

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
Allen, Matkins, Leck, Gamble & Mallory LLP  
18400 Von Karman, 4th Floor

Irvine, California 92612

Attention: Susan E. Graham, Esq.

The Assessor's tax account number for the  
Property is R-3909-00300-00200-000

MTC 41756

(Above Space For Recorder's Use Only)

### SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this 28 day of September, 1998, by KLAMATH MALL LLC, an Oregon limited liability company ("Klamath"), CHRISTOPHER A. WELSH, an individual ("Welsh") and CDF II LLC, a California limited liability company ("CDF II"), owners of the land hereinafter described and hereinafter collectively referred to as "Owner", and LEW TEDALDI, present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary";

### WITNESSETH:

THAT WHEREAS, Owner, did execute or is about to execute a deed of trust, dated September \_\_, 1998, to CARLTON D. WARREN, as trustee, covering the real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") to secure a note in the sum of \$1,000,000.00, dated September 28 1998 (the "Junior Deed of Trust"), evidencing the loan made by Beneficiary (the "Junior Loan") in favor of Beneficiary, which deed of trust is or is about to be recorded in the Official Records of the county described in said deed of trust (said note and deed of trust are hereafter referred to as the "Junior Loan Documents"); and

WHEREAS, Klamath and Welsh have executed a note in the sum of \$1,400,000.00 ("Lender's Note"), a deed of trust, which was also executed by CDF II ("Lender's Deed of Trust"), the Environmental Indemnity Agreement, and those certain UCC-1 and UCC-1A Financing Statements executed by Klamath and Welsh all dated September 28 1998 ("Lender's Loan Documents") in favor of THE JMR TRUST DATED MAY 1, 1986 as to an undivided 50% interest and John E. Aschieris doing business as Investors Management Service as to an undivided 50% interest having an address at 1575 Placentia

Avenue, Newport Beach, California 92663, hereinafter collectively referred to as "Lender," payable with interest and upon the terms and conditions described therein; and

WHEREAS, it is a condition precedent to Lender's consenting to the Junior Loan that Lender's Loan Documents and all of the terms and conditions thereof and the liens created thereunder or advanced under Lender's Deed of Trust to protect Lender's security and all extensions, modifications and supplements thereto and all sums originally advanced thereunder shall unconditionally be and remain at all times a lien or charge upon the land hereinabove described, prior and superior to the lien or charge of the Junior Loan Documents and all of the terms and conditions thereof; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender consent to the Junior Loan; and Beneficiary is willing that the Lender's Loan Documents shall constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the Junior Loan Documents.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to consent to the Junior Loan, it is hereby declared, understood and agreed as follows:

1. That Lender's Loan Documents and all of the terms and conditions thereof and the liens created thereunder and all extensions, substitutions, renewals, replacements, consolidations thereto including, without limitation, any (a) lengthening of the term thereof, and all sums originally advanced thereunder or in protection of the security thereof shall unconditionally be and remain at all times prior and superior to the Junior Loan Documents and all terms and conditions thereof and shall be and remain a lien or charge on the property therein described, prior and superior to the lien or charge of the Junior Loan Documents.

2. That Lender would not consent to the Junior Loan above described without this Agreement.

3. That this Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Loan Documents and the Junior Loan to the lien or charge of the Lender's Loan Documents and the loan evidenced thereby and shall supersede and cancel, but only insofar as would affect the priority between such loan documents, any prior agreement as to such subordination, including, but not limited to, those provisions, if any, contained in any of the Junior Loan Documents, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust.

Beneficiary declares, agrees and acknowledges that:

(a) Beneficiary consents to and approves all provisions of Lender's Loan Documents;

(b) Lender in making disbursements to Ticor Title Company, Escrow Number 661771-CD (Dobbins) is under no obligation or duty to, nor has Lender represented that

it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) Beneficiary intentionally and unconditionally subordinates the lien or charge of the Junior Loan Documents and all of the terms and conditions thereof, and the Junior Loan thereby in favor of the Lender's Loan Documents and all the terms and conditions thereof and the liens created thereby and all extensions, modifications and all sums originally advanced thereunder or advanced in protection of Lender's security. Beneficiary understands that in reliance upon, and in consideration of this subordination of a specific loan in the sum of \$1,400,000.00 is being made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination;

(d) Beneficiary agrees that until all indebtedness of Owner evidenced and secured by the Lender's Loan Documents, including, without limitation, all principal, interest, fees, costs and other amounts required to be paid thereunder, has been paid in full, all proceeds of all policies of insurance covering the Property described in the Lender's Loan Documents and all awards or other compensation made for any taking of any part of the Property described in the Lender's Loan Documents shall be held by Lender for application upon the indebtedness secured by, or for reconstruction of the Property in accordance with the provisions of, Lender's Loan Documents notwithstanding the rights of Beneficiary thereto under the Junior Loan Documents. In the event that following any such application and disposition of insurance proceeds and condemnation awards or other compensation, resulting in full repayment of all indebtedness secured by the Lender's Loan Documents, any balance remains, such excess shall be made payable to Beneficiary;

(e) If Lender shall at any time release to Owner and Beneficiary any such insurance proceeds or condemnation award for the purpose of restoration of the property described in the Lender's Loan Documents, such releases shall not be deemed to be an additional advance under the Lender's Loan Documents;

(f) Beneficiary further agrees that, upon any distribution of the assets or readjustment of the indebtedness of Owner, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the debt owed to Beneficiary, or the application of the assets of Owner to the payment or liquidation thereof, Lender shall be entitled to receive payment in full in cash of the indebtedness evidenced by and to the extent secured by Lender's Loan Documents prior to the payment of all or any part of the debt owed to Beneficiary;

(g) So long as the Junior Loan Documents shall remain a lien upon the property described in the Lender's Loan Documents or any part thereof, Lender and Beneficiary shall (a) give to the other a copy of any notice of default given by either to Owner at the time such notice is given to Owner and any such notice shall not be deemed effective until such notice has been received by Lender or Beneficiary, and (b) execute, acknowledge and deliver, upon Lender's

demand, at any time or times, any and all further subordinations, agreements or other instruments in recordable form that Lender, its successors or assigns may hereafter reasonably require for carrying out the purpose and intent of the foregoing covenants;

(h) (i) Any action or proceeding shall be brought to foreclose the Junior Deed of Trust, no portion of the rents, issues and profits of the Property shall be collected except through a receiver appointed by the court in which such foreclosure action or proceeding is brought, after due notice of the application for the appointment of such receiver shall have been given to Lender and that the rents, issues and profits so collected by such receiver shall be applied first to the payment of maintenance of the Property, and then to the payment of principal and interest due and owing on the Lender's Deed of Trust prior to the payment, if any, of any principal or interest due and owing on the Junior Deed of Trust;

(ii) If, during the pendency of any such foreclosure action or proceeding, an action or proceeding shall be brought by Lender for the foreclosure of the Lender's Deed of Trust and an application is made by the Lender for the extension of such receivership for the benefit of Lender, all such rents, issues and profits held by such receiver as of the date of such application shall be applied by the receiver in the manner set forth in (i) above.

(i) Either Lender or Beneficiary shall have the right, but shall not have the obligation, to cure any default under the other party's Loan Documents within ten (10) days after the expiration of the applicable grace period permitted to Owner thereunder, if any, unless such defaults, with reasonable efforts, are incapable of being cured within any such period or unless no such time period is provided, in which event Lender or Beneficiary shall be entitled to a reasonable period of time to cure such defaults, provided Lender or Beneficiary gives the other written notice of its intention to cure any such defaults within fifteen (15) days after Lender or Beneficiary has received notice thereof and, provided further, that Lender or Beneficiary diligently proceeds to commence and thereafter expeditiously and continuously proceeds to complete such cure;

(j) Lender and Beneficiary hereby confirms to and agrees with the other as to the following:

(i) Each has delivered to the other true and complete copies of the Loan Documents, and such documents have not been amended, modified or supplemented in any way. As of the date this Agreement is recorded in the Official Records of the county described in the deeds of trust, the outstanding principal balance of the Beneficiary's note shall be \$1,000,000.00 and Lender's note shall be \$1,400,000.00;

(ii) There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to Lender or Beneficiary as of the date hereof, by Owner under its obligations set forth in the Loan Documents;

(k) Beneficiary expressly waives reliance by Lender upon the subordination and other agreements as herein provided and presentment, demand and protest. Beneficiary agrees that Lender has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Lender's Loan Documents, or the collectibility of the debt evidenced thereby, that Lender shall be entitled to manage and supervise its loan to Owner in accordance with its usual practices, modified from time to time as Lender deems appropriate under the circumstances, and that Lender shall have no liability to Beneficiary for, and Beneficiary waives any claim which Beneficiary may now or hereafter have against Lender arising out of: (1) any and all action which Lender, takes or omits to take (including, without limitation, actions with respect to the creation, perfection or continuation of liens or security interests in the Property or other collateral for the debt owed to Lender, actions with respect to the occurrence of an "Event of Default" (as defined in any of the Lender's Loan Documents), actions with respect to release of, depreciation of or failure to realize upon the Property, and actions with respect to the collection of any claim for all or any part of the debt owed to Lender from any account debtor, guarantor or any other party with respect to the Lender's Loan Documents or to the collection of the debt evidenced thereby or the valuation, use, protection or release of the Property, or other collateral; (2) Lender's election, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et seq ) (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code. Lender may, at any time and from time to time, without the consent of or notice to Beneficiary, without incurring responsibility to Beneficiary, and without impairing or releasing any of Lender's right, or any of the obligations of Beneficiary hereunder, change the amount, manner, place or terms of payment of, or extend the time of payment of, or renew or alter the Lender's Loan Documents or the debt evidenced thereby, release, or otherwise deal with all or any part of the Property, exercise or refrain from exercising any rights against the Owner and others (including Beneficiary), add or release any party or other person primarily or secondarily liable for the Lender's Loan Documents or the debt evidenced thereby; and apply any sums, by whomsoever paid or howsoever realized, to the debt owed to Lender;

(l) All notices of any kind which any party hereto may be required or may desire to serve on the other shall be deemed served upon personal delivery, or, if mailed, upon the first to occur of receipt or expiration of 72 hours after deposit in United States Postal Service, certified mail, postage prepaid and addressed as follows:

If to Lender: Investors Management Service  
1575 Placentia Avenue  
Newport Beach, California 92663  
Attn: John E. Aschieris

If to Beneficiary: Lew Tedaldi  
P.O. Box 10  
Washingtonville, NY 10992

35429

With a copy to: Paul Manza  
c/o PTM Realty Investments  
P.O. Box 389  
155 Main Street  
Goshen, NY 10924

If to Owners: 2130 Santiago Drive  
Newport Beach, California 92660

(m) This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, except to the extent preempted by federal laws;

(n) This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument.

(o) Lender and Beneficiary acknowledge and agree that neither party has any rights or options to purchase any part of the Property.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENTS OF THE LAND.**

"OWNER"

KLAMATH MALL LLC, an Oregon limited liability company *Raymond P. Ramming*

By: *[Signature]* 9-26-98

Its: *Manager*

By: *[Signature]*

Its: *Manager* 9-26-98

*[Signature]* 9-26-98  
CHRISTOPHER A. WELSH, an individual

CDF II LLC, a California limited liability company

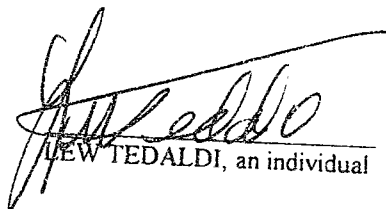
By: *[Signature]*  
Its: *Manager* 9-26-98

[SIGNATURES CONTINUED]



[SIGNATURES CONTINUED]

"BENEFICIARY"

  
LEW TEDALDI, an individual

"LENDER"

JOHN E. ASCHIERIS, TRUSTEE OF  
THE JMR TRUST DATED MAY 1, 1986  
as to an undivided 50% interest and  
JOHN E. ASCHIERIS doing business as  
INVESTORS MANAGEMENT SERVICE  
as to an undivided 50% interest

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JOHN E. ASCHIERIS, Trustee of the JMR  
Trust dated May 1, 1986

---

JOHN E. ASCHIERIS doing business as  
Investors Management Service

"BENEFICIARY"

LEW TEDALDI, an individual

"LENDER"

JOHN E. ASCHIERIS, TRUSTEE OF  
THE JMR TRUST DATED MAY 1, 1986  
as to an undivided 50% interest and  
JOHN E. ASCHIERIS doing business as  
INVESTORS MANAGEMENT SERVICE  
as to an undivided 50% interest

*John E. Aschieris* TRUSTEE 9/26/98  
JOHN E. ASCHIERIS, Trustee of the JMR  
Trust dated May 1, 1986

*John E. Aschieris* 9/26/98  
JOHN E. ASCHIERIS doing business as  
Investors Management Service

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STATE OF California }  
COUNTY OF Orange } ss.

On 9-26-98, before me, FARID K MANSOUR

Notary Public in and for said state, personally appeared JOHN E. ASCHER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public in and for said State

STATE OF California }  
COUNTY OF Orange } ss.

On 9-26-98, before me, FARID K. MANSOUR, a

Notary Public in and for said state, personally appeared Christopher A. WELSH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public in and for said State

35433

STATE OF New York )  
 COUNTY OF ORANGE ) ss.

On 26<sup>th</sup>, before me, Sept. 1998, a  
 Notary Public in and for said state, personally appeared LEW TEDALDI, personally  
 known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name  
 is subscribed to the within instrument and acknowledged to me that he/she executed the same in  
 his/her authorized capacity, and that by his/her signature on the instrument, the person, or the  
 entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.

Elizabeth Ryan  
 Notary Public in and for said State

ELIZABETH RYAN  
 Notary Public, State of New York  
 No. 01RY5003809  
 Term Expires November 2, 1998

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_, a  
 Notary Public in and for said state, personally appeared \_\_\_\_\_, personally  
 known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name  
 is subscribed to the within instrument and acknowledged to me that he/she executed the same in  
 his/her authorized capacity, and that by his/her signature on the instrument, the person, or the  
 entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

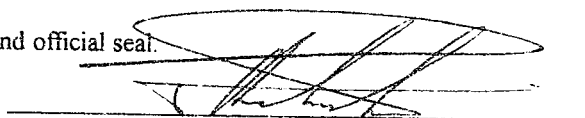
\_\_\_\_\_  
 Notary Public in and for said State

35434

STATE OF California  
COUNTY OF Orange } ss.

On 9-26-98, before me, FARID K. MANSOUR, a  
Notary Public in and for said state, personally appeared RAYMOND P. RAMM JR., personally  
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name  
is subscribed to the within instrument and acknowledged to me that he/she executed the same in  
his/her authorized capacity, and that by his/her signature on the instrument, the person, or the  
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public in and for said State

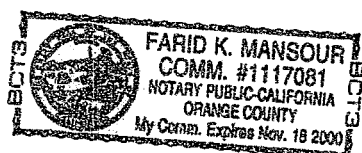


EXHIBIT "A"LEGAL DESCRIPTION

The Assessor's tax account number for the Property is R-3909-00300-00200-000.

EXHIBIT "B"

# EXHIBIT "A" LEGAL DESCRIPTION

**PARCEL 1:** All that portion of Tracts 32, 33A and 36, ENTERPRISE TRACTS, situated in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pipe on the South line of said Tract 32, said point being North 89 degrees 30' 45" West, a distance of 281.8 feet from the Southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said beginning point also being on the Northwestern line of Austin Street as deeded to Klamath County by Deed Volume 229, page 300, Deed Records of Klamath County, Oregon; thence North 34 degrees 07' 30" East at right angles to South Sixth Street and along the Northwestern line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the East line of said Tract 32; thence North 0 degrees 20' 45" East along said parallel line and along the Westerly line of Austin Street a distance of 722.70 feet to an iron pin that is South 0 degrees 20' 45" West a distance of 400.02 feet from the iron pin marking the Southerly line of Shasta Way; thence North 89 degrees 39' 15" West a distance of 629.67 feet to an iron pin on the Southeasterly line of Avalon Street; thence South 30 degrees 37' 00" West along the Southeasterly line of Avalon Street a distance of 667.53 feet to an iron pin on the most Northerly corner of a tract described as Parcel 3 in Deed Volume 256, page 96, Deed Records of Klamath County, Oregon; thence South 59 degrees 23' 00" East along the Northeasterly line of said tract a distance of 149.94 feet to an iron pin; thence South 30 degrees 37' 00" West along the Southeasterly line of said tract a distance of 59.20 feet to an iron pin on the Northeasterly line of Pershing Way; thence South 55 degrees 52' 30" East along the Northeasterly line of Pershing Way a distance of 485.15 feet to an iron pipe on the Southerly projection of the line between Tracts 32 and 36, Enterprise Tracts; thence North 0 degrees 14' 30" West along said projected line a distance of 98.97 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 89 degrees 30' 45" East along the Southerly line of said Tract 32 a distance of 362.50 feet to the point of beginning.

**PARCEL 2:** A parcel of land situated in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northwest corner of said Section 3, said point being marked by a cased iron pin; thence South 0 degrees 00' 30" East along the Westerly line of said Section 3 a distance of 826.80 feet to its intersection with a line parallel with and 75.0 feet distant at right angles Northeasterly from the centerline of the Klamath Falls-Lakeview Highway; also known as South Sixth Street, as the same is now located and constructed; thence South 55 degrees 52' 30" East, along said parallel line a distance of 1682.84 feet to an iron pin on the Northwestern line of Austin Street; thence North 34 degrees 07' 30" East along said line a distance of 235.00 feet to an iron pin on the Northeasterly line of Pershing Way, said point being the True Point of Beginning of this description; thence North 34 degrees 07' 30" East along the Northwestern line of Austin Street a distance of 282.50 feet to an iron pipe on the Southerly line of Tract 32, Enterprise Tracts, said point being North 89 degrees 30' 45" West a distance of 281.8 feet from the Southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the Northwestern line of that tract deeded to Klamath County by Deed Volume 229, page 300, Deed Records of Klamath County, Oregon; thence North 89 degrees 30' 45" West along the Southerly line of said Tract 32, a distance of 362.50 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 0 degrees 14' 30" East along the Southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the Northeasterly line of Pershing Way; thence South 55 degrees 52' 30" East along said line a distance of 245.93 feet to the True Point of Beginning of this description.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 28th day  
of September A.D., 19 98 at 1:23 o'clock P. M., and duly recorded in Vol. M98  
of Mortgages on Page 35424

Bernetha G. Letsch, County Clerk

FEE \$70.00

By Kathleen Ross