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Doc#: 0400839088
Eugene "Gene" Moore Fee: \$46.50
Cook County Recorder of Deeds
Date: 01/08/2004 01:52 PM Pg: 1 of 12

INTERCREDITOR AND SUBORDINATION AGREEMENT

This Intercreditor and Subordination Agreement ("Agreement") is made and entered into as of the 1st day of October, 2003, between the City of Chicago, acting by and through its Department of Planning and Development (the "City"), and National City Bank of Michigan/Illinois (the "Lender").

WITNESSETH:

WHEREAS, BGP Lincoln Village, L.L.C., an Illinois limited liability company (the "Developer"), has purchased certain property located within the Lincoln Avenue Redevelopment Project Area at 6055-6199 N. Lincoln Avenue and 6201 N. McCormick Road, Chicago, Illinois and legally described on Exhibit A hereto (the "Property"), in order to complete the redevelopment of the existing Lincoln Village Shopping Center (the "Project") as more specifically described in that certain Lincoln Village Shopping Center Redevelopment Agreement between the Developer and the City dated June 17, 2002 and previously recorded in the Recorder's Office of Cook County on June 24, 2002 as document number 0020700951 ("Redevelopment Agreement"); and

WHEREAS, the Developer and Lender, have entered into that certain Construction Loan Agreement dated as of March 29, 2002 pursuant to which the Lender agreed to make a loan to the Developer for the Project in an amount not to exceed Twenty Million Dollars (\$20,000,000.00) (the "Construction Loan"), which Construction Loan was evidenced by a note executed by the Developer in favor of the Lender, and the repayment of the Construction Loan was secured by, among other things, a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 29, 2002 granted by the Developer to the Lender and previously recorded in the Recorder's Office of Cook County on April 5, 2002 as document number 0020389644; and

WHEREAS, the Developer and the City entered into the Redevelopment Agreement in order to obtain additional financing for the Project (the "Redevelopment Agreement," referred to herein along with various other agreements and documents related thereto as the "City Agreements"); and

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WHEREAS, pursuant to the Redevelopment Agreement, the Developer agreed to be bound by certain covenants expressly running with the Property, as set forth in Sections 8.02, 8.06, 8.19, 8.20, and 8.22 of the Redevelopment Agreement (the "City Encumbrances"); and

WHEREAS, in connection with the Construction Loan, the Developer and the City entered into that certain Intercreditor and Subordination Agreement dated June 17, 2002 and previously recorded in the Recorder's Office of Cook County on June 24, 2002 as document number 0020700950 ("Original Intercreditor and Subordination Agreement") wherein the City and Lender agreed, among other matters, that the rights, interests and claims of Lender in the Property pursuant to the Construction Loan Documents are and shall be subject and subordinate to the City Encumbrances and that the Construction Mortgage is deemed an "Existing Mortgage" and a "Permitted Mortgage" for purposes of Section 16 of the Redevelopment Agreement; and

WHEREAS, the Developer and Lender have entered into that certain Loan Agreement dated as of September 1, 2003 pursuant to which Lender has agreed to make a term loan to the Developer in order to refinance and pay off in full the Construction Loan and pay for certain other costs in an amount not to exceed Twenty-Three Million Five Hundred Thousand Dollars (\$23,500,000.00) ("Loan"), which Loan is evidenced by a Note executed by Developer in favor of Lender ("Note"), and the repayment of the Loan is secured by, among other things, a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of September 1, 2003 granted by the Developer to Lender and previously recorded in the Recorder's Office of Cook County on _____ as document number _____ ("Mortgage"), and together with such other agreements referred to above and otherwise relating to the Loan (referred to herein collectively as the "Loan Documents"); and

WHEREAS, the City and Lender desire to set forth certain additional agreements between the parties relating to the Redevelopment Agreement consistent in all material respects, with the terms of the Original Intercreditor and Subordination Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances, which shall survive any foreclosure of the Lender's Mortgage and be binding upon any successor in title to the Developer for the time period set forth in the Redevelopment Agreement. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit (a) the Lender's right to receive, and the Developer's ability to make, payments and prepayments of principal and interest on the Note and other sums due and owing Lender under the terms of the Loan Documents, or to exercise its rights pursuant to the Loan Documents except as provided herein, or (b) the City's right to exercise its rights and remedies under the Redevelopment Agreement.

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2. Permitted Mortgage. By executing this Agreement, the City hereby consents to the Mortgage and acknowledges and agrees that, for purposes of Section 16 of the Redevelopment Agreement, the Mortgage is deemed an "Existing Mortgage" and a "Permitted Mortgage".

3. Covenants Running with Land. Notwithstanding anything to the contrary or inconsistent contained in this Agreement or in the Redevelopment Agreement, the parties acknowledge and agree that in the event Lender or its successors acquires title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, or otherwise, the Lender and its successors shall be bound only by the provisions of the Redevelopment Agreement consisting of the City Encumbrances without personal liability therefore (i.e., any exercise by the City of its rights and remedies under the Redevelopment Agreement shall, vis-a-vis the Lender, be solely against the Lender's interest in the Property), which the City does hereby waive and relinquish.

4. Forbearance. In the event Lender or its successors acquires title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, or otherwise, the City agrees to forbear from pursuing and exercising any available rights and remedies against Lender or its successors under the Redevelopment Agreement, at law, in equity or otherwise arising out of or relating to Lender's failure to complete the Project, including, without limitation, the remedy of specific performance, or the exercise of its right to terminate the Redevelopment Agreement, for so long as Lender is actively pursuing the sale and/or conveyance of the Property to a third party that shall take subject to the Redevelopment Agreement, but in no event shall the forbearance exceed the term of twelve (12) months from the date Lender acquires title to the Property or any portion thereof.

5. City Note. The Lender acknowledges that, notwithstanding any pledge or assignment of the City Note (as defined in the Redevelopment Agreement) by the Developer to the Lender, the City (subject to the 12 month forbearance period provided for in Paragraph 4 during which the City shall have no obligation to make any payment of City Funds (as defined in the Redevelopment Agreement)) shall have the right to terminate payments under the City Note in accordance with the terms of the Redevelopment Agreement, and the City shall, consistent with Section 16(b) of the Redevelopment Agreement, never have any obligation to make any payments of City Funds to the Lender unless the City, in its sole discretion, elects to make such payments.

6. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to the Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively, and (b) copies of waivers, if any, of the Developer's default in connection therewith. Under no circumstances shall the Developer or any third party be entitled to rely upon the agreement provided for herein.

7. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the 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 of the City or the Lender in any other respect at any other time.

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8. Governing Law: Binding Effect. This Agreement shall be interpreted and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

9. Section Titles: Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

10. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

IF TO THE CITY: City of Chicago
Department of Planning and Development
121 N. LaSalle, Room 600
Chicago, IL 60602
Attn: Commissioner

WITH COPIES TO: City of Chicago
Department of Law
121 N. LaSalle, Room 600
Chicago, IL 60602
Attn: Finance and Economic
Development Division

IF TO LENDER: National City Bank of Michigan/Illinois
One North Franklin Street, Suite 3600
Chicago, IL 60606
Attn: Laura Auwerda

WITH COPIES TO: Robbins, Salomon & Patt, Ltd
25 E. Washington, Suite 1000
Chicago, IL 60602
Attn: Andrew M. Sachs

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any

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notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

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IN WITNESS WHEREOF, this Intercreditor and Subordination Agreement has been signed as of the date first written above.

NATIONAL CITY BANK OF MICHIGAN ILLINOIS

By: [Signature]
Its: Senior Vice President

CITY OF CHICAGO, acting by and through its Department of Planning and Development

By: [Signature]
Alicia Mazur Berg, Commissioner

ACKNOWLEDGED AND AGREED TO THIS DAY OF _____, 2003

BGP LINCOLN VILLAGE, L.L.C., an Illinois limited liability company

By: [Signature]
Its: Manager

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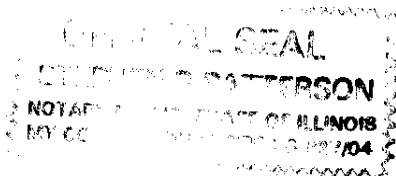
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I Stephen R. Patterson, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Alicia Mazur Berg, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") and 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 as such Commissioner, she signed and delivered the said instrument pursuant to authority, as her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 18th day of December, 2003.

Stephen R. Patterson
NOTARY PUBLIC

My Commission Expires: Jan 27, 2004



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, FRANCIS S GRIFFIN Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Leino Luuwerda, who is personally known to me to be the 3rd Vice President of National City Bank of Michigan/Illinois, and personally known by 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, sealed and delivered said instrument pursuant to the authority given to him by said Bank as his free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 2nd day of December, 2003.

Francis S Griffin
NOTARY PUBLIC

My Commission Expires: 12/29/2005



This Instrument Prepared by and
After Recording Return to:

ANDREW M. SACHS, ESQ.
ROBBINS, SALOMON & PATT, LTD.
25 East Washington Street, Suite 1000
Chicago, Illinois 60602

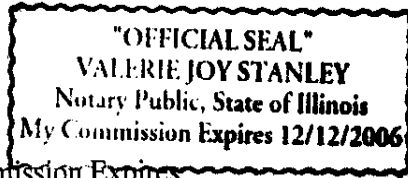
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Valerie J. Stanley Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that Scott Gendell, who is personally known to me to be the managing member of BGP Lincoln Village, L.L.C., an Illinois limited liability company (the "Developer"), and personally known by 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/she signed, sealed and delivered said instrument pursuant to the authority given to him/her by the members of the Developer, as his/her free and voluntary act and as the free and voluntary act of said Developer for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 10th day of December, 2003.

Valerie Joy Stanley
NOTARY PUBLIC



My Commission Expires. _____

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 1:

That part of the Northeast Fractional 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows:

Beginning at the intersection of the West line of the right of way of the Sanitary District of Chicago and the center line of Lincoln Avenue as formerly located; thence Northwesterly along the center line of Lincoln Avenue as formerly located 1200 feet; thence Northeasterly on a line at right angles to said center line of Lincoln Avenue, 168.8 feet; thence East 679.5 feet to said West line of the right of way of the Sanitary District of Chicago; thence Southerly along the West line of said right of way 918.73 feet to the point of beginning (except that part lying Southwesterly of a line 83 feet Northeasterly of and parallel to the Southerly or Southwesterly line of Lincoln Avenue as formerly located) and excepting that part of the premises in question described as follows:

That part of the Northeast 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the intersection of the center line of Lincoln Avenue and the center line of Kimball Avenue extended North; thence Northwesterly 20.90 feet along the center line of Lincoln Avenue to a point; thence Northeasterly 50 feet along a line forming an angle of 90 degrees with the last described course, to a point on the Northeasterly right of way line of Lincoln Avenue, which is the point of beginning; beginning at aforesaid described point; thence Northeasterly 118.80 feet, along a line forming an angle of 90 degrees with the Northeasterly right of way line of Lincoln Avenue to a point; thence Easterly 93.56 feet along a line forming an angle of 49 degrees 16 minutes to the right with a prolongation of said last described course to a point; thence Southwesterly 179.85 feet along a line forming an angle of 130 degrees 44 minutes to the right with a prolongation of said last described course to a point on the Northeasterly right of way line of Lincoln Avenue; thence Northwesterly 70.90 feet along the Northeasterly right of way line of Lincoln Avenue to the point of beginning, as condemned for Kimball Avenue on petition of the City of Chicago filed July 6, 1933, Case B-271453, Circuit Court of Cook County, Illinois.

ALSO EXCEPT THAT CONVEYED BY DEED RECORDED AUGUST 3, 2001 AS DOCUMENT NO. 0010707219 TO THE PEOPLE OF THE STATE OF ILLINOIS-DEPARTMENT OF TRANSPORTATION FOR HIGHWAY PURPOSES.

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PARCEL 2:

Easement for the benefit of Parcel 1 as created and defined in an Easement Agreement dated July 16, 1984 and recorded January 10, 1985 as Document 27,402,551 for pedestrian and vehicular ingress and egress over, upon and across the following described parcel:

That part of the Northeast Fractional Quarter of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, lying Southeasterly of Kimball Avenue (McCormick Boulevard), Northeasterly of the center line of Lincoln Avenue and Westerly of the West line of the Sanitary District of Chicago described as follows: Being a strip of land 12 feet wide as measured at right angles, lying North of the following described lines: beginning at a point on the Westerly line of the Sanitary District of Chicago 918.73 feet Northwesterly of the center line of Lincoln Avenue; thence North 90 degrees West 585.57 feet to a point of termination of said line on the Easterly line of McCormick Boulevard, 230.13 feet Northerly of the center line of Lincoln Avenue, as measured along the Easterly line of McCormick Boulevard; and bounded on the East by the West line of the Sanitary District of Chicago and on the West by the Easterly right of way line of McCormick Boulevard, all in Cook County, Illinois.

PARCEL 3:

Leasehold Estate as created by that certain indenture of Lease between Metropolitan Water Reclamation District of Greater Chicago, Lessor, and BGP Lincoln Village, L.L.C., Lessee, made March 21, 2002 and recorded August 15, 2003 as Document No. 032272718. Said Lease demises the following described land for a term beginning January 1, 2003 and ending on December 31, 2063:

PARCEL A:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West along the Northeasterly right-of-way line of Lincoln Avenue 462.72 feet to the point of beginning; thence continuing North 50 degrees 57 minutes 58 seconds West along said Northeasterly line 115.00 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 05 minutes 31 seconds West, along said Westerly line, 275.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 115.00 feet; thence South 8 degrees 43 minutes 31 seconds East, 275.01 feet; thence South 13 degrees 49 minutes 19 seconds West, 93.07 feet to the point of beginning.

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PARCEL B:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West, along the Northeasterly right-of-way line of Lincoln Avenue, 577.72 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 8 minutes 31 seconds West, along said Westerly line, 275.00 feet to the point of beginning; thence continuing North 9 degrees 08 minutes 31 seconds West, 285.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 118.00 feet; thence South 8 degrees 52 minutes 20 seconds East, 285.00 feet; thence South 80 degrees 51 minutes 29 seconds West, 115.00 feet to the point of beginning.

PARCEL C:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West, along the Northeasterly right-of-way line of Lincoln Avenue, 577.72 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 08 minutes 31 seconds West, along said Westerly line, 560.00 feet to the point of beginning; thence continuing North 9 degrees 08 minutes 31 seconds West, 285.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 145.00 feet; thence South 8 degrees 44 minutes 24 seconds East, 285.01 feet; thence South 80 degrees 51 minutes 29 seconds West, 143.00 feet to the point of beginning.

All of said Parcels A, B and C being in Cook County, Illinois.

Common Address: 6101-6199 North Lincoln Avenue, Chicago, Illinois 60035

P.I.N.: 13-02-220-027
13-02-220-208
13-02-220-035-8002