

# UNOFFICIAL COPY

97369721

THIS INSTRUMENT PREPARED BY  
AND RETURN TO:

Alan D. Pearlman  
Schain, Finsel & Burney, Ltd.  
222 N. LaSalle St., Suite 1910  
Chicago, Illinois 60601

: DEPT-01 RECORDING \$41.00  
: T#0012 TRAN 5215 05/23/97 12:24:00  
: #422 # ER \*-97-369721  
: COOK COUNTY RECORDER

## SUBORDINATION AGREEMENT

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Buy

4/1/98  
[Signature]

THIS Subordination Agreement ("Agreement") is made as of this 21st day of May, 1997, by and among **BANK OF AMERICA ILLINOIS**, an Illinois banking corporation (the "First Secured Party" or "Lender"), and **BANK OF AMERICA ILLINOIS**, an Illinois banking corporation (the "Second Secured Party"; the First Secured Party and the Second Secured Party being collectively referred to herein as the "Secured Parties").

## RECITALS:

WHEREAS, **OAKLEY LOFTS LIMITED PARTNERSHIP** ("Oakley Lofts"), an Illinois limited partnership and the First Secured Party have entered into certain documents described in Schedule I attached hereto and by this reference incorporated herein, pursuant to which, among other things, the First Secured Party has extended credit to Oakley Lofts in an aggregate principal amount of up to **ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,200,000.00)** based upon certain advances to be made from time to time by the First Secured Party all as more specifically set forth in the documents described in Schedule I (together with all extensions, renewals and refinancings thereof, the "First Party Indebtedness"); and

WHEREAS, in order to secure the First Party Indebtedness, the Borrower has executed and delivered, or contemporaneously herewith shall execute and deliver, to the First Secured Party a certain Mortgage, Assignment of Leases and Rents and Security Agreement and the other security documents described in Schedule I in favor of the First Secured Party granting the lien on and security interest in certain property described therein (the "Collateral") including but not limited to the real property legally described in Exhibit "A" attached hereto and by this reference incorporated herein ("Premises"); and

WHEREAS, the **Oakley Lofts, Park Terrace Limited Partnership** ("Park Terrace"), an Illinois limited partnership and the Second Secured Party have entered into certain documents described in Schedule II attached hereto and by this reference incorporated herein, pursuant to which, among other things, the Second Secured Party has extended credit to the Borrower in an aggregate principal amount of up to **THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00)** (together with all extensions, renewals and refinancings thereof, the "Second Party Indebtedness"); and

WHEREAS, in order to secure the Second Secured Party Indebtedness, the Borrower has previously executed and delivered to the Second Secured Party a certain Mortgage and other

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**BOX 333-CTT**

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security documents described in Schedule II granting the lien on and security interest in the Collateral, including the Premises, for the benefit of the Second Secured Party; and

WHEREAS, the parties desire to enter into this Agreement to establish priorities among the liens on and security interest in the Collateral granted to the Secured Parties.

## AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises herein contained, and in order to induce the First Secured Party to make the Loan described in the documents listed in Schedule I to Borrower, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the First Secured Party and Second Secured Party covenant and agree as follows:

### 1. Status of Security Interests

1.1 Seniority. The Second Secured Party hereby agrees that (a) all of the First Secured Party's security interests, liens and other collateral interests in the Collateral and all of the First Secured Party's rights and remedies, under law, agreement and otherwise, exercisable pursuant thereto (all of which interests and rights are herein called the "First Rights") shall be senior and superior to (b) all of the Second Secured Party's security interests, liens and other collateral interests in the Collateral and all of the Second Secured Party's rights and remedies, under law, agreement or otherwise, exercisable pursuant thereto (all of which interests and rights are herein called the "Second Rights").

1.2 Definition of Senior and Superior. As used in Section 1.1, the phrase "senior and superior" shall mean that the First Secured Party shall possess the right, in its absolute discretion,

(i) to make all decisions on the disposition of any Collateral (including, without limitation, foreclosing on such Collateral or refraining from foreclosing), notwithstanding that any or all of the Borrower's obligations to the Second Secured Party (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due and herein called the "Second Liabilities") may be due and owing or that the Borrower may be in default in any other manner with regard to the Second Liabilities;

(ii) to exercise or not exercise all rights granted to the First Secured Party with regard to all or any of such Collateral, whether or not pursuant to any of the security agreements of the First or Second Secured Parties (herein collectively called the "Collateral Agreements"); and

(iii) to apply all proceeds obtained from the Collateral on account of the First or Second Rights, as the case may be, in such order as the First Secured Party shall determine, to the Borrower's obligations to the First Secured Party in connection with the First Party Indebtedness, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due (the "First Liabilities").

The First Secured Party shall have the power to hold all Collateral which either of the Secured Parties are entitled to hold, including, without limitation, insurance policies and proceeds obtained from the sale of Collateral. The First Secured Party may choose (in the form of a written

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consent) to let the Second Secured Party foreclose on all or any Collateral or to exercise all or any of the Second Rights with respect to such Collateral, but the Second Secured Party may not so foreclose or exercise any of such rights without the written permission of the First Secured Party.

## 2. Standards for Decisions

The Second Secured Party acknowledges that it may disagree over the proper course of action to pursue in particular situations that arise pursuant to the transactions contemplated by Section 1 hereof and agrees that the First Secured Party may, in such party's absolute discretion, make decisions and pursue actions or refrain from action from time to time solely on the basis of the First Secured Party's own evaluations of its own best interests; provided, however, that this Section 2 shall be subject to the provisions of the following Section 3. The First Secured Party may confer with the Second Secured Party prior to making any decision provided for in this Section 2 so that the First Secured Party may evaluate the Second Secured Party's estimation of its own best interests before making any decision; provided, however, that such option to confer with the Second Secured Party shall not impose an obligation to confer and shall not restrict the standards for the making of any such decision by the First Secured Party previously provided in this Section 2.

## 3. Standards for Action by the First Secured Party

In the event of a foreclosure by the First Secured Party as provided herein, it shall have no obligations to the Second Secured Party other than to proceed in accordance with the First Secured Party's customary practices, provided that in no event shall the First Secured Party or any of its directors, officers, employees or agents be liable to the Second Secured Party for any action or failure to act in connection with any such foreclosure or proposed foreclosure other than on account of its gross negligence or willful misconduct (provided that the First Secured Party's acting in accordance with its own estimation of its own best interests as described in Section 2 hereof shall not be deemed to constitute gross negligence or willful misconduct).

## 4. Continuing Obligations and Rights

The First Secured Party may from time to time, whether before or after discontinuance of this Agreement, at its sole discretion and without notice to the Second Secured Party, take any or all of the following actions without affecting any of the First Secured Party's rights hereunder: (a) retain or obtain a security interest in any property to secure any of the First Liabilities; (b) retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to any of the First Liabilities; (c) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the First Liabilities, or release or compromise any obligations of any nature of any obligor with respect to any of the First Liabilities; and (d) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the First Liabilities, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property. The First Secured Party may from time to time, without notice to the Second Secured Party, and without affecting any of the First Secured Party's rights hereunder, assign or transfer any or all of the First Liabilities or any interest therein.

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## 5. Miscellaneous

5.1 Waiver. No delay on the part of the First Secured Party in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by the First Secured Party of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

5.2 Controlling Contract. In the case of any conflict between this Agreement and any Collateral Agreement, this Agreement shall control.

5.3 Transfer of Indebtedness. Each transferee of any debt owed to any party which constitutes First Liabilities or Second Liabilities shall take such debt subject to the provisions of this Agreement and to any request made, waiver or consent given or other action taken hereunder, prior to the receipt by the other party hereto of written notice of such transfer by each previous holder of such debt.

5.4 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, all parties hereto and their respective heirs, executors, and legal and personal representatives, and permitted successors and assigns.

5.5 Governing Law. The interpretation, enforcement and validity of this Agreement shall be controlled and governed by the laws and decisions of the State of Illinois.

5.6 Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

5.7 Notices. Except for any notice required under applicable law to be given in another manner, any notice that First Secured Party or Second Secured Party may desire or be required to give under any of the Loan Documents to any other party hereto shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if deposited in the United States certified or registered mail, postage prepaid, return receipt requested, on the third business day after depositing in the mail, or (iii) if delivered by reputable overnight express carrier, freight prepaid, the next business day after delivery to such carrier, addressed to such party as follows:

(a) If to First Secured Party: Bank of America Illinois  
231 South LaSalle Street  
5th Floor  
Chicago, Illinois 60690  
Attn: Kevin P. Harnedy

With a copy to: Schain, Finsel & Burney, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601  
Attn: Alan D. Pearlman

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(b) If to Second Secured Party: Bank of America Illinois  
231 South LaSalle Street  
5th Floor  
Chicago, Illinois 60690  
Attn: Kevin P. Harnedy

With a copy to: Schain, Finsel & Burney, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601  
Attn: Alan D. Pearlman

Any party may change the address to which notices may be sent by notice to the other party or parties as provided herein. Second Secured Party hereby covenants and agrees to simultaneously send copies of any notices it may send to Borrower to First Secured Party.

5.8 Recitals. The Recitals set forth herein are incorporated herein by this reference as if fully set forth herein.

5.9 Captions. The captions and headings of the various Articles and Sections of this Agreement are for convenience only, and are not intended, nor shall they be considered, to limit in any way the scope and intent of any of said Articles and Sections.

5.10 Singular, plural, etc. Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein shall be deemed to include the feminine, masculine or neuter gender, as the context so requires.

5.11 Entire Contract. This Agreement constitutes the entire contract between First Secured Party and Second Secured Party. No other prior agreements, or understanding, whether verbal or written, shall have any effect. This Agreement may be modified only in writing signed by First Secured Party and Second Secured Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized respective officers hereunto the day and year first above written.

**FIRST SECURED PARTY:**  
**BANK OF AMERICA ILLINOIS,**  
an Illinois banking corporation

By: Kevin P. Harnedy  
Name: KEVIN P. HARNEDY  
Its: VICE PRESIDENT

**SECOND SECURED PARTY:**  
**BANK OF AMERICA ILLINOIS,**  
an Illinois banking corporation

By: Kevin P. Harnedy  
Name: KEVIN P. HARNEDY  
Its: VICE PRESIDENT

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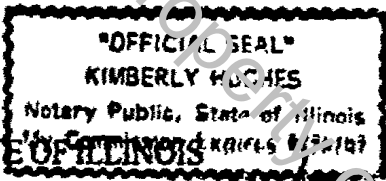
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Kimberly Hughes, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kevin Harty Michael of BANK OF AMERICA ILLINOIS, an Illinois banking corporation and \_\_\_\_\_ of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing Subordination Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the bank and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 21 day of May, 1997.

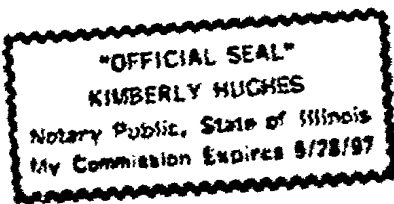


Kimberly Hughes  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Kimberly Hughes, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kevin Harty Michael of BANK OF AMERICA ILLINOIS, an Illinois banking corporation and \_\_\_\_\_ of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing Subordination Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the bank and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 21 day of May, 1997.



Kimberly Hughes  
Notary Public

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## ACKNOWLEDGEMENT AND AGREEMENT

The Borrower acknowledges receipt of a copy of the foregoing Subordination Agreement, waives notice of acceptance thereof by the First Secured Party or any holder of any of the First Party Indebtedness, and agrees to be bound by the terms and provisions thereof, to make no payments or distributions contrary to the terms and provisions thereof and to do every other act and thing necessary or appropriate to carry out such terms and provisions. The Borrower acknowledges that (i) such Subordination Agreement is solely for the benefit of the First Secured Party and the other holders of the First Party Indebtedness from time to time, and that the Borrower requires no rights by virtue thereof; and (ii) the terms of the Subordination Agreement may be amended from time to time to alter the relative rights or obligations of the First Secured Party and the other holders of the First Party Indebtedness and the holders of the Second Party Indebtedness without the consent of the Borrower.

IN WITNESS WHEREOF, this Acknowledgment and Agreement has been made and delivered at Chicago, Illinois, as of the date and year first written above.

**OAKLEY LOFTS LIMITED PARTNERSHIP,**  
an Illinois limited partnership

By: **P/H PROPERTIES, INC.,** an Illinois corporation

Its: General Partner

By: [Signature]

Name: DAVID A HACHES

Its: PRESIDENT

By: **URBANSCAPE, INC.,** an Illinois corporation

Its: General Partner

By: [Signature]

Name: [Signature]

Its: [Signature]

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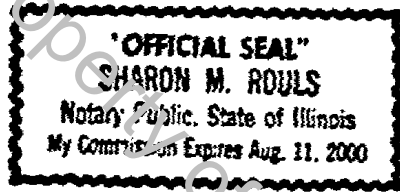
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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that James R. Madson President of **URBANSCAPE, INC.**, an Illinois corporation, as General Partner of **OAKLEY LOFTS LIMITED PARTNERSHIP** personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act, as the free and voluntary act of said corporation, all for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal on May 19, 1997.



Sharon M. Rouls  
Notary Public

adp\loans\ba\Oak-Mor sub  
Execution #1: 05/09/97 adp

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## SCHEDULE I

(documents of First Secured Party)

1. Mortgage Note in the amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) ("Note");
2. Mortgage, Assignment of Leases and Rents, and Security Agreement securing the Note;
3. Collateral Assignment of Leases and Rents securing the Note;
4. UCC-1 and UCC-2 Financing Statements securing the Note; and
5. Construction Loan Agreement.

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## SCHEDULE II

(documents of Second Secured Party)

1. Note in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) from Oakley Lofts and Park Terrace ("Note");
2. Mortgage dated as of June 17, 1996 recorded June 21, 1996 as Document No. 96-479406 securing the Note; and
3. Collateral Assignment of Leases and Rents dated as of June 17, 1996 recorded June 21, 1996 as Document Number 96-479407.

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## EXHIBIT "A"

### LEGAL DESCRIPTION

#### Legal Description of Oakley Property

LOTS 1, 2, 3, 4, 5, 6, AND 7 IN BLOCK 16 IN PIERCE'S ADDITION TO HOLSTEIN, A SUBDIVISION OF THE NORTH HALF OF THE SOUTHWEST QUARTER AND PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NOS.: 14-31-312-024-0000  
14-31-312-025-0000  
14-31-312-026-0000

COMMONLY KNOWN AS: 1855-1861 N. Milwaukee/1847-1853 N. Oakley  
Chicago, Illinois

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