

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN  
TO:

Holland & Knight LLC  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: Francis L. Keldermans, Esq.



Doc#: 0326316206  
Eugene "Gene" Moore Fee: \$58.50  
Cook County Recorder of Deeds  
Date: 09/22/2003 10:53 AM Pg: 1 of 18

*This space reserved for Recorder's use only*

## SUBORDINATION AND INTERCREDITOR AGREEMENT

### THIS SUBORDINATION AND INTERCREDITOR AGREEMENT

(this "Agreement") is made as of the 22 day of July, 2003 by and among **CIB BANK**, an Illinois banking corporation, its permitted successors and assigns ("Senior Lender"), **J.F.J. DEVELOPMENT CO.** an Illinois limited liability company ("Junior Lender"), **18-22 East Division, L.L.C.**, an Illinois corporation (the "Company"), **Jonathan H. Zitzman** ("Zitzman") and **Wayne S. Gilmartin** ("Gilmartin") (hereinafter the Company, Zitzman, and Gilmartin are collectively referred to as the "Borrower").

### RECITALS:

A. Senior Lender has heretofore made a loan ("Construction Loan") to the Company in the principal amount of FIVE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,400,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of January 29, 2002 between the Company and Senior Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Mortgage Note dated January 29, 2002, in the principal amount of the Loan made payable by the Company to the order of Senior Lender ("Construction Note").

B. The Construction Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated January 29, 2002 from the Company to Senior Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on February 2, 2002 as Document No. 0020134200 (the "Mortgage"), which Mortgage encumbers the real property and all

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improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Environmental Indemnity Agreement dated January 29, 2002 from Borrower to Senior Lender (the "Indemnity Agreement"); and (iii) certain other loan documents (the Construction Note, the Mortgage, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Construction Loan Documents").

C. The Company has requested that Senior Lender enter into a revolving line of credit loan transaction with the Borrower in the maximum amount of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) (the "Line of Credit"). As a condition precedent to funding the Line of Credit, Borrower has executed and delivered to Senior Lender a promissory note dated of even date herewith in the principal amount of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) ("Line of Credit Note"), that certain with Modification of Loan Documents (Line of Credit) dated of even date herewith by and between Lender and Borrower ("Modification Agreement"), and certain other loan documents set forth in the Modification Agreement (hereinafter the Line of Credit Note, the Modification Agreement and the other modification documents set forth in the Modification Agreement are referred to collectively as the "Modification Documents", the Construction Note and the Line of Credit Note are collectively referred to as the "Senior Notes", and the Construction Loan Documents and the Modification Documents are collectively referred to as the "Senior Loan Documents"). As security for the Line of Credit Note, the Modification Agreement shall be recorded in the Recorder's Office (hereinafter all references to the "Senior Mortgage" shall mean the Mortgage and the Modification Agreement together as a whole as though they were one document).

D. The Company is indebted to Junior Lender and Senior Lender requires that Junior Lender enter into this Agreement as condition precedent to the Modifications Documents and the Line of Credit. To induce the Senior Lender to make the Line of Credit, Junior Lender agrees to totally and unconditionally subordinate any and all: (i) indebtedness due from any Borrower to Junior Lender ("Junior Debt"), (ii) all claims, defenses, causes of action, charges, pleas, damages, torts, property damage claims, set-offs in law or equity whatsoever against any Borrower including but not limited to any unasserted claims ("Junior Claims"), and (iii) lien claims, lien rights, lien assertions, or lien theories of any nature with respect to the Property or any portion thereof ("Junior Liens") (hereinafter the Junior Debt, the Junior Claims, and the Junior Liens are collectively referred to as the "Junior Indebtedness"). To induce the Senior Lender to make the Line of Credit, Junior Lender agrees to totally and unconditionally subordinate any and all collateral or security for the Junior Indebtedness of any nature (the "Junior Security Documents").

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E. All capitalized terms used and not otherwise defined herein shall have the respective meanings assigned thereto in the Modification Agreement.

**NOW THEREFORE**, in consideration of the sum of **ONE DOLLAR (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, Senior Lender, Junior Lender and Borrower do hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated herein by this reference.

2. **Definitions.** For all purposes of this Agreement, the following terms shall have the respective meanings hereinafter specified:

**"Enforcement Action"** shall mean the commencement of the exercise of any remedies against Borrower, including without limitation, the commencement of any litigation or proceeding, including the commencement of any foreclosure proceeding, the exercise of any power of sale, the sale by advertisement, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other action with respect to, or the enforcement of any remedy against, any of the property or assets of any Borrower, including without limitation, all or any portion of the Property.

**"Expenses"** shall mean the aggregate amount paid by Borrower during each month in connection with the Property for (i) all principal and interest and other amounts payable pursuant to the Senior Loan Documents (including, without limitation, all payments to Senior Lender required from and in connection with the sale of Condominium Units, Parking Spaces and/or Commercial Units, (ii) maintenance, repairs and replacements of all or and part of the Property, (iii) reserves and expenditures for capital improvements and tenant improvements, (iv) premiums for insurance, (v) charges (including applicable taxes) for electricity, fuel oil and other utilities, (vi) real estate taxes, assessments, water charges and sewer rents, (vii) management fees, (viii) leasing commissions, (ix) advertising, marketing and sales commissions, and all other closing costs incurred in connection with the sale of the Condominium Units, Parking Spaces and/or Commercial Units, and (x) all hard and soft costs and expenses incurred in connection with the renovation, redevelopment and condominium conversion of the Property.

**"Gross Income"** shall mean the aggregate of all income received by Borrower in respect of the Property during each month other than (i) proceeds from the refinancing of the Senior Loan, (ii) insurance proceeds

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(except for the proceeds of business interruption or rent loss insurance) to the extent used to restore the Property, (iii) refunds of insurance premiums, (iv) security deposits (except to the extent such sums are applied by Borrower to the payment of any rent or additional rent due under any lease of the Property), (v) additional rents and pass-throughs such as taxes and insurance premiums to the extent (x) payable under any Lease, (y) used to pay for such items and (z) not included in Expenses.

**"Insolvency Proceeding"** shall mean any proceeding under Title 11 of the United States Code (11 U.S.C. Sec. 101 et. seq.) or any other insolvency, liquidation, reorganization or other similar proceeding concerning any Borrower, any action for the dissolution of the Company, any proceeding (judicial or otherwise) concerning the application of the assets of any 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 any Borrower or any other action concerning the adjustment of the debts of any Borrower, the cessation of business by Borrower or any one Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of the Company in a transaction, if any, permitted under the Senior Loan Documents.

**"Net Excess Cash Flow"** shall mean, for any given month, the amount, if any, by which Gross Income in such month exceeds Expenses in such month.

**"Senior Indebtedness"** shall mean all of the present and future indebtedness (plus all Protective Advances made as provided under the Senior Loan Documents or as permitted by applicable Laws), and accrued interest (including without limitation, Default Interest), late charges, fees, collection costs and expenses (including reasonable attorneys' fees), and other amounts, liabilities and obligations of any Borrower to Senior Lender (including, without limitation, all of the indebtedness, liabilities and obligations under any one or more of the Senior Loan Documents), all whether fixed or contingent, matured or unmatured, liquidated or unliquidated, and including all extensions and renewals thereof.

**"Senior Lender Collateral"** shall mean all of the property and assets of Borrower, and all cash and non-cash proceeds thereof, and including without limiting the generality of the foregoing, all property, rights and interests of Borrower described as collateral in the Senior Loan Documents.

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"UCC" shall mean the Uniform Commercial Code as adopted in the State of Illinois, as may be amended from time to time.

### 3. **Subordination.**

(a) **Generally.** Irrespective of: (i) the time, order, manner or method of creation, attachment or perfection of the respective security interests, guaranties and/or liens granted to Junior Lender or to Senior Lender by Borrower in or with respect to any or all of the property or assets of Borrower, (ii) the time or manner of the filing of Junior Lender's and Senior Lender's respective financing statements; (iii) whether Junior Lender or Senior Lender or any bailee or agent thereof holds possession of any or all of the property or assets of Borrower; (iv) the dating, execution or delivery of any agreement, document or instrument granting Junior Lender or Senior Lender security interests and/or liens in or on any or all of the property or assets of Borrower; (e) the giving or failure to give notice of the acquisition or expected acquisition of any purchase money or other security interests; and (v) any provision of the UCC or any other applicable law to the contrary, the Junior Indebtedness, the Junior Security Documents and all claims, rights and interests therein or arising therefrom or related thereto against Borrower, the Property or the Project (each as defined in the Senior Loan Documents) or any part thereof are subjected and subordinated to the Senior Indebtedness, the Senior Loan Documents and all liens, rights, titles, assignments and security interests created by the Senior Loan Documents, in lien, priority, right, claim, payment and collection.

(b) **Payment and Performance.** (i) So long as any of the Senior Indebtedness remains outstanding, Junior Lender agrees to and does hereby subordinate its claim and right to receive payment of the Junior Indebtedness, or any part thereof, to Senior Lender's claim and right to receive payment in full of the Senior Indebtedness, and hereby agrees not to accept any payment of the Junior Indebtedness, including interest thereon, or any part, or to assign its claim therefor, or any part thereof, to any other person until such time as the Senior Indebtedness shall have been fully, finally and indefeasibly paid in full. Should any payment or distribution of any kind or character be received by Junior Lender on the Junior Indebtedness prior to the time all of the Senior Indebtedness shall have been fully, finally and indefeasibly paid in full, Junior Lender shall receive and hold the same in trust, as trustee, for the benefit of Senior Lender and shall forthwith deliver the same to Senior Lender in precisely the form received (except for the endorsement or assignment of Junior Lender where necessary) for application against the Senior Indebtedness, whether due or not due, and, until so delivered, the same shall be held in trust by Junior Lender as the property of Senior Lender. If Junior Lender fails to assign or endorse any lien or payment received by Junior Lender to Senior Lender, then Senior Lender, or any of its officers or employees, is hereby irrevocably authorized to make such assignment or endorsement. For that

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purpose, Junior Lender hereby appoints Senior Lender as its attorney in fact, which appointment is coupled with an interest and hence irrevocable.

(c) **Remedies.** Notwithstanding Junior Lender's rights under applicable Laws or any provision of the Junior Indebtedness documents to the contrary Junior Lender will not: (i) institute any suit, action or proceeding, including the initiation of any Enforcement Action, to enforce any of the terms, covenants, or conditions in the Junior Security Documents, whether such suit, action or proceeding is judicial or otherwise, including the acceleration of the Junior Indebtedness (but not including the declaration of an Event of Default), or the foreclosure of, or enforcement of remedies under, the Junior Security Documents; (ii) commence any suit, action or proceeding with respect to any matter related to the any of the Junior Security Documents or the Project; or (iii) commence or join in the commencement of any Insolvency Proceeding. Without limiting the generality of the foregoing, in the event of an Insolvency Proceeding, Junior Lender shall not object to or oppose any efforts by Senior Lender to obtain relief from the automatic stay under Section 362 of the United States Bankruptcy Code or to seek to cause such entity's bankruptcy estate to abandon any of the property or assets of Borrower (or any portion thereof). Borrower shall not make, give or permit, directly or indirectly, in any manner (including by way of loan, set-off, offset, sale of participating interest, or otherwise), any payment or prepayment (in either case, other than as expressly permitted by this Agreement), or additional security of or for all or any part of the Junior Indebtedness.

(d) **Bankruptcy.** Until ninety-one (91) days following the satisfaction in full of the Senior Indebtedness, Junior Lender hereby covenants and agrees that it will not acquiesce, petition or otherwise invoke or cause any other person or entity to invoke the process of the United States of America, any state or other political subdivision thereof or any other jurisdiction, or of any entity exercising executive, legislative, judicial, regulatory or administrative functions of government: (i) for the purpose of commencing or sustaining a case against any Borrower, under a Federal or state bankruptcy, insolvency or similar law, or (ii) for the purpose of appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official with respect to any Borrower or with respect to all or any part of any Borrower's property or assets or (iii) for the purpose of ordering the winding-up or liquidation of the affairs of any Borrower. In the event of any proceeding with respect to any Borrower or any significant part of any Borrower's properties or assets, involving insolvency or bankruptcy, including without limitation any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition, arrangement or other similar proceeding, or any such proceeding by, among or on behalf of any of any Borrower's creditors, as such, or any proceeding for the voluntary liquidation, dissolution or other winding up of any Borrower (whether or not involving insolvency or bankruptcy proceedings) or any assignment for the benefit of any Borrower's creditors, or any other marshalling of its assets,

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then and in any such event: (x) the Senior Indebtedness shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made on account of the Junior Indebtedness, and (y) Junior Lender hereby assigns to Senior Lender, absolutely, irrevocably and unconditionally all of Junior Lender's rights if any, to vote to approve or reject any plan of reorganization in respect of the any Borrower in any Insolvency Proceeding. Junior Lender further agrees that it shall not object to any request or motion by the Senior Lender for an order establishing that proceeds, product, offspring, rents and profits of the Property constitute cash collateral under §363 of the Bankruptcy Code ("Cash Collateral") and Junior Lender hereby consents to any application by the Senior Lender to have such Cash Collateral applied to the payment of the Senior Indebtedness prior to the application of any such sums to the Junior Indebtedness until the Senior Indebtedness is paid in full. If Senior Lender consents to any use of the Cash Collateral by any Borrower, Junior Lender shall also consent, and if the Senior Lender objects to any such use, Junior Lender shall also object. Senior Lender agrees that it shall notify Junior Lender of Senior Lender's consent or objection not later than five (5) days prior to the expiration of the period provided by applicable Laws or by court order to so consent or object.

4. **Insurance Proceeds; Condemnation Awards.** The Junior Lender hereby assigns and releases unto the Senior Lender:

(a) all of the Junior Lender's right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Property, or any part thereof, for application to the Senior Indebtedness or for other disposition thereof in accordance with the terms, conditions and provisions of the Senior Loan Documents;

(b) all of the Junior Lender's right, title, interest or claim, if any, in and to all awards or other compensation made for any taking or condemnation of any part of the Property, or any part thereof, for application to the Senior Indebtedness or for other disposition thereof in accordance with the terms, conditions and provisions of the Senior Loan Documents.

Unless Senior Lender shall agree in writing to the contrary, Junior Lender shall not have any right to adjust or settle, or to participate in any adjustment or settlement of, any loss or taking of the Property or any part thereof. To the extent that Senior Lender agrees to permit any Borrower to use insurance proceeds or any condemnation or taking award to repair and restore the Property, Junior Lender shall be deemed to have agreed thereto and Junior Lender shall execute any and all documents as may be necessary to evidence that consent and agreement and the other provisions of this Section 4.

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If, following any application or disposition of insurance proceeds or condemnation awards, all principal and interest due and owing under the Senior Loan has been completely paid to the Senior Lender and all other Obligations of any Borrower under the Senior Loan Documents have satisfied in full, any balance of such proceeds, award or other compensation remains, then such balance shall be made payable to the order of the Junior Lender.

5. **Certain Actions.** Junior Lender hereby agrees that:

(a) **Leases; Non-Disturbance Agreements.** Junior Lender agrees to approve all leases with respect to the Property or any part thereof which are approved by the Senior Lender. Senior Lender agrees that it shall use its reasonable judgment in connection with its approval of any lease. If Senior Lender enters into a non-disturbance or other agreement **similar agreements** with any tenant or other occupant of all or any portion of the Property, then Junior Lender shall within five (5) Business Days after written request by Senior Lender enter into the same agreement in the same form with the same tenant or occupant, except that references to Senior Lender and the Senior Loan Documents shall be replaced by references to Junior Lender and the Junior Security Documents, and similar conforming changes shall be made.

(b) **Escrows; Reserves.** Other than the Debt Service Reserve Account, so long as any of the Senior Indebtedness remains unsatisfied, Junior Lender shall not collect payments from any Borrower or fund any advance of the proceeds of the Junior Indebtedness for the purpose of escrowing taxes, assessments or other charges imposed on the Property, for creating, funding or maintaining any reserves with respect to the Property or the operating thereof, or for insurance premiums due on the insurance policies required under the Senior Loan Documents or the Junior Security Documents.

6. **Prohibition of Subsequent Acquisition of Rights.** The Junior Lender shall not acquire by subrogation, contract or otherwise any lien upon or other estate, right or interest in the Property (including, without limitation, any such lien, estate, right or interest that may arise with respect to real estate taxes, assessments or other governmental charges) or any rents or revenues therefrom that is or may be prior in right to or on parity with the Senior Loan Documents.

7. **Junior Indebtedness.**

(a) **No Assignment.** So long as all or any part of the Senior Indebtedness is outstanding and remains unpaid, without the prior written consent of Senior Lender, Junior Lender will not assign, transfer or pledge any or all of the Junior Indebtedness or any portion thereof or interest therein or any of the Junior Security Documents so long as the Senior Loan Documents remain outstanding. Any attempted assignment in contravention of this



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restriction shall be void and Junior Lender shall defend, indemnify and hold harmless Senior Lender from and against all losses, claims, costs and damages incurred by Senior Lender by reason of any assignment made or attempted in contravention of this Agreement.

(b) **Representations.** Junior Lender hereby represents and warrants to Senior Lender that:

- (i) there exists under the Junior Security Documents or the junior Indebtedness no default, event of default or circumstance or state of facts that, with the giving of notice or the passage of time or both could constitute such a default or event of default thereunder, and
- (ii) Junior Lender has the power, authority and legal right to execute, deliver and perform this Agreement. This Agreement has been duly authorized by all necessary action of Junior Lender, duly executed and delivered by Junior Lender and constitutes the valid and binding obligation of Junior Lender enforceable against Junior Lender in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).
- (iii) Neither the execution, delivery or performance by Junior Lender of this Agreement nor compliance by it with the terms and provisions hereof: (i) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of Junior Lender pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement, loan, agreement, partnership agreement or any other agreement, contract or instrument to which Junior Lender is a party or by which it or any of its property or assets is bound or to which it may be subject, or (iii) will violate any provision of the organizational documents of Junior Lender.
- (iv) No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except

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as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with (i) the execution, delivery and performance by Junior Lender of this Agreement or (ii) the legality, validity, binding effect or enforceability of this Agreement with respect to Junior Lender.

- (v) As of the date hereof, the making of the Junior Indebtedness by Junior Lender to Borrower will not result in the imposition of any withholding tax or similar charge or levy payable by Borrower (whether pursuant to Laws or contract).
- (vi) Junior Lender entered into the transactions contemplated by Junior Security Documents and made the Junior Indebtedness without reliance upon any information or advice from Senior Lender. Junior Lender made its own underwriting analysis in connection with the Junior Indebtedness, its own credit review of Borrower and investigated all matters which Junior Lender deemed pertinent thereto.

(c) **Junior Lender Default Notice.** Junior Lender shall copy Senior Lender on all written notices sent to any Borrower with respect to any default or Event of Default under the Junior Security Documents and shall send such notices at the same time and in the same manner delivered to Borrower.

8. **Senior Lender Loan.** (a) Borrower and Senior Lender may at any time, and from time to time, without the consent of or notice to Junior Lender without incurring liability or responsibility to Junior Lender and without impairing or releasing any of Senior Lender's rights hereunder, (i) alter the terms of the Senior Loan Documents or any other instrument or agreement in any way relating to the Senior Loan other than changes or alterations which: (A) increase the rate of interest currently set forth in the Senior Loan Documents, (B) increase the amount of payments required by the Senior Loan Documents or extend the Loan Maturity, (C) increase the Senior Indebtedness (as it is defined herein), (D) cross-default the Senior Indebtedness with any other loan, (E) cross-collateralize the Senior Indebtedness with any other loan, or (F) add additional default provisions to any of the Senior Loan Documents or delete existing notice and cure periods for any default; (ii) sell, exchange, release or otherwise deal with all or any part of any property at any time securing payment of the Senior Indebtedness; (iii) release anyone liable in any manner for the payment or collection of the Senior Indebtedness or any portion thereof; (iv) exercise or refrain from exercising any right against Borrower or others (including Junior Lender); (v) apply any sums received by Senior Lender,

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by whomsoever paid and however realized, to the Senior Indebtedness in such manner as Senior Lender shall deem appropriate.

(b) Junior Lender shall have the right (but not the obligation) to cure any monetary Default under the Senior Loan Documents for a period of ten (10) days after notice thereof from Senior Lender. Junior Lender shall also have the right (but not the obligation) to cure any non-monetary Default under the Senior Loan Documents for a period of thirty (30) additional days after receipt of notice from Senior Lender, so long as during cure period, Junior Lender is timely satisfying (or causing to be timely satisfied) all monetary Obligations under the Senior Loan Documents; provided, however, that if such non-monetary Default is susceptible of cure by the Junior Lender but is of a nature that it cannot be cured within such thirty (30) period and the Junior Lender promptly commences and diligently pursues cure of such non-monetary Default within such original thirty (30) day period, then Junior Lender shall have the right to an extension of such cure period for such period of time as required to cure such default but in no event more than sixty (60) additional days. Junior Lender shall have the right to acquire the Senior Indebtedness at par following the commencement of a foreclosure action by Senior Lender.

## 9. Additional Covenants

(a) If Senior Lender, or Senior Lender's assignee or designee, accepts a deed or other conveyance from Borrower affecting Borrower's interest in the Collateral (or a portion of such interest), in lieu of such Senior Lender's exercise of remedies under the Senior Loan Documents (a "**Deed In Lieu**"), then there shall be no merger between the estate arising under the Senior Loan Documents and the estate conveyed or assigned by such Deed in Lieu. The interests of Senior Lender (or its assignee or designee) as holder of the Senior Loan Documents and holder of the estate transferred by the Deed in Lieu shall remain forever separate and distinct except to the extent that Senior Lender (or its assignee or designee) agrees in writing to the contrary.

(b) Junior Lender shall not provide any "debtor-in-possession financing" to Borrower unless Senior Lender consents in writing to such financing and all the terms thereof. If Junior Lender violates the preceding sentence, then without thereby limiting any other rights or remedies of Senior Lender, any and all liens and payments received by Junior Lender on account of such financing shall be received and held by Junior Lender in trust, as trustee, for the benefit of Senior Lender. Junior Lender shall segregate the payments from other funds and property held by Junior Lender and shall be paid over to Senior Lender and applied as provided in Section 3 hereof.

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## 10. Miscellaneous Provisions.

(a) Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier for next Business Day delivery (effective the Business Day following delivery to such courier), if sent by telecopy with confirmation of receipt and a hard copy mailed in accordance with the provisions of this Section 10 (effective the business day following receipt of confirmation of receipt) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

To Senior lender: CIB Bank  
20527 LaGrange Road  
Frankfort, Illinois 60423-1345  
Attn; Derrick Mars

With a copy to: Francis L. Keldermans  
Holland & Knight  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 407-8404 (fax)

To Borrower: 18-22 East Division, L.L.C.  
c/o SJ Investments, LLC  
55 East Monroe, Suite 1590  
Chicago, Illinois 60603  
Attention: Wayne S. Gilmartin

Copy to: Kathryn Kovitz Arnold  
Shelsky & Froelich, Ltd.  
444 N. Michigan Avenue Suite 2500  
Chicago, Illinois 60611

Junior Creditor: J.F.J. Development Co.  
2506 N. Clark Street  
Suite 288  
Chicago, Illinois 60614  
Attn: Jonathan H. Zitzman

(b) **Continuing Validity.** Except as provided in this Agreement, the terms and provisions of the Junior Security Documents and the Senior Loan Documents shall remain in full force and effect.

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(c) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their successors and assigns.

(d) **Complete Agreement.** This Agreement contains all of the agreements and conditions made between the parties regarding the subject matter hereof, supersedes prior negotiations and agreements regarding the subject matter hereof, and may not be modified orally or in any manner other than by an agreement in writing signed by Senior Lender, Junior Lender and Borrower.

(e) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(f) **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) **Further Assurances.** Junior Lender will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers, pledges and assurances as Senior Lender reasonably may require or deem desirable for the better assuring and confirming the subordination as described herein.

(h) **Exhibits.** All exhibits referenced herein are incorporated in this Agreement by reference.

(i) **Terminology.** All personal pronouns used in this Agreement whether used in the masculine, feminine or neuter gender shall include all other genders. The singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the substantive provision of this Agreement itself.


[Signature Page Follows]

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**IN WITNESS WHEREOF**, Senior Lender, Junior Lender and each Borrower have executed and delivered this Agreement under seal as of the date first above written.


**SENIOR LENDER:**

**CIB BANK**, an Illinois banking corporation

By:   
Derrick Mars  
Senior Vice President

**JUNIOR LENDER:**

**J.F.J. DEVELOPMENT CO.**, an Illinois corporation

By:   
Printed Name: Jon Zitzman  
Printed Title: President

**BORROWER:**

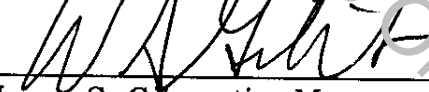
**18-22 East Division, L.L.C.**


an Illinois limited liability company

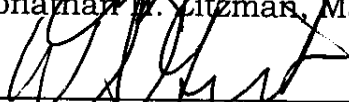
By: Its Manager


Equity Development Group, L.L.C.

an Illinois limited liability company

By:   
Wayne S. Gilmartin, Manager

By:   
Jonathan H. Zitzman, Manager

  
Wayne S. Gilmartin, individually

  
Jonathan H. Zitzman, individually

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I James D. Loughlin, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathan Zitema, the Manager of **J.F.J. Development Co.** is 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 for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25 day of July, 2003.

James D. Loughlin  
Notary Public

My Commission Expires: 5/05/07



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I CAROL WITTE, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Derrick Mars**, SVP of **CIB Bank** is 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 for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25 day of July, 2003.



Carol Witte  
Notary Public

My Commission Expires: \_\_\_\_\_

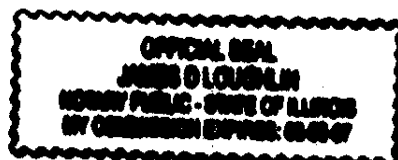
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

I JAMES D. LAUGHLIN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Wayne S. Gilmartin** is 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 for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25 day of July, 2003.

James D. Laughlin  
Notary Public

My Commission Expires: 05/05/07





# UNOFFICIAL COPY

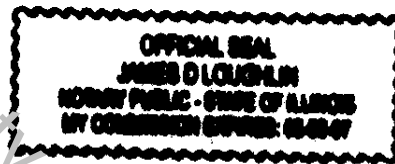
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF \_\_\_\_\_ )

I JAMES D. LOUGHLIN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Jonathan H. Zitzman** is 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 for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25 day of July, 2003.

James D. Loughlin  
Notary Public

My Commission Expires: 05/05/07



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## EXHIBIT A

### THE PROPERTY

LOTS 1, 2 AND 3 IN RESUBDIVISION OF LOTS 13, 14 AND 15 IN BLOCK 10 IN STONE'S SUBDIVISION OF ASTOR'S ADDITION TO CHICAGO IN THE NORTH FRACTIONAL 1/2 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 17-03-112-021  
17-03-112-022

Commonly known as: 18-22-East Division St.  
Chicago, IL

CHO1 #1285676 v3

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