

# UNOFFICIAL COPY

THIS DOCUMENT WAS PREPARED BY AND  
WHEN RECORDED MAIL TO:

Shefsky, Saitlin & Proelich, Ltd.  
444 North Michigan Avenue  
Suite 2300  
444 North Michigan Avenue  
Chicago, Illinois 60611  
Attn: Steven E. Silverman, Esq.

89049720

BOOK #

## SUBORDINATION AGREEMENT

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THIS SUBORDINATION AGREEMENT is made and entered into as of December 10, 1988 by, between and among American National Bank and Trust Company of Chicago, a National Banking Association, (the "Senior Lender"), LaSalle National Bank, a National Banking Association, of Chicago, Illinois, not personally, but solely as Trustee under Trust Agreement dated September 22, 1987 and known as Trust No. 112654 and VMS/MCL Venture, an Illinois general partnership (collectively, the "Borrower"), and VMS Mortgage Investors L.P. III, a Delaware limited partnership (the "Subordinated Lender").

### RECITALS:

A. Senior Lender has extended credit to Borrower pursuant to those certain Mortgage Notes dated as of October 29, 1987 in the principal sums of \$5,000,000.00; \$6,000,000.00 and \$4,000,000.00 (hereinafter referred to collectively as the "Senior Note") and secured by, among other things, that certain Mortgage and Security Agreement dated October 29, 1987 and filed October 30, 1987 as Document LR 3663825 and recorded as document number 87-588145 made by the Borrower in favor of Senior Lender (the "Senior Mortgage"), and that certain Assignment of Leases, Rents, Sales Contracts and Proceeds of even date therewith (the "Senior Assignment"); the Senior Mortgage, the Senior Assignment and the Senior Note are hereinafter collectively referred to as the "Senior Loan Documents") which Senior Mortgage and Assignment constitute liens or encumbrances on that certain real property legally described on Exhibit A attached hereto and made a part hereof (the "Property") and the improvements located and to be constructed on the Property (the "Project").

B. Subordinated Lender has extended credit to Borrower pursuant to that certain Note dated May 9, 1988 in the original principal sum of \$4,251,000.00 (the "Subordinated Note"), which is secured by, among other things, that certain Mortgage on the

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Project dated May 9, 1988 and recorded on May 13, 1988 as Document 88205588 and Document LR 8707665, respectively, in the offices of the Recorder of Deeds and Registrar of Torrens Titles of Cook County, Illinois (the "Subordinated Mortgage"); the Subordinated Note and the Subordinated Mortgage are sometimes hereinafter collectively referred to as the "Subordinated Loan Documents").

C. Borrower has requested and Lender has agreed to extend additional credit to the Borrower in the amount of \$3,500,000 and amend the Senior Loan Documents to provide for the additional borrowing of the \$3,500,000 and to amend certain other provisions of the Senior Loan Documents pursuant to a certain Modification of Note, Mortgage and Construction Loan Agreement dated the 31st day of December, 1986 (the "Senior Modification").

D. As a condition to extending the additional credit to Borrower, Subordinated Lender has agreed that the Subordinated Mortgage and the obligations of Borrower to Subordinated Lender be subordinated to the Senior Loan Documents as modified and increased by the Senior Modification and the obligations of Borrower running to Senior Lender pursuant to the Senior Loan Documents and the Senior Modification.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by each of the parties hereto, it is agreed as follows:

1. Subordination of Interests. All references herein to the term "Senior Loan Documents" shall mean collectively, the Senior Loan Documents and the Senior Modification. All now existing or hereafter arising interests of Subordinated Lender (including, but not limited to, the lien of the Subordinated Mortgage) in the Property and the Project (and all leases, rents, income, profits and other revenues therefrom), pursuant to the Subordinated Note and Mortgage shall be and are hereby declared to be subject, junior and subordinate to all now existing or hereafter arising rights or interests in the Property and the Project held by Senior Lender pursuant to the Senior Loan Documents.

2. Subordination of Other Collateral and Proceeds. All now existing or hereafter arising rights and interests of Subordinated Lender in all tangible and intangible personal property in which a security interest or lien arises under the Senior Loan Documents ("Personal Property"), and all products and proceeds of the Personal Property, including, without limitation, all insurance and condemnation proceeds, shall be and hereby are declared to be subject, junior and subordinate to all now exist-

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ing or hereafter arising rights or interests of Senior Lender in the Personal Property and all products and proceeds of the Personal Property.

3. Extent of Subordination. The subordinations provided for in paragraphs 1 and 2 above shall remain in full force and effect until all now existing or hereafter arising obligations of Borrower under the Senior Loan Documents are paid and satisfied in full and Senior Lender has no further obligations to advance additional funds with respect to the Project under the Senior Loan Documents, which obligations of Borrower shall include, without limitation, the obligation to pay to Senior Lender:

(a) all outstanding balances of principal, interest and applicable penalties on the Senior Note;

(b) all fees, charges, costs and expenses incurred by Senior Lender in preparing or amending the Senior Loan Documents, including reasonable attorneys' fees;

(c) all fees, charges, costs and expenses incurred by Senior Lender in protecting the lien of the Senior mortgage or the lien or security interest applicable to other collateral pledged to Senior Lender;

(d) all fees, charges, costs and expenses, including reasonable attorneys' fees, incurred by Senior Lender in enforcing its rights and remedies under the Senior Loan Documents or applicable law.

All the foregoing obligations of Borrower are hereinafter referred to as the "Senior Loan Obligations."

4. Conflicting Terms. In the event of any conflict between the provisions of this Subordination Agreement and the provisions of the Subordinated Loan Documents, the provisions of this Subordination Agreement shall be deemed to be controlling.

5. Attachment, Perfection. The rights and interests subordinated hereby and the priorities established hereby shall bind the parties hereto, irrespective of the attachment, filing, perfection or lack thereof of the security interests, liens or other interests held by the parties under their respective loan documentation.

6. Senior Loan. Senior Lender represents and warrants to Subordinated Lender that:

a) the Senior Loan Documents are in full force

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and effect:

b) upon payment in full of the principal, accrued interest, and other indebtedness evidenced or secured by the Senior Loan Documents, Senior Lender will release in full its interest in the Property, the Project and the Personal Property;

c) Senior Lender is the current holder of all rights, title and interest in and to the Senior Loan Documents and has not agreed to assign or convey all or any portion of its interest in the Senior Loan Documents to any person or entity;

d) Senior Lender consents to the execution, delivery, and recording of the Subordinated Loan Documents and to the best knowledge of Senior Lender, there is no default under any of the Senior Loan Documents;

e) The maximum principal amount to be advanced by Senior Lender to Borrower under the Senior Loan Documents shall not exceed the sum of \$18,500,000 exclusive of protective advances and interest.

7. Partial Releases. Until the Senior Lender has been paid in full, Subordinated Lender hereby agrees not to exercise its discretion but to automatically execute and deliver partial releases of the lien of the Subordinated Mortgage upon the sale and conveyance of Units (as defined in the Subordinated Mortgage) simultaneously, with the execution and delivery of partial releases of the Senior Mortgage for the same Units.

8. Notice of Default and Opportunity to Cure. Subordinated Lender expressly agrees to deliver to Senior Lender a copy of any notice of default under the Subordinated Loan Documents and to afford Senior Lender the same opportunity to cure as is afforded Borrower under the Subordinated Loan Documents. Subordinated Lender agrees to accept performance by Senior Lender as performance and cure of any such defaults under the Subordinated Loan Documents.

Senior Lender agrees to use its best efforts to give Subordinated Lender notice of default under the Senior Loan Documents and to afford Subordinated Lender the same opportunity to cure as is afforded Borrower under the Senior Loan Documents. Senior Lender agrees to accept performance by Subordinated Lender as performance and cure of any such defaults under the Senior Loan Documents.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or

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render unenforceable any other provision hereof.

10. Amendments, Changes or Modifications. Except as otherwise herein provided, this Agreement may be effectively amended, changed, modified, altered or terminated only in writing signed by the party against whom enforcement of such amendment, change or modification is sought.

11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

12. Recitals. The above Recitals are true and correct as of the date hereof and constitute part of this Agreement.

13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

14. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be the original, and all of which shall constitute but one in the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

BORROWER:

VMS/KCL Venture, an Illinois general partnership

By: VMS Embassy Club, Inc., an Illinois corporation, A General Partner

By: [Signature]  
Name: Robert Burton  
Title: VMS President

- and -

By: Embassy Club Development Corporation, an Illinois corporation, A General Partner.

By: [Signature]  
Name: James M. [unclear]  
Title: President

- and -

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Trustee's Exoneration Rider Attached Hereto And Made A Part Hereof  
LaSalle National Bank, as  
Trustee as aforesaid and not  
personally

By: [Signature]  
Name: Corinne Hoz  
Title: ASSISTANT VICE PRESIDENT

ATTEST: [Signature]  
Its: ASSISTANT SECRETARY  
Rita Ellen Koster

SENIOR LENDER:

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO, a  
National Banking Association

By: [Signature]  
Name: Mary W Brown  
Title: AND Vice President

ATTEST:

Its:

[Signature]  
Asst Secretary

SUBORDINATED  
LENDER

VMS MORTGAGE INVESTORS L.P.  
III, a Delaware limited part-  
nership

By: VMS Mortgage Investors  
III, Inc., an Illinois  
corporation, Its Managing  
General Partner

By: [Signature]  
Name: Loyd J. [unclear]  
Title: Vice President

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

1989 FEB -1 PM 11: 27

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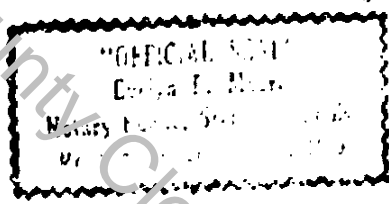
STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK    )

I, Evelyn F. Moore, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY THAT Rita Ellen Welter Vice President of LASALLE NATIONAL BANK, and Rita Ellen Welter Assistant Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the Said Assistant Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said Bank, did affix the said corporate seal of said Bank to said instrument as his own 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 Notarial Seal this 31st day of January, 1989.

Notary Public *Evelyn F. Moore*

My commission expires: 8-9-89



This instrument is executed by LASALLE NATIONAL BANK, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants, and conditions to be performed by LASALLE NATIONAL BANK are undertaken by it solely as Trustee as aforesaid, and not individually, and no personal liability shall be asserted to be enforceable against LASALLE NATIONAL BANK by reason of anything contained in said instrument, or in any previously executed document, whether or not executed by said LASALLE NATIONAL BANK, either individually or as Trustee as aforesaid, relating to the subject matter of the attached agreement, all such personal liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder. No duty shall rest upon LASALLE NATIONAL BANK, personally or as said Trustee, to sequester the rents, issues and profits arising from the disposition thereof; but so far as said trustee and its successors and said LASALLE NATIONAL BANK personally are concerned, the legal holders or holders of this instrument and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged real estate for the payment thereof, by enforcement of the lien heretofore created in the manner provided therefore and as provided in said note or by action to enforce the personal liability of the guarantor, if any.

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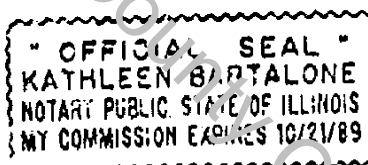
STATE OF ILLINOIS     )  
                                  )     ss.  
COUNTY OF COOK        )

I, the undersigned, a NOTARY PUBLIC, in and for the County and State aforesaid, DO HEREBY CERTIFY, that personally known to me to be the President of Embassy Club Development Corporation, an Illinois corporation which is a general partner of VMS/MCL Venture, an Illinois general partnership (the "Mortgagor") 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 as such, he signed and delivered the foregoing instrument pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation on behalf of the Mortgagor, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of January, 1989.

Kathleen Bartalone  
Notary Public

My commission expires:



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01/25/2011



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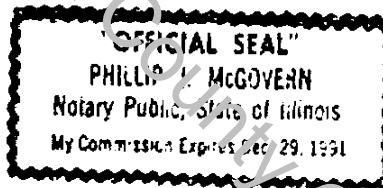
STATE OF ILLINOIS )  
                          )     ss.  
COUNTY OF COOK     )

I, the undersigned, a NOTARY PUBLIC, in and for the County and State aforesaid, DO HEREBY CERTIFY, that personally known to me to be the Vincent P. S. [unclear] of VMS Embassy Club, Inc., an Illinois corporation which is a general partner of VMS/MCL Venture, an Illinois general partnership (the "Mortgagor") 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 as such, he signed and delivered the foregoing instrument pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation on behalf of the Mortgagor, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19<sup>th</sup> day of January, 1989.

Phillip V. McGovern  
Notary Public

My commission expires:



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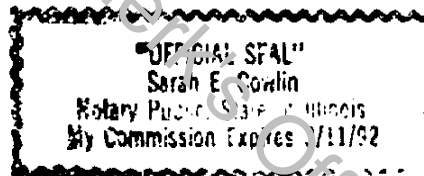
STATE OF Illinois )  
COUNTY OF COOK ) ss

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify, that the abovenamed MARY W. BROWN and JAMES E. PHILLIPS, Vice-President and Assistant Secretary of the American National Bank and Trust Company of Chicago, a National Banking Association, (referred to in the within instrument as the "Senior Lender") personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said National Banking Association for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal and said National Banking Association caused the corporate seal of said National Banking Association to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said National Banking Association for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 30th day of January, 1989.

Sarah E. Cowlin  
NOTARY PUBLIC

My Commission Expires:



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

#### PARCEL 1:

LOTS 1 TO 11, BOTH INCLUSIVE, AND THE EAST 1/2 OF THE NORTH AND SOUTH ALLEY LYING WEST OF AND ADJOINING SAID LOTS 1 TO 11, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOTS 1, 3 AND 4 IN THE SUBDIVISION OF LOT 1 IN BLOCK 45 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 12 TO 21, BOTH INCLUSIVE, AND ALL THE NORTH AND SOUTH 16 FOOT ALLEY LYING WEST OF SAID LOTS 12 TO 16, BOTH INCLUSIVE, AND EAST OF SAID LOT 17, VACATED BY ORDINANCES RECORDED AS DOCUMENTS 6443641 AND 19185377 AND THE NORTH 1/2 OF THE EAST AND WEST 16 FOOT ALLEY LYING SOUTH OF SAID LOTS 16 TO 21, BOTH INCLUSIVE, AND THE SOUTH LINE OF SAID LOT 16, EXTENDED WEST TO THE SOUTHEAST CORNER OF SAID LOT 17 IN THE SUBDIVISION OF LOTS 1, 3 AND 4 IN THE SUBDIVISION OF LOT 1 IN BLOCK 45 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOT 2 AND THE WEST 1/2 OF THE NORTH AND SOUTH 16 FOOT ALLEY LYING EAST AND ADJOINING LOT 2 AFORESAID, ALL IN THE SUBDIVISION OF LOT 1 IN BLOCK 45 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

LOT 5 AND 6 AND THE SOUTH 1/2 OF THE EAST AND WEST 16 FOOT ALLEY LYING NORTH AND ADJOINING SAID LOTS 5 AND 6 ALSO THE SOUTH 553 FEET OF LOT 7 (EXCEPTING THEREFROM THE NORTH 159 FEET OF THE WEST 212 FEET OF SAID SOUTH 553 FEET OF LOT 7) IN THE SUBDIVISION OF LOT 1 IN BLOCK 45 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT A (cont.)

### PARCEL 5:

ALL THAT PART OF DRUMMOND PLACE LYING SOUTH OF LOT 11 IN THE SUBDIVISION OF LOTS 1, 3 AND 4 IN THE SUBDIVISION OF LOT 1 IN BLOCK 45, AFORESAID, AND LOT 2 IN THE SUBDIVISION OF LOT 1 IN JOSEPH E. SHEFFIELD'S SUBDIVISION OF BLOCK 45 AFORESAID, AND THE SOUTH LINE OF SAID LOT 11, EXTENDED WEST TO THE SOUTHEAST CORNER OF SAID LOT 2 AND NORTH OF LOTS 12 AND 17 TO 21, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOTS 1, 3 AND 4 IN THE SUBDIVISION OF LOT 1 IN BLOCK 45 AFORESAID, AND THE NORTH LINE OF SAID LOT 12 EXTENDED WEST TO THE NORTHEAST CORNER OF SAID LOT 17, AS VACATED BY ORDINANCE RECORDED AS DOCUMENT 10832010, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

1430 Weightwood  
Chicago, Illinois

PIN

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065, 067, 070, 071, 072, 073, 074

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