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0020764597

7/3/02 10:35 AM 7@8w031.DOC Page 1 of 15

2002-07-12 15:32:00

Cook County Recorder 49.50

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Carole K. Towne  
Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 East Monroe Street, Suite 3700  
Chicago, Illinois 60603  
(312) 201-4000



**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of June 24, 2002 between FIFTH THIRD BANK (CHICAGO) ("Senior Lender"), A. JAMES GALLAGHER, as Trustee ("Trustee"), and A. JAMES GALLAGHER, MARIE GALLAGHER, AND WEIDENHYER DEVELOPMENT COMPANY ("Junior Lender").

**RECITALS**

A. Senior Lender has made a first mortgage loan (the "Senior Loan") to BANK NOTE PLACE L.L.C. ("Borrower"), which is secured by, among other things, a Construction Mortgage dated as of June 24, 2002 and recorded with the Cook County Recorder of Deeds on \_\_\_\_\_, 2002 as Document No. 0020764596 (the "Senior Mortgage") covering certain real property owned by Borrower and legally described on Exhibit A attached hereto (the "Property").

B. Junior Lender has made loans in the aggregate principal amount of \$1,817,014 (the "Junior Loan") to Borrower, which is secured by a Trust Deed in favor of Trustee dated October 9, 2000 and recorded with the Cook County Recorder of Deeds on September 21, 2001 as Document No. 0010882259 (the "Junior Mortgage"). A copy of the Junior Mortgage is attached hereto as Exhibit B.

C. Junior Lender hereby represents and warrants to Senior Lender that it is the holder of the note or notes evidencing the indebtedness secured by the Junior Mortgage.

D. To induce Senior Lender to make the Senior Loan to Borrower, Trustee and Junior Lender are willing to execute this Agreement subordinating the Junior Mortgage and all the indebtedness secured thereby to the Senior Mortgage.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto hereby covenant and agree as follows:

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## ARTICLE I DEFINED TERMS

Section 1.1 Definitions. In addition to defined terms elsewhere in this Agreement, the following terms shall have the meanings herein specified unless the context otherwise requires (such meanings to apply to such terms in both the singular and plural forms):

"**Affiliate**" means any Person that is wholly owned, directly or indirectly, and controlled by, Junior Lender.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code (11 U.S.C. Sec. 101 et. seq.), as amended from time to time, or any successor statute or any rule promulgated pursuant thereto.

"**Business Day**" shall mean any day, other than a Saturday or Sunday, when banks in Chicago, Illinois are not required or authorized to be closed.

"**Insolvency Proceeding**" means any proceeding under the Bankruptcy Code or any other insolvency, liquidation, reorganization or other similar proceeding concerning Borrower, any action for the dissolution of Borrower, any proceeding (judicial or otherwise) concerning the application of the assets of Borrower, for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of Borrower, or any other action concerning the adjustment of the debts of Borrower, or the cessation of business by Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of Borrower in a transaction permitted under the Senior Loan Documents.

"**Junior Loan Default**" means the occurrence of an Event of Default under, and as defined in, the Junior Loan Documents.

"**Junior Loan Documents**" shall mean the Junior Mortgage, the note or notes evidencing the indebtedness thereby secured and any and all other instruments, documents and agreements now or hereafter evidencing, securing or relating to the Junior Obligations.

"**Junior Obligations**" shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower, secured by the Junior Mortgage.

"**Person**" means any individual, corporation, trust, trustee, partnership, limited liability company, unincorporated association, government, governmental agency, or court or other authority, including without limitation, any officer appointed by any court or other authority.

"**Senior Loan Default**" means an Event of Default under and as defined in the Senior Mortgage.

"Senior Loan Documents" shall mean all documents evidencing or securing the Senior Obligations.

"Senior Obligations" shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower secured by the Senior Mortgage.

## ARTICLE II SUBORDINATION AND STANDSTILL

Section 2.1 Subordination. The Junior Mortgage and the Junior Obligations and any and all rights and interest of Junior Lender are hereby subordinated in priority and payment to the Senior Mortgage, the Senior Obligations, the lien of the Senior Loan Documents and all advances thereunder, including without limitation all advances for construction and all protective advances, without regard to the application of such proceeds, together with all interest and all other sums due under the Senior Loan Documents and to any extensions, substitutions, modifications, amendments, renewals, refinancings, replacements, severances and consolidations thereof.

Section 2.2 Standstill. Until all of the Senior Obligations have been indefeasibly paid in full and satisfied, Junior Lender (i) shall not amend, supplement or modify the Junior Loan Documents in any material respect without the prior written consent of Senior Lender; (ii) shall not accept any payments on or in respect of any portion of the Junior Obligations; (iii) expressly disclaims any right, power or interest in the proceeds under policies of casualty insurance, and/or any right, title and interest in and to any awards or other compensation made for any damages, losses or compensation or other rights by reason of a taking in eminent domain affecting the Property; and (iv) shall not exercise any rights or remedies or enforce the payment of the Junior Loan. Junior Lender shall not take or institute any action, which directly or indirectly would interfere with or delay the exercise by Senior Lender of its rights and remedies in respect of the Property or any part thereof or under the Senior Loan Documents or this Agreement.

### Section 2.3 Insolvency Proceedings.

(a) Junior Lender hereby covenants and agrees that it will not (i) acquiesce, petition or otherwise invoke, or cause any other Person to invoke, an Insolvency Proceeding with respect to Borrower, (ii) seek to appoint a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official with respect to Borrower or all or any part of their respective property or assets or (iii) seek or acquiesce in the winding-up or liquidation of the affairs of Borrower.

(b) In the event of any Insolvency Proceeding involving Borrower or the Property, Junior Lender (i) shall not make any election, give any consent, commence any action or file any motion or take any other action without the prior written consent of Senior Lender, which consent may be given or withheld in Senior Lender's sole discretion, (ii) shall not object to or oppose any efforts by Senior Lender to obtain relief from the automatic stay

under Section 362 of the Bankruptcy Code or to seek to cause such entity's bankruptcy estate to abandon the Property (or any portion thereof) that is subject to the Senior Mortgage, (iii) shall vote in favor of, and not against, any and all actions taken by Senior Lender in any bankruptcy proceeding to permit the commencement or continuation of any foreclosure or otherwise to cause a bona fide sale process to occur; and (iv) shall not propose any plan or vote to confirm or take any other action in support of any plan or other course of action proposed by Borrower or any other party (other than Senior Lender) which would be reasonably likely to have the effect of (A) impairing the priority of the Senior Loan, (B) denying, impeding or delaying Senior Lender's efforts to collect the Senior Loan, or (C) delaying, preventing or impairing Senior Lender's collection of all or any portion of the Senior Loan.

Section 2.4 Waiver of Claims. (a) Junior Lender hereby covenants and agrees with Senior Lender that Senior Lender may at any time and from time to time without the consent of, or notice to Junior Lender, and without incurring responsibility to Junior Lender, upon or without any terms or conditions and in whole or in part:

(i) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Senior Obligations or any other obligations of any Person evidenced or secured by the Senior Loan Documents, or any liabilities incurred directly or indirectly in respect thereof;

(ii) exercise or refrain from exercising any rights against Borrower or others;

(iii) settle or compromise any portion of the Senior Obligations or any other obligations of any Person evidenced or secured by the Senior Loan Documents, any security therefor or any liability incurred directly or indirectly in respect thereto;

(iv) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of Borrower to Senior Lender regardless of what liability or liabilities of Borrower remain unpaid or unperformed; and/or

(v) consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, or otherwise amend, modify or supplement any of the Senior Loan Documents or any other instruments or agreements executed and delivered in connection therewith or otherwise relating thereto; provided however that prior to the occurrence of a Senior Loan Default, Senior Lender will not make any modification to the terms of the Senior Obligations that would have the effect of accelerating, or materially increasing, Borrower's debt service obligations under the Senior Loan Documents.

(b) Junior Lender hereby waives any right it may have to require that Senior Lender marshal any assets of Borrower in favor of Junior Lender.

**ARTICLE III  
DEFAULTS AND REMEDIES**

Section 3.1 Notices of Default. In the event of a Junior Loan Default, Junior Lender will provide to Senior Lender a copy of any notice of default.

Section 3.2 Consents to Action. Junior Lender hereby agrees that any action taken by or on behalf of Senior Lender in the exercise of Senior Lender's rights and/or remedies under the Senior Loan Documents (subject to compliance with the Senior Loan Documents, including this Agreement) or at law or in equity (including, without limitation, any foreclosure or acquisition of title to the Property or any part thereof by deed in lieu of foreclosure or otherwise) is hereby, and shall be deemed to be, consented to and approved by Junior Lender in all respects including, without limitation, at the option of Senior Lender, the sale, whether separately or together, of all or any portion of the Property.

**ARTICLE IV  
MISCELLANEOUS**

Section 4.1 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, in any event addressed to the intended addressee as follows (or at such other address as may be designated by such party as herein provided):

If to Senior Lender:

Fifth Third Bank (Chicago)  
1701 Golf Road  
Rolling Meadows, Illinois 60008  
Attention: Jennifer Scattergood

If to Junior Lender:

A. James Gallagher, Jr.  
c/o Weidenhyer Development Co.  
2020 Algonquin Road, Suite 303  
Schaumburg, Illinois 60173

All notices, demands, requests or other communications shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent.



Section 4.2 Modification. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 4.3 WAIVER OF JURY TRIAL. EACH OF SENIOR LENDER AND JUNIOR LENDER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY AND EVERY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

Section 4.4 Governing Law.

(a) This Agreement shall be governed by and construed according to the laws, from time to time in effect, of the State of Illinois.

(b) Any legal suit, action or proceeding against Junior Lender or Senior Lender arising out of or relating to this Agreement shall be instituted in any Federal or state court in Chicago, Illinois and each of Senior Lender and Junior Lender waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and each of Senior Lender and Junior Lender hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

Section 4.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument and shall be binding upon, and shall inure to the benefit of, each of the undersigned individually as fully and completely as if all had signed one instrument.

Section 4.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 4.7 No Third Party Beneficiaries. Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any Person other than Senior Lender and Junior Lender and their respective successors and assigns, and no other Person, including, without limitation, Borrower shall be a third party beneficiary hereof.

Section 4.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 4.9 No Waiver. No waiver shall be deemed to be made by Senior Lender of any of its rights hereunder, or under the Senior Loan Documents, unless the same shall be in writing and signed by Senior Lender, and each waiver, if any, shall be a waiver

only with respect to the specific instances involved and shall in no way impair the rights of Senior Lender in any other respect or at any other time.

Section 4.10 Further Assurances; Amendment to Documents.

Each of Senior Lender and Junior Lender shall execute such further documents or instruments and take such further actions as the other may reasonably request from time to time to carry out the intent of this Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

FIFTH THIRD BANK (CHICAGO)

By Jennifer Scattergood  
Its AVP

WEIDENHYER DEVELOPMENT COMPANY

By SEE ATTACHED COUNTERPART  
Its SIGNATURE PAGE

SEE ATTACHED COUNTERPART  
SIGNATURE PAGE

A. JAMES GALLAGHER, AS TRUSTEE

SEE ATTACHED COUNTERPART  
SIGNATURE PAGE

A. JAMES GALLAGHER

SEE ATTACHED COUNTERPART  
SIGNATURE PAGE

MARIE GALLAGHER

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FIFTH THIRD BANK (CHICAGO)

By SEE ATTACHED COUNTERPART  
Its SIGNATURE PAGE

WEIDENHYER DEVELOPMENT COMPANY

By *Ken P. Gallagher*  
Its vice president

*A. James Gallagher, Trustee*  
A. James Gallagher, AS TRUSTEE

*A. James Gallagher*  
A. James Gallagher

*Marie Gallagher*  
MARIE Gallagher

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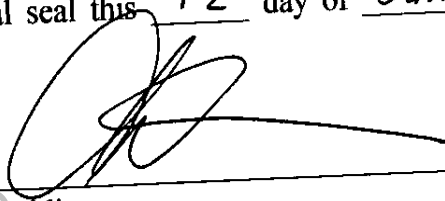
ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, CAROLE K. TOWNE, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Jennifer Scattergood of Fifth Third Bank (Chicago), a Michigan banking corporation, 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 she signed and delivered said instrument as her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

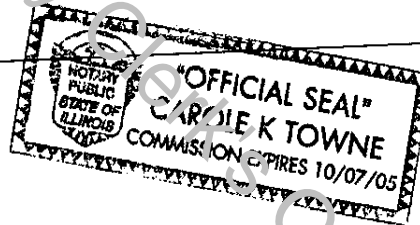
2002.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of June,



Notary Public

My Commission Expires:



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## ACKNOWLEDGMENT

20764597

STATE OF

COUNTY OF

)  
) SS

I, Steven Fink, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT \* Steven Fink of WEIDENHYER DEVELOPMENT COMPANY, an Illinois corporation, 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 and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

2002.

GIVEN under my hand and notarial seal this 2nd day of July,

\* Kevin Gallagher  
A. James Gallagher, Trustee  
Marc Gallagher

Notary Public

My Commission Expires



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20764597

## ACKNOWLEDGMENT

STATE OF )

) SS

COUNTY OF )

I, Steven Fink, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT A. JAMES GALLAGHER AND MARIE GALLAGHER, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of July,

2002.

Notary Public

My Commission Expires:





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## EXHIBIT A

### LEGAL DESCRIPTION

ALL OF THE FOLLOWING 4 PARCELS TAKEN AS A TRACT EXCEPT FOR THE SOUTH 70 FEET THEREOF:

#### PARCEL 1:

LOT 12 AND LOT 12 (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 12; 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 CHICAGO 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 LIE 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.

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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 20, 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.

ADDRESS:

120 EAST CULLERTON AND 1910 SOUTH INDIANA  
CHICAGO, IL

PIN NUMBERS:

17-22-307-043  
17-22-307-054  
17-22-307-058

of Cook County Clerk's Office