

UNOFFICIAL COPY

00288274

29/0/0221 32 001 Page 1 of 11  
2000-04-25 15:23:16  
Cook County Recorder 41.50

NAB Loan No. 57802-01

Prepared by and after  
recording return to:



00288274

Thomas G. Jaros  
Levenfeld Pearlstein Glassberg  
Tuchman Bright Goldstein  
& Schwartz, LLC  
33 West Monroe  
21st Floor  
Chicago, IL 60603

Property Common Address:

1063-65 West Madison Street  
Chicago, Illinois 60607

P.I.N. 17-17-203-024-0000

**NAB BANK  
SUBORDINATION AGREEMENT**

**THIS SUBORDINATION AGREEMENT** (this "Agreement") dated as of April 4, 2000 by and among 1063 MADISON, L.L.C., an Illinois limited liability company ("Borrower"); CHANDRAKANT K. SHAH (the "Subordinated Lender") and NAB BANK (the "Senior Lender"), has reference to the following:

**WHEREAS**, the Borrower has requested that the Senior Lender grant to the Borrower certain loans, advances or other accommodations (the "Loans") which will be secured by, among other things, a mortgage against the property identified on EXHIBIT A hereto (the "Mortgaged Property"); and

**WHEREAS**, the Borrower is or may become indebted to Subordinated Lender after the making of the Loans to Borrower; and

**WHEREAS**, Senior Lender has indicated that it is unwilling to make the Loans to Borrower unless Subordinated Lender shall subordinate to the Senior Lender: (a) all of its present and future "Subordinated Debt" (as defined below); and (b) any and all mortgages, liens or security interests which Subordinated Lender may have in and to the Mortgaged Property or any proceeds thereof.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agrees as follows:

1. Definitions. For purposes of this Agreement the following definitions shall apply:

(a) "Senior Debt" shall mean all debts, claims, obligations and liabilities of Borrower to Senior Lender, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing, and however arising including, without limitation, all notes made by Borrower in favor of Senior Lender and all renewals, extensions, replacements or modifications thereof.

(b) "Senior Loan Documents" shall mean all notes, agreements, instruments or other documents which create, evidence, secure or otherwise relate to the Senior Debt, including all notes, loan agreements, mortgages, assignments of leases, environmental indemnities, UCC statements and other documents relating to the Mortgaged Property which evidence the Loans.

(c) "Subordinated Debt" shall mean all debts, claims, obligation and liabilities of Borrower to Subordinated Lender, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable.

(d) "Subordinated Loan Documents" shall mean all notes, agreements, mortgages, instruments or other documents which create, evidence, secure or otherwise relate to the Subordinated Debt.

2. Subordination. Subordinated Lender hereby agrees as follows:

(a) the Subordinated Debt shall be subordinate and junior to the Senior Debt in all respects;

(b) the Subordinated Debt shall not be paid, and no payment on account thereof, nor any security therefor, shall be received, accepted or retained by Subordinated Lender unless and until Borrower has paid and satisfied in full all of the Senior Debt; provided however, Borrower may make regularly scheduled payments of interest to Subordinated Lender provided no default or event of default shall have occurred under the Senior Loan Documents and upon such a default or event of default such payments shall immediately cease; and

(c) Notwithstanding the date, manner or order of perfection, or lack of perfection, any and all liens, security interests, pledges, mortgages or other interests granted by or on behalf of Borrower in favor of Subordinated Lender (*whether granted in the Subordinated Loan Documents or otherwise*) in and to the Mortgaged Property or any other property of Borrower shall be subordinate and junior to all liens, security interests, pledges, or mortgages securing repayment of the Senior Debt in all respects. Nothing herein contained shall waive any prohibitions against the creation of security interests set forth in any of the Senior Loan Documents.

Any payments received by Subordinated Lender on account of the Subordinated Debt after a default under the Senior Loan Documents shall be held in trust by Subordinated Lender for the benefit of Senior Lender and shall be immediately turned over to Senior Lender for application against the Senior Debt.

3. Other Agreements. Subordinated Lender further represents, warrants and agrees:

(a) that it waives: (i) notice of the existence, creation, renewal, extension of the Senior Debt (or any increase in the amount thereof); (ii) any right to require Senior Lender to collect, enforce or realize upon the Senior Debt; (iii) all rights of subrogation which it has or may have against Borrower or its assets;

(b) it will render to the Senior Lender upon demand from time to time a statement of the amount of the Subordinated Debt outstanding, along with copies of any of the Subordinated Loan Documents as Senior Lender may request; and

(c) that it will not, without Senior Lender's prior written consent: (i) commence or join in the commencement of any litigation or proceeding (including bankruptcy proceedings) to collect the Subordinated Debt; and/or (ii) seek to foreclose any mortgage against the Mortgaged Property or any lien against any of Borrower's assets.

4. Borrower's Agreements. Borrower hereby agrees that:

(a) it will render to the Senior Lender upon demand from time to time a statement of the amount of the Subordinated Debt outstanding, along with copies of any of the Subordinated Loan Documents as Senior Lender may request;

(b) it will allow Senior Lender to have access, from time to time, to Borrower's books in order that the Senior Lender may make full and free examination of the state of the account of the Subordinated Debt;

(c) it will duly comply with and perform each and every of the terms of this Agreement on its part required to be performed;

(d) this Agreement does not constitute a waiver or partial waiver of any of Senior Lender's rights under the Senior Loan Documents or in any way release Borrower from its obligations to comply with the terms and conditions contained in the Senior Loan Documents; and

(e) an event of default under the Subordinated Loan Documents shall be an event of default under the Senior Loan Documents.

5. Liquidation of Borrower. In the event of any receivership, insolvency, bankruptcy, reorganization, dissolution, sale of all or substantially all of its assets, winding up, liquidation or any other marshalling of the assets and liabilities of the Borrower, any payment or distribution of assets of the Borrower of any kind or character, whether in cash, securities or other property, which would otherwise be payable to or deliverable upon or with respect to any of the Subordinated Debt, shall be paid or delivered directly to the Senior Lender for application on the Senior Debt until all of the Senior Debt shall have been fully paid and satisfied. The Senior Lender shall have the right to enforce, collect and receive every such payment or distribution and give acquittance therefor, and the Senior Lender is hereby authorized, as attorney-in-fact for the Subordinated Lender to vote and

prove the indebtedness of the Borrower to the Subordinated Lender in any of the above-described proceedings or in any meeting of creditors of the Borrower relating thereto.

6. Continuing Agreement. (a) This Agreement shall constitute a continuing agreement of subordination, and the Senior Lender may, without notice to the Subordinated Lender, lend monies, extend additional credit and make other financial accommodations to or for the account of the Borrower on the faith hereof. Without limiting the foregoing, Subordinated Lender hereby expressly acknowledges and agrees that the Subordinated Debt shall be subordinate to all of the Senior Debt, even Senior Debt incurred after the incurrence of the Subordinated Debt and after the recording of any mortgage or lien securing the Subordinated Debt.

(b) The Senior Lender, at any time and from time to time, either before or after any notice of revocation, may enter into any such agreement or agreements with the Borrower as the Senior Lender may deem proper extending the time of payment or renewing or otherwise altering the terms of any of the Senior Debt or affecting any security underlying any or all of the Senior Debt, or may exchange, sell, surrender, or otherwise deal with any security, with or without notice to the Subordinated Lender and without in any way impairing or affecting this Agreement.

7. Waiver. No waiver shall be deemed to be made by any party to this Agreement of any of rights hereunder unless same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights and/or the obligations of the waiving party in any other respect or at any other time. Senior Lender's delay in or failure to exercise any right or remedy shall not be deemed a waiver of any obligation of the Subordinated Lender or Borrower or right of the Senior Lender.

8. Binding Agreement; Entire Agreement; Governing Law. This Agreement shall inure to the benefit of and be binding upon the executors, administrators, personal representatives, successors and assigns of the parties to this Agreement. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

9. Severability. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application thereof to other parties or circumstances will not be affected thereby, the provisions of this Agreement begin severable in any such instance.

10. Counterparts. This Agreement may be executed in counterparts, each of which may be deemed an original but all of which shall constitute but one instrument.

11. Enforcement Costs. Subordinated Lender agrees to pay, upon Senior Lender's demand therefor, any and all reasonable costs, fees and expenses (*including attorneys' fees, costs and expenses*) incurred in enforcing any of Senior Lender's rights hereunder upon a breach of this Agreement by Subordinated Lender. Borrower agrees to pay, upon Senior Lender's demand therefor, any and all reasonable costs, fees and expenses (*including attorneys' fees, costs and expenses*) incurred in enforcing any of Senior Lender's rights hereunder upon a breach of this

Agreement by Borrower. Fees and expenses incurred by Bank in collecting any judgment which may be entered on account of this Agreement shall also be paid by Subordinated Lender and/or Borrower, as appropriate. The obligations set forth in this agreement shall be continuing and shall not be merged into any judgment entered based upon this Agreement.

12. Notices. Whenever a notice is given under this Agreement, it shall be in writing and either: (a) hand delivered; (b) sent via nationally recognized over-night mail carrier, or (c) sent via certified mail, return receipt requested. Notice sent via certified mail shall be deemed given two (2) days after such notice is mailed. Notice served by hand delivery or by nationally recognized over-night mail carrier shall be deemed served on the day delivered. Notice shall be delivered or sent to the addresses set forth beside each party's signature.

13. Forum Selection. BORROWER, SUBORDINATED LENDER AND SENIOR LENDER IRREVOCABLY AGREE THAT, SUBJECT TO SENIOR LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. BORROWER, SUBORDINATED LENDER AND SENIOR LENDER HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. BORROWER, SUBORDINATED LENDER AND SENIOR LENDERS HEREBY WAIVE ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT BY SENIOR LENDER IN ACCORDANCE WITH THIS PARAGRAPH.

14. Jury Waiver. BORROWER, SUBORDINATED LENDER AND SENIOR LENDER HEREBY IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT COUNTERCLAIM OR PROCEEDING (a) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH, OR (b) ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, AND AGREE THAT ANY SUCH ACTION, SUIT, COUNTERCLAIM OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[REMAINDER OF PAGE LEFT BLANK]

[SIGNATURES FOLLOW ON NEXT TWO PAGES]



# UNOFFICIAL COPY

00288274

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

## SUBORDINATED LENDER:

Address:

7041 WRIGHT TERRACE  
NILES, IL 60714

Chandrakant K. Shah  
CHANDRAKANT K. SHAH

## SENIOR LENDER: NAB BANK

Address:

222 West Cermak Road  
Chicago, Illinois 60616

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

## BORROWER:

1063 MADISON, L.L.C., an Illinois limited liability company

Address:

515 Warren Road  
Glenview, Illinois 60025

By: Nofal Gewargis  
Name: Nofal Gewargis  
Title: Manager

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

**SUBORDINATED LENDER:**

Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**CHANDRAKANT K. SHAH**

**SENIOR LENDER:  
NAB BANK**

Address:

222 West Cermak Road  
Chicago, Illinois 60616

By: \_\_\_\_\_  
Name: **Douglas W. Dancer**  
Title: **V.P. / Branch Mgr**

**BOBPOWER:  
1063 MADISON, L.L.C., an Illinois limited  
liability company**

Address:

515 Warren Road  
Glenview, Illinois 60025

By: \_\_\_\_\_  
Name: **Nofal Gevargis**  
Title: **Manager**







# UNOFFICIAL COPY

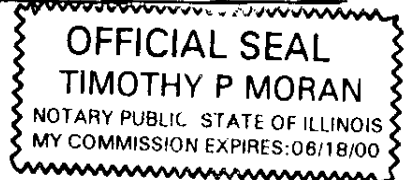
00288274

STATE OF ILLINOIS        )  
                                  )       SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Nofal Gewarges, the Manager of 1063 MADISON, L.L.C., an Illinois limited liability 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 before me that he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 4th day of April, 2000.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT A  
TO  
SUBORDINATION AGREEMENT

00288274

Mortgaged Property

LOTS 26 AND 27 IN ROGERS' SUBDIVISION OF BLOCK 1 OF CANAL TRUSTEES' SUBDIVISION OF THE WEST ½ AND THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN AND OF BLOCK 5 OF DUNCAN'S ADDITION TO CHICAGO IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 1063-65 WEST MADISON  
CHICAGO, ILLINOIS 60607

P.I.N. 17-17-203-024-0000

H:\Docs\3200032029\Gewarges\SUBORD-shah.doc

Property of Cook County Clerk's Office