAD; THENCE NORTH 00 DEGREES 21 MINUTES 02 SECONDS EAST ALONG SAID EASTERLY RIGHT OF WAY LINE 181.56 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS

20762260