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1998-12-16 07:57:14
Cook County Recorder 31.00



08140614

Prepared by and after recording mail to:

Steven C. Roper
Lord, Bissell & Brook
115 S. LaSalle Street
Chicago, IL 60603

- P.I.N. 17-17-208-001-0000
- 17-17-208-002-0000
- 17-17-208-005-0000
- 17-17-208-006-0000
- 17-17-208-007-0000
- 17-17-208-009-0000
- 17-17-208-010-0000
- 17-17-208-016-0000
- 17-17-208-017-0000
- 17-17-208-018-0000

Common Address: 21 South Peoria, Chicago, IL

SUBORDINATION AGREEMENT

This Subordination Agreement (this "Agreement") is made as of August 14, 1998 by John Melk, an individual (John Melk, together with his successors, permitted assigns, heirs and representatives referred to herein as "Junior Mortgagee") in favor of American National Bank and Trust Company of Chicago, a national banking association (together with its successors and assigns, referred to herein as "Senior Mortgagee").

RECITALS

WHEREAS, H2O Plus, L.P., a Delaware limited partnership ("Borrower"), has previously executed and delivered a Construction Mortgage, Assignment of Leases and Security Agreement dated as of December 23, 1993 in favor of Senior Mortgagee encumbering the land described on Exhibit A hereto (the "Original Mortgage") securing certain indebtedness in the principal amount of up to \$4,000,000 and recorded as document 03063992 with the Recorder of Deeds of Cook County, Illinois;

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WHEREAS, Borrower has requested Senior Mortgagee to advance additional funds to Borrower and in connection therewith to increase the amount of indebtedness secured by the Original Mortgage to \$4,800,000 pursuant to the terms of a Memorandum of Modification to Mortgage dated as of August 14, 1998 (the "Mortgage Modification");

WHEREAS, Borrower has previously entered into a certain Mortgage dated February 2, 1998 and recorded May 4, 1998 as document 98364678 (the "Junior Mortgage") in favor of Junior Mortgagee to secure indebtedness in the amount of \$500,000 (such indebtedness, together with any other indebtedness now or hereafter secured by the Junior Mortgage, referred to as herein the "Junior Indebtedness");

WHEREAS, Senior Mortgagee is unwilling to advance certain funds to Borrower unless Junior Mortgagee enters into this Agreement.

WHEREAS, Junior Mortgagee will receive substantial direct and indirect benefits from the making of additional loans to Borrower by Senior Mortgagee.

NOW, THEREFORE, it is agreed as follows.

1. Junior Mortgagee hereby agrees that the Junior Mortgage and all rights and interests of Junior Mortgagee therein are now and at all times shall continue to be in all respects subject and subordinate to the lien of the Senior Mortgage and to all renewals, modifications, consolidations, replacements and extensions thereof. As used herein, "Senior Mortgage" means the Original Mortgage, as amended by the Mortgage Modification and as further heretofore or hereafter amended, supplemented, renewed or extended. As used herein, "Senior Indebtedness" means all indebtedness secured by the Senior Mortgage or as otherwise owing by Borrower to Senior Mortgagee, whether for principal, interest fees or other charges whatsoever.

2. Until the Senior Indebtedness is paid and performed in full, Junior Mortgagee agrees that he shall not:

- (i) ask, demand, sue for, take or receive from Borrower, by set-off or in any other manner, the whole or any part of the Junior Indebtedness;
- (ii) exercise any of the remedies under the Junior Mortgage or any other remedies available at law or equity to Junior Mortgagee with respect to the Junior Indebtedness;
- (iii) agree to any amendment, modification or supplement to the Junior Mortgage or the Junior Indebtedness; or
- (iv) assign, transfer or sell all or any portion of the Junior Indebtedness or the Junior Mortgage or any rights therein.

3. In the event of any insolvency, bankruptcy, receivership, liquidation, custodianship, reorganization, assignment for the benefit of creditors, foreclosure or other judicial proceeding or non-judicial action for the liquidation, dissolution or winding up of Borrower, any payment or distribution that, but for the terms hereof, otherwise would be payable or deliverable in respect of the Junior Indebtedness shall be paid or delivered directly to the Senior Mortgagee for application to the Senior Indebtedness until the Senior Indebtedness is paid in full. Junior Mortgagee irrevocably authorizes and empowers Senior Mortgagee to demand, sue for, collect and receive every such payment or distribution described herein.

4. If, notwithstanding the provisions of this Agreement, any payment or distribution is received by Junior Mortgagee in contravention of the terms of this Agreement, and before payment in full of the Senior Indebtedness, such payment or distribution shall not be commingled with any other assets of Junior Mortgagee, and shall be held in trust by Junior Mortgagee for application to payment of the Senior Indebtedness.

5. No payment or distribution of any kind to which Junior Mortgagee would have been entitled except for the provisions of this Agreement and which was made to or for the account of Senior Mortgagee shall, as between Borrower and Junior Mortgagee, be deemed to be a payment or distribution by Borrower to or for the account of Junior Mortgagee.

6. Junior Mortgagee represents and warrants to Senior Mortgagee that Junior Mortgagee has not previously assigned all or any part of the Junior Mortgage or Junior Indebtedness, and that no other person or entity owns any interest or rights therein.

7. This Agreement shall continue and shall be irrevocable until all the terms and conditions of the Senior Indebtedness and Senior Mortgage are paid and performed in full by Borrower. Junior Mortgagee shall not be released nor shall Junior Mortgagee's obligations hereunder be in any way diminished, by (i) any further modification, amendment or supplement of the Senior Indebtedness or the Senior Mortgage, (ii) any extension of time for payment granted Borrower by Senior Mortgagee, (iii) any action taken by Senior Mortgagee under the Senior Mortgage in exercise of any right thereby confined, or (iv) any delay, failure or omission on the part of Senior Mortgagee to enforce any such right.

8. All loans and advances made by Senior Mortgagee to Borrower shall be deemed to have been made in reliance upon this Agreement. Junior Mortgagee agrees that Senior Mortgagee shall have no liability to Junior Mortgagee for, and Junior Mortgagee waives any claim which Junior Mortgagee may now or hereafter have against Senior Mortgagee arising out of, any and all actions which Senior Mortgagee may take with respect to the Senior Mortgage and the Senior Indebtedness.

9. This Agreement shall be governed by the laws of the State of Illinois (excluding choice of law provisions).

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

[Handwritten signature of John Melk]

John Melk

STATE OF ILLINOIS)
COUNTY OF Cook) SS

I, Margaret A. Dudek, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY that John Melk, an individual, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me in person and acknowledged that he signed and delivered the said instrument, as such person's free and voluntary act for the uses and purposes therein set forth.

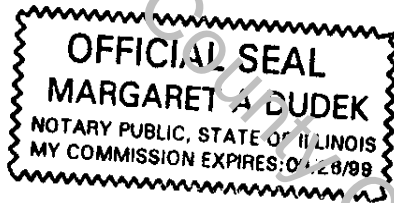
GIVEN under my hand and notarial seal, this 14th day of October, 1998.

Margaret A. Dudek
Notary Public

My Commission Expires:

Sept. 26, 1999

H2OAMD9.SB1



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ACKNOWLEDGMENT

H2O Plus, L.P., a Delaware limited partnership, hereby accepts and agrees to the terms of the foregoing Agreement and agrees that it shall not pay any of the Junior Indebtedness except as provided by the foregoing Agreement.

H2O Plus, L.P.

By: H2O Plus, Inc., its sole general partner

By: [Signature]

Name: John J. Melt

Title: Chairman

Attest: [Signature]

Name: Roger Marks

Title: Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, Margaret A. Dudek, a notary public in and to the County and State aforesaid, DO HEREBY CERTIFY that John J. Melt, the Chairman of H2O Plus, Inc., a Delaware corporation ("Corporation"), which Corporation is the sole general partner of H2O Plus, L.P., a Delaware limited partnership, and Roger Marks, the Secretary of said Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers appeared before me in person and acknowledged that they signed and delivered the said instrument pursuant to the authority given by said Corporation as such officers' free and voluntary act and as a free and voluntary act and deed of the Corporation and such limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14th day of October, 1998.

Margaret A. Dudek
Notary Public

My Commission Expires:

Sept. 26, 1999

H2OAMD9.SB1



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EXHIBIT A

08140614

LOTS 3 TO 16, ALL INCLUSIVE, IN BLOCK 2 IN DUNCAN'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

H2OAMD9.SB1

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2