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KATHY HILL  
SKAGIT COUNTY AUDITOR

98 OCT 26 P12:18

AFTER RECORDING RETURN TO:

SEAFIRST BANK  
REG LOAN ADMINISTRATION  
P.O. BOX 3686 (CSC-15)  
SEATTLE, WA 98124-3686  
Attention: Barbara Johnson

**9810260089**

RECORDED \_\_\_\_\_ FILED \_\_\_\_\_  
REQUEST OF \_\_\_\_\_

FIRST AMERICAN TITLE CO.

55812-5

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION  
(RCW 65.04):

INSTRUMENT TITLES: CONSENT TO SUBORDINATE FINANCING AND  
AGREEMENT OF SUBORDINATION

GRANTOR(S)

1. NEL/SON DISTRIBUTING, INC., a Washington corporation
2. JMJ INVESTMENTS, INC., a Washington corporation

GRANTEE(S): BANK OF AMERICA NATIONAL TRUST AND SAVINGS  
ASSOCIATION, DOING BUSINESS AS SEAFIRST BANK

LEGAL DESCRIPTION: N/A - See reference to related document recording number(s) below.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):

1. 340429-3-020-0102 (P28731)
2. 340429-3-020-0201 (P28732)
- ~~3. 71319 (P101394)~~

REFERENCE NUMBER OF RELATED DOCUMENTS:

1. Grantor Deed of Trust recording no. 9810260088
2. Grantee Deed of Trust recording no. 9810260086

Loan No. 605808 and 3058779

**CONSENT TO SUBORDINATE FINANCING AND AGREEMENT OF  
SUBORDINATION**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE  
SUBORDINATOR'S DEED OF TRUST ON THE PROPERTY BECOMING  
SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF OTHER OR  
LATER DEED OF TRUST.**

**THIS CONSENT TO SUBORDINATE FINANCING AND AGREEMENT  
OF SUBORDINATION ("Agreement") is made to be effective as of the 9th day of  
October, 1998, by and between:**

Consent to Subordinate Financing  
and Agreement of Subordination

-1-

**9810260089**

BK 1887 PG 0496

**"Lender"**

**Bank of America National Trust and Savings Association, doing business as Seafirst Bank, whose address is:**

Seafirst Bank  
Loan Administration (CSC 15)  
P.O. Box 3686  
Seattle, WA 98124-3686  
Attn: Loan No. 605808 and 3058779

**"Subordinator"**

**Nel/Son Distributing, Inc., a Washington corporation, whose address is:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**"Owner"**

**JMJ Investments, Inc., a Washington corporation, whose address is:**

208 West Avenue South  
Arlington, WA 98223

with respect to the following facts:

A. Lender is making a loan (the "Loan") to Owner in the principal amount of \$705,000.00 which Loan is secured or to be secured by a deed of trust (the "Seafirst Deed of Trust") constituting a first lien encumbrance on the real and personal property and fixtures (the "Project") described in the Seafirst Deed of Trust. The real property encumbered by the Seafirst Deed of Trust is legally described in Exhibit "A" attached hereto and by this reference incorporated herein.

B. Owner is the owner of all of the property both real and personal, tangible and intangible, described in and encumbered by the Seafirst Deed of Trust.

C. The terms of the Loan prohibit any lien or encumbrance on the Project other than the Seafirst Deed of Trust and Owner and Subordinator have requested that Lender permit all or a portion of the Project to be encumbered by a deed of trust (the "Subordinate Deed of Trust") to secure indebtedness to Subordinator evidenced by a promissory note in the amount of \$\_\_\_\_\_. Lender has agreed to the encumbrance of the Subordinate Deed of Trust on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of Lender's consent to the Subordinate Deed of Trust, to induce Lender to advance loan funds under the Seafirst Deed of Trust, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties represent, warrant and agree as follows:

1. **Recording Information.** The Seafirst Deed of Trust was recorded in Skagit County, Washington, on 10-26-98, 1998, under Skagit County Recording No. 9810260086, and the Subordinate Deed of Trust was recorded in Skagit County, Washington, on 10-26-98, 1998, under Skagit County Recording No. 9810260088. It is contemplated that this Agreement will be executed prior to the recording of the Seafirst Deed of Trust and the Subordinate Deed of Trust and Subordinator and Owner specifically authorize Lender to insert or cause to be inserted in this Section 1 the recording dates and recording numbers for the Seafirst Deed

of Trust and the Subordinate Deed of Trust.

2. **Consent to Subordinate Deed of Trust.** Lender hereby consents to the Subordinate Deed of Trust, provided, that the maximum amount which may be, by its terms, secured by the Subordinate Deed of Trust shall not exceed \$ \_\_\_\_\_.

3. **Subordination.** Subordinator, being all of the holders of the beneficial interest in the Subordinate Deed of Trust, hereby unconditionally and irrevocably agrees that the Subordinate Deed of Trust and all indebtedness and obligations secured thereby, and any other estate, lien or interest which Subordinator may at any time now or hereafter have or acquire in any of the property, real and personal, described in the Seafirst Deed of Trust, is and shall at all times be and remain unconditionally subject, subordinate and inferior to the lien and security interest now or hereafter created by the Seafirst Deed of Trust and to all advances or charges made or accruing under the Seafirst Deed of Trust. Without limitation, this agreement of subordination extends to and includes unconditional and irrevocable subordination of the Subordinate Deed of Trust to (i) any extension, modification, amendment, renewal or replacement of the Seafirst Deed of Trust, (ii) all leases, rents, cash collateral, accounts, insurance and condemnation proceeds, inventory, equipment, general intangibles and other tangible and intangible property comprising or derived from the Project, (iii) to all advances made in connection with the Loan, any advance made by Lender to Owner as a debtor in possession under the U.S. Bankruptcy Code, advances to protect Lender's interest in the Project, and advances made by Lender for taxes, insurance, improvements, or other advances made with respect to the Project, whether or not such advances are expressly authorized by the terms of the Seafirst Deed of Trust, and (iv) any interest or other sums which may accrue to Subordinator on the obligations secured by the Subordinate Deed of Trust following the filing of any petition in bankruptcy with respect to Owner, regardless of whether Owner is excused from paying such interest or other sums under the U.S. Bankruptcy Code.

4. **Payments to Subordinator.** Prior to any default on the Seafirst Deed of Trust or any default by Owner on any loan or other obligation of Owner to Lender, Owner may make and Subordinator may receive payments on the obligations secured by the Subordinate Deed of Trust in the amounts and at the times due but not otherwise without Lender's prior written consent. After any default under the Seafirst Deed of Trust or under any loan or other obligation of Owner to Lender, Owner shall not make and Subordinator, with actual knowledge of such default, shall not take any payments on such obligations and following such default of which Subordinator has actual knowledge any payment of such obligations by Owner to Subordinator shall be collected, enforced and received by Subordinator in trust for the benefit of Lender and promptly paid over to Lender on account of the obligations secured by the Seafirst Deed of Trust. Failure to remit shall be deemed equivalent to misappropriation while acting in a fiduciary capacity so as to constitute a non-dischargeable debt under the U.S. Bankruptcy Code.

5. **Covenants of Subordinator.** Subordinator hereby covenants and agrees with Lender and Owner that:

a. Until such time as the indebtedness and obligations secured by the Seafirst Deed of Trust have been paid and performed in full, Subordinator waives, relinquishes and releases any and all rights of subrogation which Subordinator may have with respect to the Seafirst Deed of Trust, in any other security for payment of the Loan which Lender now has or hereafter acquires, or otherwise to participate in any claim, right or remedy of Lender against Owner.

b. So long as the Seafirst Deed of Trust remains in effect, not to exercise any of the rights or remedies available to Subordinator under the Subordinate

Deed of Trust, the U.S. Bankruptcy Code, or any other federal, state or local laws including, without limitation, the right to appoint a receiver, the right to receive rents from the Project and the right to foreclose the subordinate Deed of Trust against the Property.

c. Lender shall not be bound to exhaust its recourse or take any action against Owner or any guarantor or any other person or entity or proceed against any other collateral or property prior to judicial or nonjudicial (trustee's sale) foreclosure of the Seafirst Deed of Trust. Lender may, without notice to or the consent of Subordinator, (i) enter into any extension, modification, amendment, renewal, replacement of the Seafirst Deed of Trust or any other document or agreement evidencing or securing the Loan, (ii) release any or all parties liable for any obligations or indebtedness secured by the Deed of Trust, and (iii) release all or any of the security for the obligations or indebtedness secured by the Deed of Trust. Subordinator agrees to promptly execute and deliver to Lender from time to time all such documents and agreements as Lender may require to confirm the subordination of the Subordinate Deed of Trust.

d. Subordinator waives (i) the benefit of suretyship claims and defenses generally, (ii) any right to require marshalling of assets or to require Lender to proceed against or exhaust any specific security for the obligations secured by the Seafirst Deed of Trust, and (iii) any defense to any exercise of Lender's rights hereunder or under the Seafirst Deed of Trust or the other documents and agreements evidencing and securing the Loan arising out of the loss or impairment of any right of subrogation to the Seafirst Deed of Trust or to any other document or agreement evidencing or securing the Loan.

e. In the event of a casualty to the Project or a condemnation or taking under a power of eminent domain of all or any portion of the Project, the buildings or improvements thereon, or a threat of such condemnation or taking, all payments and settlement of insurance claims and condemnation awards shall be paid to Lender to be used or applied as provided in the Seafirst Deed of Trust.

f. Subordinator represents to Lender that Subordinator (i) is adequately informed of the financial condition of Owner and of Owner's plans and resources for development and operation of the Project, (ii) has not relied upon any financial or other information about Owner or the Project furnished by Lender, if any, and (iii) does not expect Lender to provide and waives any duty on the part of Lender to provide such information in the future including, without limitation, adverse information about the Owner or the Project, if any, which Lender may possess or acquire and which may not be available to Subordinator.

g. Prior to the execution of this Agreement, Subordinator has had the opportunity to examine the terms of the Seafirst Deed of Trust and the other documents, instruments and agreements evidencing and securing the Loan, all of which Subordinator consents to and approves. Subordinator acknowledges that Lender has no obligation to Subordinator to advance any funds under the Seafirst Deed of Trust or to see to the proper use and application of the funds so advanced. Subordinator understands that construction loans can involve substantial risks for junior lien holders and agrees that Lender is not a trustee or fiduciary for Subordinator and undertakes no duty, obligation responsibility or special relationship to Subordinator to see to proper use and application of the Loan or otherwise to protect and not act adversely to Subordinator's interests. Any application or use of the Loan for purposes other than those provided for in the Seafirst Deed of Trust and the other documents instruments and agreements evidencing and securing the Loan shall not defeat, limit or impair this subordination in whole or in part.

6. **Cross Default.** Any breach or default by Subordinator of Subordinator's



duties and obligations under this Agreement or any claim or assertion by or on behalf of Subordinator that the Subordinate Deed of Trust is of equal or greater priority to the Seafirst Deed of Trust shall constitute an event of default under the Seafirst Deed of Trust and the other documents and agreements evidencing and securing the Loan.

7. **Miscellaneous.**

(a) This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(b) In any action or proceeding to construe or enforce this Agreement, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy, insolvency or receivership proceeding, and in any appeal therefrom.

(c) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, replaces all prior and contemporaneous oral agreements and understanding, and may be modified only by a writing signed by all parties hereto.

(d) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have made this Agreement to be effective as of the day and year first set forth above.

**NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**LENDER:**

SEAFIRST BANK

By: *C. J. [Signature]*

Its: A.V.P.

By: *[Signature]*

Its: Asst Vice President

**OWNER:**

JMJ INVESTMENTS, INC.,  
a Washington corporation

By: *M. J. [Signature]*

Its: president

**SUBORDINATOR:**

NEL/SON DISTRIBUTING, INC.,  
a Washington corporation

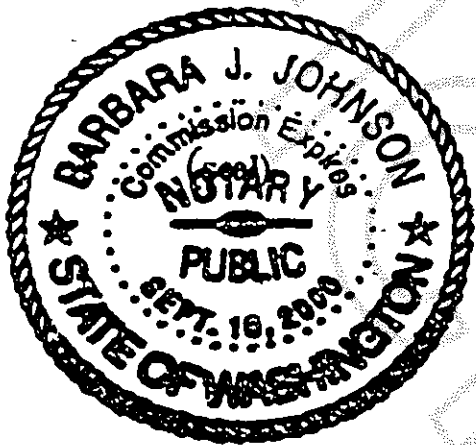
By: *[Signature]*

Its: president

STATE OF WASHINGTON )  
 )§  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Cesar Lucero is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the Assistant Vice President of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/19/98

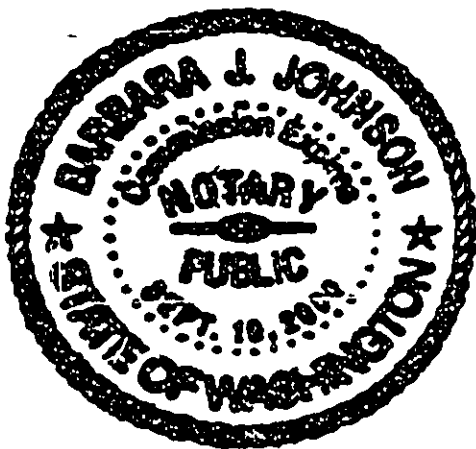


Barbara Johnson  
(Print Notary Name) Barbara J. Johnson  
Notary Public in and for the State of Washington  
residing at Kent  
My appointment expires 9-10-2000

STATE OF WASHINGTON )  
 )§  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Lois R. Gunnison is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledge it as the Assistant Vice President of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/19/98

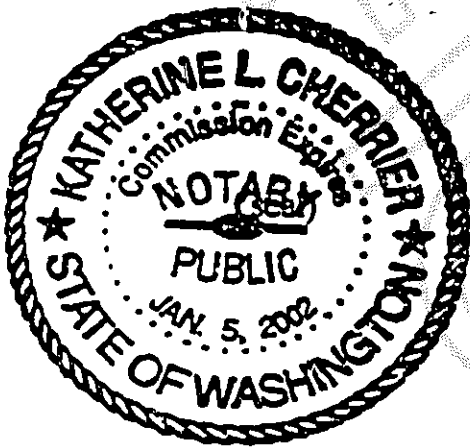


Barbara Johnson  
(Print Notary Name) Barbara J. Johnson  
Notary Public in and for the State of Washington  
residing at Kent  
My appointment expires 9-10-2000

STATE OF WASHINGTON )  
 )§  
COUNTY OF Snohomish )

I certify that I know or have satisfactory evidence that Mark Nelson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the President of JMJ INVESTMENTS, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10-20-98

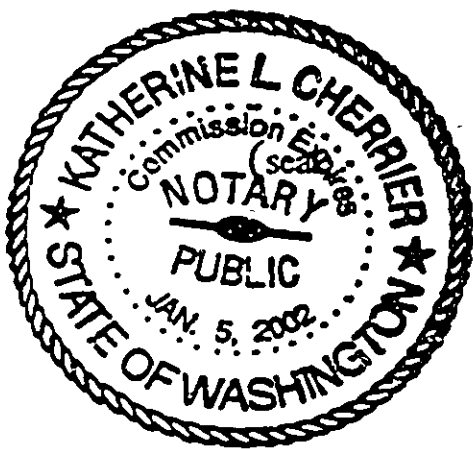


Katherine L. Cherrier  
(Print Notary Name) KATHERINE L. CHERRIER  
Notary Public in and for the State of Washington  
residing at Bellingham  
My appointment expires 1-5-2002

STATE OF WASHINGTON )  
 )§  
COUNTY OF Snohomish )

I certify that I know or have satisfactory evidence that James Cherrier is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the President of NEL/SON DISTRIBUTING, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10-20-98



Katherine L. Cherrier  
(Print Notary Name) KATHERINE L. CHERRIER  
Notary Public in and for the State of Washington  
residing at Bellingham  
My appointment expires 1-5-2002

EXHIBIT A

THIS EXHIBIT IS PART OF THE CONSENT TO SUBORDINATE FINANCING AND AGREEMENT OF SUBORDINATION DATED OCTOBER 9, 1998, BETWEEN NELSON DISTRIBUTING, INC., A WASHINGTON CORPORATION, AS SUBORDINATOR; JMJ INVESTMENTS, INC., A WASHINGTON CORPORATION, AS OWNER; AND BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, DOING BUSINESS AS SEAFIRST BANK, AS LENDER.

LEGAL DESCRIPTION:

Parcel A

That portion of the Southwest 1/4 of Section 29, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point 50 feet Southeasterly (when measured radially) from Highway Engineer's Station E 9 2+00, as shown on Washington State Highway Department right of way map SR 5 MP222.08 to MP225.62, Johnson Road to Blackburn Street, Sheet 9 of 23 sheets, latest revision date September 10, 1971, said point being on a 250 foot radius curve concave to the Southeast, a radial at said point bearing South 74 degrees 58'06" East; thence Northerly along said curve 132.00 feet; thence South 45 degrees 07'01" East 145.49 feet to a point on the Northwesterly margin of the DL Ramp, as shown on said map; thence South 24 degrees 15'30" West 96.00 feet to a point 110 feet Northerly from (when measured at right angles to) Highway Engineer's Station A16+00; thence South 84 degrees 40'07" West 100.50 feet to a point 100 feet Northerly from (when measured at right angles to) Highway Engineer's Station A15+00; thence North 18 degrees 34'00" West 91.47 feet to the point of beginning.

Parcel B

That portion of the Southwest 1/4 of Section 29, Township 34 North, Range 4 East, W.M., Skagit County, Washington, described as follows:

Commencing at a point 50 feet Southeasterly (when measured radially) from Highway Engineer's Station F9 2+00, as shown on Washington State Highway Department Right-of-Way Map SR5 MP222.08 to MP225.62, Johnson Road to Blackburn Street, Sheet 9 of 23 sheets, latest revision date, September 10, 1971, said point being on a 250 foot radius curve concave to the Southeast, a radial at said point bearing South 74 degrees 58'06" East; thence Northerly along said curve, 132.00 feet to the true point of beginning; thence South 45 degrees 07'01" East, 145.49 feet to a point on the Northwesterly margin of the DL Ramp, as shown on said map; thence North 24 degrees 15'30" East along said Northwesterly margin, 256.63 feet to a point 250 feet Westerly (when measured radially) from Station 67+00 on the centerline of said SR5; thence North 20 degrees 02'30" East, 125.54 feet to a point 50 feet Southeasterly (when measured radially) from Station F9 7+50, as shown on said map, said point being on a 500 foot radius curve concave to the Northwest, a radial at said point bearing North 58 degrees 44'02" West; thence Southerly along said curve, 158.07 feet to a point 50 feet Southeasterly (when measured at right angles) from Station F9 PC5+57.74; thence South 49 degrees 22'45" West, 179.90 feet to a point 50 feet Southeasterly from Station F9 PT3+79.85, said point being the point of curvature of a 250 foot radius curve to the left; thence Southerly along said curve 17.87 feet to the true point of beginning.

9810260089

BK 1587 PG 0503