

UNOFFICIAL COPY

Prepared by:

Dennis R. Ainger
Schwartz, Cooper, Greenberger
& Krauss, Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601



Doc#: 0428104060
Eugene "Gene" Moore Fee: \$108.00
Cook County Recorder of Deeds
Date: 10/07/2004 11:24 AM Pg: 1 of 43

1044

8209446000
Rell

Property of Cook County Clerk's Office

SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT ("Agreement") is dated as of the 1st day of October, 2004, by and between **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Senior Lender"), and **CIG INTERNATIONAL, LLC**, a Delaware limited liability company ("Mezzanine Lender").

RECITALS:

A. 3900 N. Pine Grove LLC, an Illinois limited liability company ("Borrower"), is the owner of certain real property legally described on Exhibit "A" attached hereto located in Cook County, Illinois and all improvements thereon (such real property, together with all other collateral for the "Senior Loan" (as such term is defined in Recital B) of any kind, are referred to herein collectively as the "Property").

B. Senior Lender has agreed to make a construction loan in the principal amount of up to \$13,500,000.00 (the "Senior Loan") to Borrower pursuant to a Construction Loan Agreement dated as of the date hereof between Borrower and Senior Lender (the "Senior Loan Agreement"), which Senior Loan is (a) evidenced by a Promissory Note from Borrower to Senior Lender dated as of the date hereof (the "Senior Note") in the original principal amount of \$13,500,000.00 (b) secured by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed by Borrower and encumbering the Property (the "Senior Mortgage") and (c) also secured or guaranteed by the other documents described on Exhibit "B" attached hereto. The Senior Loan Agreement, the Senior Note, the Senior Mortgage and all of the documents described on Exhibit "B" attached hereto, together with any extensions, modifications, substitutions and consolidations thereof (to the extent permitted hereunder), are hereinafter collectively referred to as the "Senior Loan Documents."

C. Mezzanine Lender has agreed to make a loan in the principal amount of \$3,055,000.00 (the "Mezzanine Loan") to Borrower pursuant to a Loan Agreement (Mezzanine Loan) dated on or about the date hereof between Borrower and Mezzanine Lender (the "Mezzanine Loan Agreement"), which Mezzanine Loan is evidenced by a Mortgage Note from

43
g

UNOFFICIAL COPY

Borrower to Mezzanine Lender dated as of the date hereof (the "Mezzanine Note") in the original principal amount of \$3,055,000.00 and is secured or guaranteed by (a) a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents executed by Borrower and encumbering the Property (the "Junior Mortgage"), (b) a Collateral Pledge and Security Agreements (the "Pledge") whereby the holder of 100% of the direct and indirect beneficial ownership interests in Borrower (the "Pledged Interests") pledged such interests to Mezzanine Lender and (c) certain other documents described on Exhibit "C" attached hereto. The Mezzanine Loan Agreement, the Mezzanine Note, the Junior Mortgage, the Pledge and all of the documents described on Exhibit "C" attached hereto, together with any extensions, modifications, substitutions and consolidations thereof (to the extent permitted hereunder), are hereinafter collectively referred to as the "Mezzanine Loan Documents".

D. Christopher R. Feurer, Steven L. Golovan, John F. Lally, Charles T. Mudd, and Castlebar Enterprises, Inc., an Illinois corporation (collectively, together with all other persons or entities, other than Borrower, that have any personal liability for the payment or performance of any obligations under the Senior Loan Documents, the "Guarantors") have guaranteed or otherwise assumed personal liability for the payment and/or performance of certain obligations under the Senior Loan Documents (collectively, the "Guarantors' Senior Obligations") and under the Mezzanine Loan Documents (collectively, the "Guarantors' Junior Obligations").

E. It is a condition precedent to Senior Lender making the Senior Loan that: (i) the payment and performance of all obligations with respect to the Senior Loan remain at all times prior and superior to the payment and performance of all obligations with respect to the Mezzanine Loan, with respect to both the Borrower's and the Guarantors' obligations thereunder, (ii) the Senior Loan Documents remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Junior Mortgage and the other Mezzanine Loan Documents in accordance with the terms of this Agreement, (iii) unless and until the Senior Loan is indefeasibly paid and performed in full, except as otherwise expressly permitted hereunder, Mezzanine Lender shall have no right to receive any payment with respect to the Mezzanine Loan (including, without limitation, any payment by the Guarantors with respect to the Guarantors' Junior Obligations) or to exercise any rights or remedies with respect to the Mezzanine Loan, and (iv) Mezzanine Lender enters into the agreements with Senior Lender set forth herein.

F. It is a condition precedent to Mezzanine Lender making the Mezzanine Loan that, subject to the terms of this Agreement, Senior Lender (a) consents to the making of the Mezzanine Loan, (b) consents to the encumbrance of the Property pursuant to the Junior Mortgage and to the pledge of the Pledged Interests pursuant to the Pledge, (c) consents to the execution, delivery and performance of the Mezzanine Loan Documents (so long as same do not violate any of the terms or provisions of this Agreement or the Senior Loan Documents) and (d) enters into the agreements with Mezzanine Lender set forth herein.

NOW, THEREFORE, in order to induce Senior Lender to make the Senior Loan and Mezzanine Lender to make the Mezzanine Loan, and in consideration of the mutual agreements and acknowledgements contained herein, the parties hereto agree as follows:

UNOFFICIAL COPY

1. The recitals to this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. Senior Lender consents to the making of the Mezzanine Loan, the encumbrance of the Property pursuant to the Junior Mortgage and the pledge of the Pledged Interests to secure the Mezzanine Loan, subject to the restrictions set forth herein. Senior Lender further consents to the terms and provisions of the Mezzanine Loan Documents and the execution, delivery, performance and observance thereof, but only to the extent that such terms and provisions can be performed and observed in a manner consistent with the terms and provisions of the Senior Loan Documents and this Agreement. If and to the extent that the performance or observance of any of the terms or provisions of the Mezzanine Loan Documents would be contrary to or inconsistent with any of the terms or provisions of the Senior Loan Documents or this Agreement, then such terms and provisions of the Mezzanine Loan Documents shall not be observed or performed unless and until all of the obligations of Borrower set forth in the Senior Loan Documents have been indefeasibly paid and performed in full. Neither the review of nor consent to any of the Mezzanine Loan Documents by Senior Lender shall be deemed approval or authorization of performance or observance of any term or provision of the Mezzanine Loan Documents that is contrary to or inconsistent with the Senior Loan Documents, except to the extent expressly permitted under this Agreement. Notwithstanding the foregoing, the mere existence of any term or provision in the Mezzanine Loan Documents that is inconsistent with the Senior Loan Documents shall not constitute a default under the Senior Loan Documents so long as neither Borrower nor any Guarantor observes or performs such terms or provisions prior to the indefeasible payment and performance of the Senior Loan Documents.

3. Mezzanine Lender consents to the making of the Senior Loan, the terms and provisions of the Senior Loan Documents and the liens and encumbrances on and security interests in the Property created thereby, and agrees that the execution, delivery and performance thereof shall not constitute a default under the terms and provisions of the Mezzanine Loan Documents.

4. Mezzanine Lender hereby acknowledges and agrees that until the entire Senior Loan shall have been repaid in full, and all of the obligations of Borrower set forth in the Senior Loan Documents have been indefeasibly paid and performed in full:

(a) except as provided in the final sentence of this Paragraph 4, the liens, security interests and encumbrances created by the Junior Mortgage and the other Mezzanine Loan Documents shall be subject and subordinate to the liens, security interests and encumbrances created by the Senior Loan Documents in each and every respect, and shall be limited in the manner set forth in the other provisions of this Agreement;

(b) except for the liens, security interests and encumbrances created by the Junior Mortgage and the other currently existing Mezzanine Loan Documents, Mezzanine Lender shall not be entitled to obtain or maintain any other mortgage or other liens, security interests or encumbrances on, in or against the Property, or any part thereof, whether voluntarily or involuntarily, by subrogation, express agreement, court order or otherwise (including, without limitation, any which may arise with respect to real estate taxes, assessments or other governmental charges); provided, however, that the foregoing

UNOFFICIAL COPY

shall not be deemed to prohibit any amendment to the Mezzanine Loan Documents that is not a Prohibited Junior Amendment pursuant to Paragraph 10(c) below;

(c) Mezzanine Lender shall not exercise any rights or remedies available to Mezzanine Lender upon the occurrence of a breach or default under the Mezzanine Loan Documents, whether available at law, in equity, under bankruptcy or insolvency laws (except for the filing of proofs of claim or the exercising of other rights of Mezzanine Lender expressly permitted under Paragraph 13 below), pursuant to the express provisions of the Mezzanine Loan Documents or otherwise, including, without limitation, the right to foreclose the Junior Mortgage or any other lien or security interest in favor of Mezzanine Lender, the right to the appointment of a receiver or the appointment of Mezzanine Lender as mortgagee in possession, or the institution of any involuntary bankruptcy proceedings; provided, however, that the foregoing shall not prohibit Mezzanine Lender from exercising its rights under the Pledge or any other rights expressly permitted hereunder, subject to the limitations set forth herein (including the right to accelerate the Mezzanine Loan and pursue an "Enforcement Action," as permitted under Paragraph 7 below); and

(d) all amounts due to Mezzanine Lender under the Mezzanine Loan and rights with respect thereto (including, without limitation, interest and/or principal payments or prepayments, fees, rents, sales proceeds, insurance proceeds, condemnation awards, payments into escrow or cash collateral accounts or lockboxes for security purposes or to balance the Mezzanine Loan or as additional security of any kind, or to repay expenses or Protective Advances, and rights under or payments of any personal guarantees or indemnity agreements, including the obligations of the Guarantors for the payment of the Guarantors' Junior Obligations), are and shall at all times continue to be expressly subject and subordinate in right of payment to the indebtedness of, and all amounts due from, Borrower and/or Guarantors evidenced by or set forth in the Senior Loan Documents and any and all obligatory advances and Protective Advances advanced or incurred in accordance therewith, including the obligations of the Guarantors for the payment of the Guarantors' Senior Obligations; provided, however, that prior to the occurrence of an Event of Default (as defined in the Senior Loan Agreement) or the occurrence of an event which, with the passage of time or the giving of notice would constitute an Event of Default under the Senior Loan Agreement; either such event a "Payment Stoppage Event"), Borrower may pay to Mezzanine Lender, and Mezzanine Lender may receive for its benefit, a (i) monthly payments of Current Interest (as defined in the Mezzanine Note); (ii) monthly payments of the Asset Management Fee (as defined in the Mezzanine Loan Agreement) in the amount of \$1,000.00, and (iii) payments to replenish Interest Reserve II (as defined in the Mezzanine Loan Agreement) in accordance with Section 2.3(c) of the Mezzanine Loan Agreement, from funds other than those deposited in operating or property accounts held by Senior Lender. Mezzanine Lender shall provide written notice to Senior Lender, upon the occurrence of such replenishment.

Without intending to limit the generality of the foregoing, in the event that, prior to the time that the obligations of Borrower set forth in the Senior Loan Documents have been indefeasibly paid and performed in full: (i) Mezzanine Lender receives any payment of any kind whatsoever other than as expressly permitted under Section 4(d) above from Borrower or any Guarantor or

UNOFFICIAL COPY

otherwise to satisfy any obligations under the Mezzanine Loan Documents, the provisions of Paragraph 8 below shall apply; or (ii) Mezzanine Lender acquires any lien on, security interest in or other encumbrance against any of the Property (other than the liens, security interests and other encumbrances set forth in the Mezzanine Loan Documents as of the date hereof) or any assets of any Guarantor (other than the Pledged Interests of such Guarantor), Mezzanine Lender shall immediately take all action reasonably required by Senior Lender to release and remove same. The term "Protective Advances" means any advances necessary in Senior Lender's or Mezzanine Lender's reasonable judgment to protect the security for the Senior Loan or the Mezzanine Loan, as the case may be, such as, by way of example and not limitation, advances to pay real estate taxes, insurance premiums or necessary repair, maintenance or construction costs or amounts advanced by Mezzanine Lender in connection with its exercise of its rights hereunder to cure defaults under the Senior Loan Documents. Notwithstanding anything in this Paragraph 4 or elsewhere in this Agreement to the contrary, Senior Lender acknowledges and agrees that Senior Lender has no security interest in or other rights to the Pledged Interests and shall not obtain any security interest in or other rights to the Pledged Interests so long as the Mezzanine Loan is outstanding.

5. Senior Lender may, without affecting the senior priority of the Senior Loan Documents or other rights and benefits afforded to Senior Lender and Senior Lender herein, in its sole and absolute discretion, and without the approval of Mezzanine Lender and without regard to any effect upon the Mezzanine Loan or the collateral for the Mezzanine Loan: (a) release or compromise any obligation in the Senior Note or Senior Loan Documents, (b) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the Senior Note or (c) retain or obtain a lien in any property to further secure payment of the Senior Note.

6. Mezzanine Lender shall give Senior Lender notice of any default by Borrower under any of the Mezzanine Loan Documents at the time such notice is given to Borrower and shall promptly provide to Senior Lender copies of all other notices and correspondence given or received by Mezzanine Lender relating to such default and copies of any foreclosure proceedings involving the Pledged Interests or any other collateral given as security for the Mezzanine Loan. Senior Lender shall give Mezzanine Lender notice of any "Default" or "Event of Default" (as defined in the Senior Loan Agreement) by Borrower under any of the Senior Loan Documents at the time such notice is given to the Borrower and shall provide to Mezzanine Lender copies of all other notices and correspondence given or received by Senior Lender relating to such Default or Event of Default and copies of any foreclosure proceedings involving Borrower or all or any portion of the Property. If a Default shall occur under the Senior Loan Documents, Mezzanine Lender shall have the right (but not the obligation) to cure such Default, which right to cure shall extend for the permitted cure periods set forth below, it being agreed that until the expiration of such permitted cure periods, Senior Lender shall not commence a foreclosure of the Senior Mortgage nor shall Senior Lender impose or enforce against Mezzanine Lender any default rate, late payment charges or other fees as a result of such Default provided such Default is cured by Mezzanine Lender:

(a) In the case of any Default under the Senior Loan Documents which can be cured solely by the payment of money, including, without limitation, scheduled payments of principal and interest under the Senior Note (such Defaults, "Monetary Defaults"),

UNOFFICIAL COPY

Mezzanine Lender's right to cure shall extend for ten (10) days after receipt by Mezzanine Lender of notice from Senior Lender that such Monetary Default has occurred; and

(b) In the case of any Default under the Senior Loan Documents which is not a Monetary Default (such Defaults, "Other Defaults"), Mezzanine Lender's right to cure shall extend for sixty (60) days after receipt by Mezzanine Lender of notice from Senior Lender that such Other Default has occurred.

It is expressly agreed that the curing by Mezzanine Lender of any Default under the Senior Loan Documents or the taking of any action by Mezzanine Lender in connection therewith shall not be deemed an assumption by Mezzanine Lender of any of Borrower's obligations under the Senior Loan Documents. If Mezzanine Lender (and/or a "Qualified Substitute Developer," as hereinafter defined) becomes the owner or holder of the Pledged Interests in accordance with the provisions of Paragraph 7 below, and has cured all defaults under the Senior Loan Documents in accordance with the provisions of this Paragraph 6, then the Senior Loan Documents shall continue in full force and effect upon the terms and conditions set forth in the Senior Loan Documents. Notwithstanding anything in any of the Senior Loan Documents to the contrary, the occurrence of a default or an event of default under the Mezzanine Loan Documents shall not be, in and of itself, a default or event of default under the Senior Loan Documents; provided, however, Mezzanine Lender acknowledges and agrees that an event, circumstance or condition that constitutes a default or event of default under the Mezzanine Loan Documents may, independently, constitute a default or event of default under the Senior Loan Documents.

7. Except as expressly permitted herein, Mezzanine Lender shall not commence any remedial action against Borrower or any of the Guarantors (or against any assets of Borrower or any of the Guarantors) pursuant to the Mezzanine Loan Documents following a breach or default by Borrower thereunder. The foreclosure of the Junior Mortgage or the appointment of a receiver or Mezzanine Lender as mortgagee in possession or, except as expressly permitted herein, any other remedial action against Borrower or any of the Guarantors (or against any assets of Borrower or any of the Guarantors) under the Mezzanine Loan Documents or otherwise, without the prior, written consent of Senior Lender shall constitute an Event of Default under the Senior Loan and the Senior Loan Documents and under this Agreement at the time such enforcement or remedial action is initiated. Notwithstanding the foregoing, Senior Lender hereby acknowledges and agrees that no consent shall be required for Mezzanine Lender to institute or pursue an "Enforcement Action" (as defined below), or to acquire, or cause a nominee wholly owned by Mezzanine Lender and any participants in the Mezzanine Loan (a "Mezzanine Nominee") to acquire, the Pledged Interests as a result of an Enforcement Action upon the occurrence of an event of default under the Mezzanine Loan Documents (and the same shall not constitute a Default or Event of Default under the Senior Loan Documents), provided that: (a) at least five (5) business days prior to instituting an Enforcement Action, Mezzanine Lender notifies Senior Lender in writing that Mezzanine Lender intends to exercise such remedy, furnishes Senior Lender with copies of the documents to be used to effect such Enforcement Action, and agrees to cure all Monetary and Other Defaults which then exist under the Senior Loan Documents; (b) Mezzanine Lender proceeds with all due diligence to cure, and does cure, such Monetary Defaults and Other Defaults within the time periods provided in Paragraphs 6(a) and 6(b); and (c) Mezzanine Lender causes a "Qualified Substitute Developer" (as defined in

UNOFFICIAL COPY

Exhibit "D" attached hereto) to assume responsibility for the completion of the development, sale, marketing and management of the Property in accordance with the terms of the Senior Loan Documents and in the time and manner required under Exhibit "D," which shall not be later than one hundred five (105) days following the date (the "Takeover Date") on which Mezzanine Lender takes over control of Borrower as a result of an Enforcement Action or otherwise. Between the Takeover Date and the date on which a Qualified Substitute Developer assumes such responsibility, Mezzanine Lender shall have the right and the obligation to continue to develop, sell, market and manage the Property in a manner consistent with the terms of the Senior Loan Documents, utilizing such consultants, agents and other personnel as may be reasonably required in connection therewith, all at Mezzanine Lender's own cost. Mezzanine Lender shall furnish Senior Lender with copies of all documents to be used to effect the provisions of clause (c) above at least fifteen (15) days prior to the date on which the Qualified Substitute Developer is to assume responsibility of the Property, and such documents shall be subject to the prior written approval of Senior Lender, which approval shall not be unreasonably withheld or delayed and shall be deemed given if not expressly denied in writing within such 15-day period. For purposes hereof, the term "Enforcement Action" shall mean any action by Mezzanine Lender (i) to name Mezzanine Lender, or any Mezzanine Nominee, as manager or managing member of the Borrower, and/or (ii) to enforce the Pledge or conduct a sale of the membership interests in Borrower pursuant to the Pledge, the acceptance by Mezzanine Lender or a Mezzanine Nominee of a transfer or assignment in lieu of action under the Pledge, or the taking of any other enforcement action against the members of Borrower, in any case for the purpose of acquiring the Pledged Interests and the control of Borrower. Furthermore, for the sole purpose of providing a basis on which the Mezzanine Lender may pursue an Enforcement Action, as specifically described above, Mezzanine Lender may accelerate the Mezzanine Loan, provided that Mezzanine Lender does not attempt to collect any money or exercise any other right as a result of such acceleration (other than the right to pursue the Enforcement Action).

8. As provided in Paragraph 4 above, the payment of any amounts due under the Mezzanine Loan Documents is subordinated to the prior payment of all amounts due under the Senior Loan Agreement, Senior Note, Senior Mortgage and other Senior Loan Documents. So long as the Senior Loan shall not have been paid in full, and until all of Borrower's obligations under the Senior Loan Documents have been indefeasibly paid and performed in full, no payment whatsoever shall be made to Mezzanine Lender by or on behalf of Borrower or any Guarantor for or on account of any amount due under the Mezzanine Loan Documents, except as otherwise expressly permitted under Paragraph 4 of this Agreement. For purposes of this Agreement, the Senior Loan shall not be deemed paid or satisfied in full and the Borrower's obligations shall not be deemed to be indefeasibly paid and performed until, among other things, Senior Lender has received full payment of all amounts due Senior Lender under the Senior Loan Documents and Senior Lender have no further obligation to make any disbursements under the Senior Loan Agreement. In the event payment of amounts due under or with respect to the Mezzanine Loan Documents that are subordinated and prohibited as set forth above is made, including, without limitation, the types of payments described in clause (d) of Paragraph 4 above, Mezzanine Lender shall hold the same in trust for Senior Lender and promptly pay and deliver same to Senior Lender for the benefit of Senior Lender. Furthermore, in the event that after the Senior Loan is repaid in full: (a) Borrower or any Guarantor becomes obligated to pay to Senior Lender or any other Senior Lender any amounts due under the Senior Loan Documents for any reason, including, without limitation, because of an indemnity or other obligation that

UNOFFICIAL COPY

survives repayment of the Senior Loan or because Senior Lender or any other Senior Lender is required to surrender any amount previously paid under the Senior Loan Documents because of a preference, or other bankruptcy or insolvency defense, or otherwise; and (b) Mezzanine Lender has received any amount due under or with respect to the Mezzanine Loan, Mezzanine Lender shall pay to Senior Lender the amount owing under the Senior Loan Documents up to the amount so received by Mezzanine Lender.

9. So long as the Senior Mortgage shall remain a first lien upon the Property or any part thereof, or the Senior Loan or any part thereof shall remain unpaid, Mezzanine Lender shall at no cost to Mezzanine Lender (provided that Mezzanine Lender shall be responsible for its own counsels' fees) execute, acknowledge and deliver, promptly following Senior Lender's demand, from time to time, any and all further subordinations, agreements or other instruments consistent with the terms of this Agreement in form and content satisfactory to Mezzanine Lender and Senior Lender in the exercise of their reasonable judgment as Senior Lender may reasonably require for carrying out the purpose and intent of the covenants and agreements contained herein.

10. Mezzanine Lender hereby represents and warrants to and covenants and agrees with Senior Lender as follows:

(a) Mezzanine Lender has delivered to Senior Lender true and complete fully executed copies of the Mezzanine Loan Documents, and such documents have not been amended, modified or supplemented in any way and such documents constitute (i) the entire agreement of Mezzanine Lender and Borrower and (ii) all of the documents evidencing, securing, guaranteeing or governing the Mezzanine Loan.

(b) Without Senior Lender's prior written consent, which may be denied in the Senior Lender's sole and absolute discretion, Mezzanine Lender shall not enter into any "Prohibited Junior Amendment" (as defined below). Mezzanine Lender may enter into any modification or amendment of the Mezzanine Loan Documents that is not a Prohibited Junior Amendment; provided, however, that the modified and amended Mezzanine Loan Documents shall otherwise remain subject to the terms, conditions and limitations set forth herein. For purposes hereof, "Prohibited Junior Amendment" means any amendment or modification of the Mezzanine Loan Documents which (i) expands the rights of the holder of the Mezzanine Loan Documents to advance additional indebtedness beyond that permitted under the Mezzanine Loan Documents in effect on the date hereof (which permitted additional advances include, without limitation, Protective Advances and advances from the Interest Reserve (as defined in the Mezzanine Loan Agreement)), (ii) shortens the term of the Mezzanine Loan, (iii) increases the total payments (including both principal and interest) required under the Mezzanine Loan Documents or recharacterizes principal payments as interest, fees or other amounts, (iv) increases the rate at which interest accrues on the Mezzanine Loan, (v) shortens the cure periods available to Borrower, (vi) imposes additional fees, prepayment premiums or penalties beyond those amounts or rights provided in the existing Mezzanine Loan Documents, (vii) limits the contractual ability of Borrower to make any payment of principal, interest or other amounts due under the Senior Loan Documents, (viii) creates any new defaults or events of default, (ix) grants the holders thereof any additional lien or encumbrance on or security interest in the Property or in

UNOFFICIAL COPY

any other property that secures the Senior Loan or (x) grants the holders thereof a lien or encumbrance on or security interest in any property owned by any Guarantor. Copies of any amendments to the Mezzanine Loan Documents will be delivered to Senior Lender upon execution thereof, regardless of whether consent thereto is required.

(c) Without the prior written consent of Senior Lender, no additional advances will be made under the Mezzanine Loan Documents other than (i) advances from the Interest Reserve pursuant to the terms and conditions of Section 2.3 (c) of the Loan Agreement, and (ii) Protective Advances.

(d) Notwithstanding any other provisions in the Mezzanine Loan Documents to the contrary, until the indefeasible payment and performance in full of all of Borrower's obligations under the Senior Loan Documents, Mezzanine Lender agrees to assign and release unto Senior Lender or any other holder or holders of the Senior Loan all of its right, title and interest or claim in and to (i) the receipt by Mezzanine Lender of any payment not permitted under Paragraph 4(d) above, or (ii) all insurance policies and insurance proceeds in respect to the Property for application pursuant to the provisions of the Senior Mortgage, and (iii) all condemnation awards made for any taking of any part of the Property for application pursuant to the provisions of the Senior Mortgage.

(e) If Mezzanine Lender obtains any assets of Borrower or any Guarantor and is not entitled to apply such assets to the Mezzanine Loan in accordance with the provisions of this Agreement, Mezzanine Lender will hold such assets in trust for, and immediately pay, deliver and assign to Senior Lender such assets for application to the Senior Loan.

(f) Mezzanine Lender, as the holder of the Mezzanine Loan, shall not at any time prior to the indefeasible payment and performance in full of all of Borrower's obligations under the Senior Loan Documents, demand or retain any voluntary or optional payment, prepayment, redemption or repurchase of any portion of the Mezzanine Loan from Borrower; provided, however, that the foregoing shall not be deemed to prohibit the pursuit of an Enforcement Action by Mezzanine Lender to the extent expressly permitted under Paragraph 7 above.

(g) If Senior Lender or any other holder or holders of the Senior Loan, or their agents, exercise any right or take any remedial action pursuant to the terms and provisions of the Senior Mortgage or the Senior Loan Documents, Mezzanine Lender expressly waives any defenses or claims it may have as a junior mortgagee, creditor or equity holder or otherwise against Senior Lender or any other holder of all or any part of the Senior Loan, in connection with such act by Senior Lender or any other holder or holders of the Senior Loan, or their agents, other than defenses or claims predicated on (i) a breach of this Agreement by Senior Lender or the holder of the Senior Loan; (ii) bad faith or willful misconduct by Senior Lender or the holder of the Senior Loan, or (iii) in the event Mezzanine Lender or any wholly owned subsidiary shall become the owner of the Pledged Interests through an Enforcement Action, a breach under any of the Senior Loan Documents by Senior Lender or the holder of the Senior Loan.

UNOFFICIAL COPY

(h) Mezzanine Lender agrees not to oppose any plan of reorganization or rehabilitation proposed or approved by Senior Lender in any Bankruptcy Proceeding (as hereinafter defined) on the basis that Mezzanine Lender is entitled to any payments before the Senior Loan has been indefeasibly paid and performed in full; provided, however, that the foregoing shall not prohibit Mezzanine Lender from filing a proof of claim in any Bankruptcy Proceeding, subject, however, to the provisions of Paragraphs 12 and 13 below.

(i) The foregoing provisions are solely for the purpose of defining the relative rights of the holder or holders of the Senior Loan and the holder or holders of the Mezzanine Loan, and nothing herein shall impair, as between the Borrower and Senior Lender, the obligation of the Borrower, which is unconditional and absolute, to pay the Senior Loan in accordance with its terms, nor shall anything herein prevent Senior Lender from exercising all remedies otherwise permitted by applicable law or under the Senior Note, Senior Mortgage or other Senior Loan Documents, subject to the provisions of this Agreement.

11. Mezzanine Lender will not assign, sell, transfer or pledge any or all of the Mezzanine Loan or any portion thereof or interest therein or any of the Mezzanine Loan Documents without the prior consent of Senior Lender, which may be withheld in Senior Lender's sole discretion, so long as the Senior Loan remains outstanding. Notwithstanding the foregoing, and provided that (i) any such sale, transfer, assignment, pledge or hypothecation of the Mezzanine Loan remains subject in all events to the terms and provisions of this Agreement and the transferee executes a written acknowledgment recognizing the foregoing, and (ii) Senior Lender is delivered written notice of such sale, transfer, assignment, pledge or hypothecation, Mezzanine Lender shall, without the prior consent of the Senior Lender, have the right to:

(a) assign and transfer all or any portion of Mezzanine Lender's interest in the Mezzanine Loan and in all of the Mezzanine Loan Documents to any entity controlling, controlled by or under common control with Mezzanine Lender (as it is currently organized, owned and controlled); and

(b) assign and transfer Mezzanine Lender's interest in the Mezzanine Loan and in all of the Mezzanine Loan Documents (including any such assignment and transfer as security) to: any insurance company, bank, pension plan, pension fund advisory firm, mutual fund or other investment company, money management firm, governmental entity or plan, real estate investment trust, "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, having, in any such case at least \$250,000,000 in capital, statutory surplus or stockholders equity and at least \$600,000,000 in total assets (other than a broker/dealer, in which case total assets shall be no less than \$500,000,000), which entity must also be experienced in making commercial real estate loans; and

(c) assign and transfer Mezzanine Lender's interest in the Mezzanine Loan and in all of the Mezzanine Loan Documents (including any such assignment and transfer as security) to any entity controlled by any of the entities referenced in (a) or (b) above; and

UNOFFICIAL COPY

(d) assign and transfer Mezzanine Lender's interest in the Mezzanine Loan and in all of the Mezzanine Loan Documents (including any such assignment and transfer as security) to a "Qualified Trustee" (as defined herein) in connection with a securitization of, the creation of collateralized debt obligations ("CDO") secured by or financing through an "owner trust" of, the Mezzanine Loan (collectively, "Securitization Vehicles"), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise qualified transferees under this paragraph; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are qualified transferees under this paragraph and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this section within thirty (30) days.

For the purposes of this Section:

"Qualified Trustee" means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

"Required Special Servicer Rating" means (i) a rating of "CSS1" in the case of Fitch, (ii) on the Standard & Poors Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P") list of approved special servicers in the case of S&P and (iii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination, and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

12. In the event of any proceedings to liquidate, dissolve or wind up the Borrower or any Guarantor, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or any Guarantor, or its or his property (a "Bankruptcy Proceeding"), the Senior Loan shall be preferred in payment over the Mezzanine Loan, and the Senior Loan shall first be paid in full before any payment is made upon the Mezzanine Loan; and in any such event any payment or distribution of any kind or character, whether in cash, property or securities (other than in securities or other evidences of indebtedness, the payment of which is subordinated to the Senior Loan to the same extent as herein provided), which shall be made upon or in respect of the Mezzanine Loan as a result of any such proceeding, shall be paid over first to the holder or holders of the Senior Loan

UNOFFICIAL COPY

for application in payment thereof unless and until the Senior Loan shall have been indefeasibly paid or satisfied in full.

13. (a) Mezzanine Lender, as the holder of the Mezzanine Loan, undertakes and agrees for the benefit of Senior Lender and each holder of the Senior Loan to execute, verify, deliver and file any proofs of claim, consents, assignments or other instruments in form and content reasonably satisfactory to Mezzanine Lender which Senior Lender may at any time reasonably require in connection with any Bankruptcy Proceeding in order to effectuate the agreements contained herein;

(b) Senior Lender and Mezzanine Lender hereby agree as follows:

(i) Mezzanine Lender shall vote in favor of, and not against, any and all actions taken by Senior Lender in any bankruptcy proceeding to permit the commencement or continuation of any foreclosure (all subject to the terms and provisions of Paragraph 14 hereof); and

(ii) Mezzanine Lender shall not propose any plan or vote to confirm or take any other action in support of any plan or other course of action proposed by Borrower or any other party (other than Senior Lender) which would have the effect of (A) impairing the priority or lien of the Senior Loan, (B) denying, impeding or delaying Senior Lender's efforts to collect the Senior Loan, or (C) delaying, preventing, limiting, requiring a reduction in the amount of or impairing Senior Lender's collection of all or any portion of the Senior Loan. The foregoing shall not be deemed to prohibit Mezzanine Lender from proposing or voting for a plan that has been expressly agreed to in writing by Senior Lender (in its sole and absolute discretion).

14. If (a) an Event of Default shall have occurred under the Senior Loan Documents, or any Default occurs under the Senior Loan Documents that, by its nature, cannot be cured by Mezzanine Lender, and, in either case, Senior Lender will not agree to waive such Default or Event of Default upon written request of Mezzanine Lender, (b) Senior Lender shall have unjustifiably failed to advance proceeds of the Senior Loan in accordance with the provisions of the Senior Loan Documents for a period of sixty (60) days after a written request for funding by Borrower, or (c) a Bankruptcy Proceeding with respect to Borrower shall have commenced and be continuing, then Mezzanine Lender shall have the right to purchase the Senior Loan and all rights, interests, documents, instruments, insurance policies, and accounts in connection therewith, without recourse or representations by Senior Lender, except representations as to the outstanding balance of the Senior Mortgage and that the Senior Lender has not assigned or encumbered its rights in the Senior Loan on the following basis:

(i) For a purchase price (the "Purchase Price") equal to the sum of (A) 100% of the outstanding principal indebtedness evidenced and secured by the Senior Loan Documents, (B) all accrued, unpaid interest (including interest at the Default Rate provided for in the Senior Loan Documents) and late charges due on the Senior Loan to and including the date on which the sale is closed, (C) all Protective Advances made by Senior Lender and any (D) all other amounts due and payable to Senior Lender under any

UNOFFICIAL COPY

of the Senior Loan Documents, including without limitation, legal fees of Senior Lender's counsel, and all other enforcement costs therefor incurred by Senior Lender, and any unpaid release fees or other fees, if any, owed Senior Lender pursuant to the terms of the Senior Loan Documents.

(ii) Mezzanine Lender's election to purchase the Senior Loan must be exercised by (A) written notice to Senior Lender of its intention to do so (the "Purchase Notice") and (B) payment of the Purchase Price to Senior Lender by wire transfer (I) in the event of an Event of Default other than a Bankruptcy Proceeding at any time prior to entry of a decree of foreclosure of the Senior Mortgage and (II) in the event of a Bankruptcy Proceeding within thirty (30) days of delivery of the Purchase Notice.

(iii) Upon receipt of the Purchase Price, Senior Lender shall deliver to Mezzanine Lender the following documents:

(a) Original, signed or certified copies of all of the Senior Loan Documents (except for UCC Financing Statements of which true and correct copies shall be delivered); and

(b) An assignment, without recourse, representation or warranty of any kind (other than with respect to the outstanding principal balance of the Senior Loan, accrued and unpaid interest and other amounts due, and that Senior Lender is the holder of the entire Senior Loan and has not assigned, pledged or hypothecated all or any interest therein), of the Senior Loan Documents and all rights, interests, documents, instruments, insurance policies (including title insurance policies), accounts, escrows, moneys and deposits held by Senior Lender pursuant to the terms of the Senior Loan Documents in form reasonably satisfactory to Senior Lender and Mezzanine Lender in their reasonable discretion;

(iv) If for any reason whatsoever, other than the default of Senior Lender or other failure of Senior Lender to deliver the documents described in subparagraphs (i) and (ii), the sale is not consummated and Senior Lender does not receive the Purchase Price in its account by 2:00 p.m., on the date of closing specified above, Mezzanine Lender's right to purchase the Senior Loan Documents shall be null and void.

(v) Neither any of the rights granted Mezzanine Lender in this Paragraph 14, nor Mezzanine Lender's election to purchase the Senior Loan Documents, shall nullify, impair, diminish or in any way affect any of the rights or remedies granted to or available to Senior Lender pursuant to the Senior Loan Documents or available to Senior Lender at law or in equity, or the exercise of any such rights or remedies by Senior Lender; provided, however, that if Senior Lender is notified of the exercise of Mezzanine Lender's intent to purchase the Senior Loan prior to the filing of a foreclosure action or seeking the appointment of a receiver, Senior Lender shall defer filing such action or action to have a receiver appointed, until the thirty-first (31st) day after the date of such notice. Notwithstanding the foregoing, Senior Lender shall not be precluded from exercising its rights in rents, sale proceeds or other cash collateral or its rights to take any

UNOFFICIAL COPY

action deemed reasonably necessary or reasonably desirable by Senior Lender to protect its interest or security in the Property, irrespective of receipt of notice of the exercise of Mezzanine Lender's right to purchase the Senior Loan (provided that any proceeds received by Senior Lender as a result of its exercising such rights shall be applied to the costs thereof and then to the outstanding balance of the Senior Loan, as more fully provided in the Senior Loan Documents, with any such reduction in the balance of the Senior Loan reducing the Purchase Price accordingly).

15. Senior Lender hereby represents and warrants and covenants and agrees with Mezzanine Lender as follows:

(a) Senior Lender has delivered to Mezzanine Lender true and complete fully executed copies of the Senior Loan Documents, and such documents have not been amended, modified or supplemented in any way and such documents constitute (i) the entire agreement of Senior Lender and Borrower and (ii) all of the documents evidencing, securing, guaranteeing or governing the Senior Loan.

(b) Without Mezzanine Lender's prior, written consent, which may be denied in the Mezzanine Lender's sole and absolute discretion, Senior Lender (on behalf of Senior Lender) shall not enter into any "Prohibited Senior Amendment" (as defined below). Senior Lender (on behalf of Senior Lender) may enter into any modification or amendment of the Senior Loan Documents that is not a Prohibited Senior Amendment; provided, however, that the modified and amended Senior Loan Documents shall otherwise remain subject to the terms, conditions and limitations set forth herein. For purposes hereof, "Prohibited Senior Amendment" means any amendment or modification of the Senior Loan Documents which (i) expands the rights of the holder of the Senior Loan Documents to advance additional indebtedness beyond that permitted under the Senior Loan Documents in effect on the date hereof (which permitted additional advances include, without limitation, Protective Advances), (ii) shortens the term of the Senior Loan, (iii) increases the total payments (including both principal and interest) required under the Senior Loan Documents or recharacterizes principal payments as interest, fees or other amounts, (iv) increases the rate at which interest accrues on the Senior Loan, (v) shortens the cure periods available to Borrower, (vi) imposes additional fees, prepayment premiums or penalties, beyond those amounts or rights provided in the existing Senior Loan Documents, (vii) provides for the accrual rather than current payment of interest on the Senior Loan to the extent not currently contemplated under the Senior Loan Documents (Mezzanine Lender acknowledging that interest on the Senior Loan is anticipated to be paid from an interest reserve funded from proceeds of the Senior Loan) or (ix) grants the holders thereof any security in the Pledged Interests. Copies of any amendments to the Senior Loan Documents will be delivered to Mezzanine Lender upon execution thereof, regardless of whether consent thereto is required.

(c) No additional advances will be made under the Senior Loan Documents other than advances of the original principal amount of the Senior Loan and Protective Advances as permitted by such documents. Except in the case of an emergency, Senior Lender shall provide ten (10) days prior written notice to Mezzanine Lender of all

UNOFFICIAL COPY

Protective Advances intended to be made by Senior Lender under the Senior Loan Documents prior to the making of any such Protective Advance.

16. No right of Senior Lender or any other holder or holders of the Senior Loan to enforce the subordination of the Mezzanine Loan Documents, or the Mezzanine Loan, as herein provided shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower or any Guarantor, or by any noncompliance by the Borrower or any Guarantor with any of the terms, provisions and covenants of the Mezzanine Loan or the Mezzanine Loan Documents, regardless of any knowledge thereof with which Senior Lender or any other holder or holders of the Senior Loan may have or otherwise be charged. No right of Mezzanine Lender to enforce the provisions of this Agreement against Senior Lender or any other holder or holders of the Senior Loan shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower or any Guarantor, or by any noncompliance by the Borrower or any Guarantor with any of the terms, provisions and covenants of the Senior Loan or the Senior Loan Documents, regardless of any knowledge thereof with which Mezzanine Lender or any other holder or holders of the Mezzanine Loan may have or otherwise be charged. The foregoing provisions of this Paragraph 16 are not intended to modify or otherwise affect the relative rights and priorities between Mezzanine Lender, on the one hand, and Senior Lender, on the other hand, as set forth in the other provisions of this Agreement.

17. Each party hereby represents and warrants to the other that the party making such representation has full power and authority to enter into and perform its obligations hereunder, that this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of such party enforceable in accordance with its terms.

18. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be received when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission (receipt by facsimile being deemed to occur only upon confirmation thereof), or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Senior Lender: LaSalle Bank National Association
8303 West Higgins Road
6th Floor
Chicago, Illinois 60631
Attn: Jonathan Gilfillan, Senior Vice President

With copies to: Much Shelist Freed Denenberg Ament & Rubenstein PC
191 North Wacker Drive
Suite 1800
Chicago, IL 60606
Attention: Scott L. David

To Lender: CIG International, LLC
C/o CapitalSource Finance LLC

UNOFFICIAL COPY

4445 Willard Avenue, 12th Floor
 Chevy Chase, Maryland 20815
 Attn: SFG Portfolio Manager

With copies to: CIG International, LLC
 C/o CapitalSource Finance LLC
 One North Franklin
 Suite 1800
 Chicago, IL 60606
 Attention: Carolyn Brocavich

And Schwartz Cooper Greenberger & Krauss
 180 North LaSalle Street, Suite 2700
 Chicago, Illinois 60601
 Attn: Dennis R. Ainger

Any party may designate a change of address by written notice to the other parties by giving at least ten (10) days' prior written notice of such change of address.

19. THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF ILLINOIS. BORROWER, SENIOR LENDER AND MEZZANINE LENDER, IN ORDER TO INDUCE SENIOR LENDER TO ENTER INTO THE SENIOR LOAN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS-EASTERN DIVISION. BORROWER, SENIOR LENDER AND MEZZANINE LENDER EACH HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY SENIOR LENDER ON THIS AGREEMENT IN ACCORDANCE WITH THIS PARAGRAPH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SENIOR LENDER TO ENTER INTO THE SENIOR LOAN.

20. EACH OF BORROWER, SENIOR LENDER AND MEZZANINE LENDER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY SENIOR LENDER ON THIS AGREEMENT, ANY AND EVERY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

21. The covenants and agreements of Mezzanine Lender contained in this Agreement that benefit Senior Lender or the holder of the Senior Loan and any restriction on Mezzanine Lender shall cease upon indefeasible repayment of the Senior Loan in full and the indefeasible payment and performance in full of all of Borrower's other obligations under the Senior Loan Documents (or the full and indefeasible release by Mezzanine Lender of the Mezzanine Loan

UNOFFICIAL COPY

Documents at a time when Mezzanine Lender has no further duties, obligations or liabilities hereunder).

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

23. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Agreement shall in no way be affected thereby.

24. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Agreement contained by or on behalf of any party shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not; provided, however, that the provision of this Paragraph 24 shall not be deemed to permit any unpermitted assignee to acquire any benefits hereunder (but such unpermitted assignee shall be bound by the assignor's obligations and restrictions hereunder).

25. This Agreement and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

26. This Agreement or a memorandum thereof shall be recorded concurrently with the execution and delivery hereof. In order to further notify third parties of the existence of this Agreement, the Mezzanine Note and the Junior Mortgage each shall, at all times, expressly state that the obligations of the Borrower thereunder are subordinated to the Senior Loan pursuant to the terms and provisions of this Agreement.

27. As between the parties hereto, the rights and obligations of the parties contained in this Agreement shall prevail over any provision in either the Senior Loan Documents or the Mezzanine Loan Documents that is inconsistent with the terms of this Agreement. This Agreement is for the sole benefit of Senior Lender, Mezzanine Lender and their respective successors and permitted assigns. Nothing herein shall be deemed to modify, limit or in any way affect the rights and obligations of Borrower or any Guarantor under the Senior Loan Documents or the Mezzanine Loan Documents, except as otherwise expressly set forth herein. Neither Borrower nor any Guarantor is or shall be deemed to be a third-party beneficiary hereunder. Senior Lender shall have the right to sell or transfer the Senior Loan and Senior Loan Documents, or any interest therein, in whole or in part, to any institutional lender.

28. Concurrently herewith, Mezzanine Lender, Senior Lender and Borrower shall enter into the escrow agreement in the form attached hereto as Exhibit "E-1" (the "Escrow Agreement") whereby Mezzanine Lender has agreed to deposit partial releases (the "Mezzanine Releases") of the Property in escrow, which releases shall be disbursed and recorded upon the sales of condominium units or other sales or refinancings of portions of the Property, in the time

UNOFFICIAL COPY

and manner provided in the Escrow Agreement. Senior Lender and Mezzanine Lender covenant and agree that:

(a) for any Unit or Parking Space (each as defined in the Escrow Agreement) that is subject at all times hereafter to a purchase agreement entered into prior to the date hereof, each of Senior Lender and Mezzanine Lender will release their mortgage liens upon such Unit or Parking Space provided the gross sales price for such Unit or Parking Space is that shown on the applicable purchase agreement.

(b) for any Unit or Parking Space that is not subject at all times hereafter to a Purchase Agreement entered into prior to the date hereof (an "Unsold Unit" or Unsold Parking Space"), Senior Lender and Mezzanine Lender will release their mortgage liens upon such Unit or Parking Space provided the gross sales price for such Unit or Parking Space is not less than eighty percent (80%) of the "Minimum Sales Price" shown for such Unit or Parking Space on Exhibit "C" to the Escrow Agreement.

Borrower hereby acknowledges and agrees that the provisions of this Agreement, the Escrow Agreement and this Paragraph 28 are solely intended to define the relative rights of Mezzanine Lender and Senior Lender with respect to Mezzanine Lender's and Senior Lender's agreement with respect to the Mezzanine Releases, and are in no way intended to: (i) as between Borrower and Mezzanine Lender, amend or modify the terms, covenants and conditions of the Mezzanine Loan Documents, including, without limitation, Article 9 of the Mezzanine Loan Agreement, or shall impair, as between Borrower and Mezzanine Lender, the obligations of Borrower to Mezzanine Lender to comply with all of the covenants and agreements contained therein, or (ii) as between Borrower and Senior Lender, amend or modify the terms, covenants and conditions of the Senior Loan Documents, or shall impair, as between Borrower and Senior Lender, the obligations of Borrower to Senior Lender to comply with all of the covenants and agreements contained therein.

29. Senior Lender and Mezzanine Lender mutually agree to provide to one another from time to time within 15 days after written request, but not more often than once in any 12-month period (except in the event of a default by Borrower, in which case requests may be more often but not so often as to unreasonably burden or disturb the lender furnishing the certificate), estoppel certificates specifying: (a) the outstanding principal balance (and any other amounts then due and payable) of the Mezzanine Loan or the Senior Loan, from such lender to Borrower; (b) whether, to such lender's knowledge, any defaults exists under the Mezzanine Loan Documents or the Senior Loan Documents, between such lender and Borrower, and specifying the nature of such defaults, if any; and (c) any other information reasonably requested pertaining to the Mezzanine Loan Documents or the Senior Loan Documents between such lender and Borrower.

30. Senior Lender agrees that, without Mezzanine Lender's written consent, Senior Lender shall not join any contract purchaser of any condominium unit in the Property in any foreclosure of the Senior Mortgage or other legal proceeding to terminate the contract governing such purchaser's proposed unit purchase provided that such contract is not in violation of the provisions of the Senior Loan Documents or the purchaser is not in default thereunder beyond the expiration of applicable cure periods.

UNOFFICIAL COPY

31. Mezzanine Lender and Senior Lender each hereby agree, at the request of the other, to execute such further documents and take such further actions as may be reasonably required to effect the purpose and intent of this Agreement.

32. This Agreement may be executed in counterparts, each or which shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.

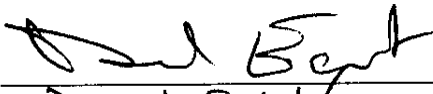
Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

SENIOR LENDER:

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

By: 
Name: Daniel Egli
Title: Loan officer

MEZZANINE LENDER:

CIG INTERNATIONAL, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

SENIOR LENDER:

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

By: _____
Name: _____
Title: _____

MEZZANINE LENDER:

CIG INTERNATIONAL, LLC,
a Delaware limited liability company

By: _____
Name: **Lee T. Smith**
Title: **Counsel**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT OF BORROWER AND GUARANTORS

The undersigned hereby acknowledge receipt of a copy of the foregoing Agreement and the undersigned's agreement to all of the provisions therein contained.

BORROWER:

3900 N. PINE GROVE LLC,
an Illinois limited liability company

By: [Signature]
Christopher R. Feurer, Managing Member

GUARANTORS:

[Signature]
CHRISTOPHER R. FEURER

[Signature]
STEVEN L. GOLOVAN, individually

[Signature]
JOHN F. LALLY, individually

[Signature]
CHARLES T. MUDD, individually

CASTLEBAR ENTERPRISES, INC.
an Illinois corporation

By: [Signature]
Its: [Signature]

Property of Cook County Clerk's Office

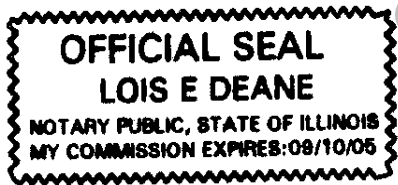
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29 day of September, 2004, before me personally appeared DANIEL EGLIT, the Loan Officer of **LASALLE BANK NATIONAL ASSOCIATION**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, the day and year last aforesaid.

Lois E. Deane
Notary Public



My Commission Expires: 9-10-05

(NOTARY SEAL)

UNOFFICIAL COPY

STATE OF MARYLAND)
) SS
COUNTY OF MONTGOMERY)

I HEREBY CERTIFY that on this 29th day of ~~October~~ September, 2004, before me personally appeared Lee T. Smith, the Counsel of **CIG INTERNATIONAL, LLC**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal in Chevy Chase, Maryland, the day and year last aforesaid.

Jackie M. Matheson
Notary Public

My Commission Expires: 8/31/08

(NOTARY SEAL)

This Document Prepared By:

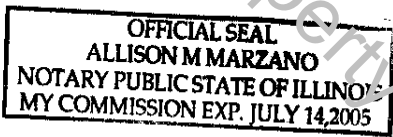
Dennis R. Ainger
Schwartz, Cooper, Greenberger & Krauss, Chtd.
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared **CHRISTOPHER R. FEURER**, the Managing Member of **3900 N. PINE GROVE, LLC**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said company in its corporate capacity and in its capacity as manager of 3900 N. Pine Grove, LLC.

WITNESS my signature and official seal at _____, in the County of Cook and State of Illinois, the day and year last aforesaid.



Allison M. Marzano
Notary Public

My Commission Expires: 7-14-05

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared **CHRISTOPHER R. FEURER**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

Cook WITNESS my signature and official seal at _____, in the County of _____ and State of Illinois, the day and year last aforesaid.



Allison M. Marzano
Notary Public

My Commission Expires: 7-14-05

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared **STEVEN L. GOLOVAN**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at _____, in the County of Cook and State of Illinois, the day and year last aforesaid.



Allison M. Marzano
Notary Public

My Commission Expires: 7-14-05

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared **JOHN F. LALLY**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at _____, in the County of Cook and State of Illinois, the day and year last aforesaid.



Allison M. Marzano
Notary Public

My Commission Expires: 7-14-05

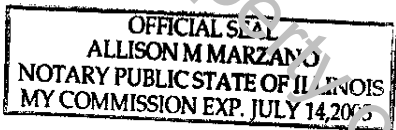
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared **CHARLES T. MUDD**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at _____, in the County of Cook and State of Illinois, the day and year last aforesaid.

Allison M. Marzano
Notary Public



My Commission Expires: 7-14-05

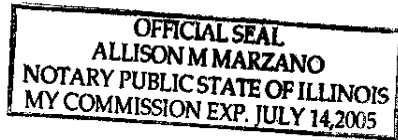
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 29th day of ~~October~~ ^{September}, 2004, before me personally appeared Steven Golovan, the President of **CASTLEBAR ENTERPRISES, INC.**, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal in _____, the day and year last aforesaid.

Allison M. Marzano
Notary Public

My Commission Expires: 7-14-05



UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 1 AND 2 AND THE EAST 15 FEET OF LOT 3 IN BLOCK 2 IN PELEG HALL'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL ¼ OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 3900 Pine Grove
Chicago, IL

PIN: 14-21-100-015-0000

UNOFFICIAL COPY

EXHIBIT "B"

DESCRIPTION OF SENIOR LOAN DOCUMENTS

All documents are dated as of October 1, 2004.

1. Construction Loan Agreement
2. Promissory Note
3. Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing
4. Assignment of Rents and Leases
5. UCC Financing Statement
6. Guaranty of Payment and Performance
7. Environmental Indemnity Agreement
8. Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits
9. Certificate of Representations, Warranties and Covenants
10. Escrow Agreement
11. Subordination Agreement (General Contractor)
12. Architect's Certificate
13. Architect's Consent Agreement
14. Engineer's Consent Agreement
15. Engineer's Consent Agreement (Structural Engineer)
16. Contractor's Consent Agreement

UNOFFICIAL COPY

EXHIBIT "C"

DESCRIPTION OF MEZZANINE LOAN DOCUMENTS

All documents are dated as of October 1, 2004.

1. Secured Promissory Note
2. Loan Agreement
3. Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents
4. Collateral Pledge and Security Agreement
5. UCC Financing Statements - Borrower
6. UCC Financing Statements - Members
7. Environmental Indemnity Agreement
8. Assignment of Agreements Affecting Real Estate
9. Limited Payment Guaranty
10. Contractor's Consent Agreement
11. Architect's Consent Agreement
12. Architect's Certificate

UNOFFICIAL COPY

EXHIBIT "D"

DEFINITION OF QUALIFIED SUBSTITUTE DEVELOPER

To qualify as a "Qualified Substitute Developer," an entity must:

- (1) be a developer experienced in the development, sale, marketing and management of high-rise condominiums or luxury apartments in the Chicago metropolitan area;
- (2) be of good business reputation and financial capacity sufficient to satisfactorily perform its services as developer of the Property, as determined by Senior Lender in good faith;
- (3) have sufficient experienced employees to perform its services as developer to a satisfactory level;
- (4) either (a) acquire all or substantially all of the Borrower's interests in the Property or (b) enter into a binding development agreement with Mezzanine Lender pursuant to which such developer assumes control of and responsibility for the performance and completion of all necessary development, sales, marketing and management services for the Property; and
- (5) be approved by Senior Lender in accordance with the procedures set forth in the provisions of this Exhibit D below, which approval shall not be unreasonably withheld provided that such developer meets all of the criteria described in clauses (1) through (4) above.

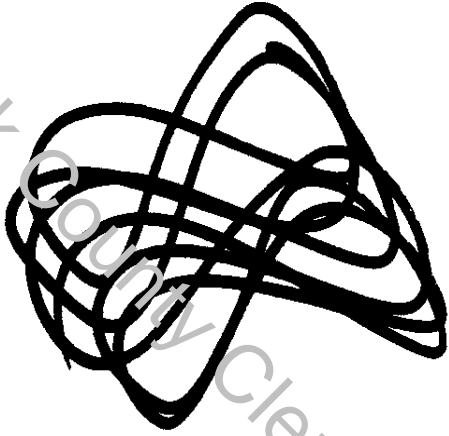
The selection and approval process pertaining to a Qualified Substitute Developer shall be as follows:

Within thirty (30) days after the Takeover Date, Mezzanine Lender shall deliver to Senior Lender a list of not less than five (5) nor more than seven (7) potential Qualified Substitute Developers, together with reasonably satisfactory documentation that all such potential Qualified Substitute Developers meet the standards in clauses (1) through (4) above; provided, however, that, for purposes of the listing process, only a statement pertaining to the intended structure described in clause (4) above needs to be furnished to Senior Lender (with the actual documentation being subject to subsequent approval by Senior Lender pursuant to Paragraph 7 of this Agreement). Within thirty (30) days after receipt of such list, Senior Lender shall notify Mezzanine Lender in writing which developers on such list are acceptable and which are unacceptable to Senior Lender, provided that Senior Lender must accept at least one of the developers on the list. Within thirty (30) days after receipt of such notice from Senior Lender, Mezzanine Lender shall select the Qualified Substitute Developer from any one of the developers on such list that Senior Lender has designated as acceptable, and complete the applicable documentation and submit same to Senior Lender for approval in accordance with Paragraph 7 of this Agreement. Within fifteen (15) days after receipt of such documentation, Senior Lender shall approve or disapprove same by written notice to Mezzanine Lender, provided that such approval shall not be unreasonably withheld or delayed and shall be deemed given if not expressly denied in writing within such 15-day period. If Mezzanine Lender fails to comply with any of the requirements set forth in this grammatical paragraph within the time required hereunder, then, without limiting Senior Lender's other available rights and remedies as

UNOFFICIAL COPY

a result thereof, Senior Lender may select the Qualified Substitute Developer by written notice to Mezzanine Lender at any time thereafter.

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXHIBIT "E-1"

FORM OF RELEASE DEPOSIT ESCROW

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is dated as of October 1, 2004, by and among **3900 N. PINE GROVE, LLC**, an Illinois limited liability company ("**Borrower**"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("**First Mortgagee**"), **CIG INTERNATIONAL, LLC**, a Delaware corporation ("**Second Mortgagee**"), and **CHICAGO TITLE INSURANCE COMPANY** ("**Escrowee**").

RECITALS.

A. Borrower is the owner of certain real property legally described on Exhibit "A" attached hereto located in Cook County, Illinois and all improvements thereon (the "**Property**"). The Property is the subject of Commitment No. 008209446 issued by Escrowee.

B. First Mortgagee has agreed to make a loan in the principal amount of \$13,500,000.00 (the "**First Loan**") to Borrower pursuant to a Construction Loan Agreement dated as of the date hereof between First Mortgagee and Borrower (the "**First Loan Agreement**"), which First Loan is evidenced by a Promissory Note from Borrower to First Mortgagee dated as of the date hereof (the "**First Note**") in the original principal amount of \$13,500,000.00 by and between Borrower and First Mortgagee, and is secured by, among other things, a Construction Mortgage, Security Agreement and Assignment of Leases and Rents and Fixture Filing executed by Borrower and encumbering the Property (the "**First Mortgage**") and by certain other documents and instruments (collectively, with the First Loan Agreement, First Note and the First Mortgage, the "**First Loan Documents**").

C. Second Mortgagee has agreed to make a loan in the principal amount of \$3,055,000.00 (the "**Second Loan**") to Borrower pursuant to a Loan Agreement dated as of the date hereof between Second Mortgagee and Borrower (the "**Second Loan Agreement**"), which Second Loan is evidenced by a Mortgage Note from Borrower to Second Mortgagee dated as of the date hereof (the "**Second Note**") in the original principal amount of \$3,055,000.00 and is secured by, among other things, a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents executed by Borrower and encumbering the Property (the "**Second Mortgage**") and by certain other documents and instruments (collectively, with the Second Loan Agreement, the Second Note and the Second Mortgage, the "**Second Loan Documents**").

D. First Mortgagee and Second Mortgagee have entered into a Subordination of Mortgage and Intercreditor Agreement dated as of the date hereof (the "**Intercreditor Agreement**").

E. Borrower, First Mortgagee and Second Mortgagee each acknowledge and agree that: (i) the Borrower will be converting portions of the Property to a residential condominium (the "**Conversion**"); (ii) following the submission of the Property to the Illinois Condominium

UNOFFICIAL COPY

Property Act, 765 ILCS 605/1 et seq. (the “Act”), the 102 condominium units (individually, a “Unit” and collectively, the “Units”) and 75 parking spaces (individually, a “Parking Space” and collectively, the “Parking Spaces”) to be created thereby will be sold and conveyed by the Borrower over a period of time (individually, a “Sale” and collectively, the “Sales”); (iii) the proceeds of each Sale and shall be paid in the manner herein provided; and (iv) the cooperation of each of the parties to this Agreement is necessary in order to effect the orderly and business-like conduct of the Sales.

NOW, THEREFORE, it is agreed as follows:

1. Agency Closings by Escrowee. The parties hereto agree that the closing of each Sale shall be conducted under agency-type closings at the offices of the Escrowee located at 171 North Clark Street, Chicago, Illinois 60601. The closing of the sale of all or any portion of the Retail Space shall take place from time to time through an escrow or “New York Style” closing at the offices of Escrowee.

2. Deposit of Partial Releases. Upon execution of this Escrow Agreement, Second Mortgagee shall deposit with the Escrowee one hundred seventy-five (175) partial releases in the form attached hereto as Exhibit “B” (the “Partial Releases”). The Partial Releases shall be executed and in recordable form, except that the legal descriptions for each Unit and Parking Space shall be attached thereto by the Escrowee from time to time at the earlier to occur of (a) the consummation of the combined Sales of at least five (5) Units and Parking Spaces, and (b) thirty (30) days after the date of the last recording of a Partial Release. The parties hereby agree that the intent of this Paragraph is to permit Escrowee to periodically record Partial Releases which release, in one document, multiple Units and Parking Spaces with respect to which Sales have occurred. The Escrowee shall retain the Partial Releases and shall withdraw and record them only in accordance with this Escrow Agreement. Second Mortgagee agrees that it shall promptly deposit an additional twenty-five (25) executed Partial Releases in recordable form upon request of the Escrowee if at any time during the term of this Escrow, Escrowee shall have less than twenty-five (25) Partial Releases on deposit pursuant to this Escrow. Notwithstanding anything contained herein to the contrary, if for any reason whatsoever, Escrowee shall no longer have any executed Partial Releases in this Escrow, Escrowee shall, nonetheless, perform all of its other obligations under this Escrow and proceed to close the sale of Units and Parking Spaces notwithstanding Second Mortgagee’s failure to deposit Partial Releases hereunder.

3. First Mortgage Pay-Down. Until such time as the First Loan shall have been repaid in full, upon the delivery to Escrowee of a partial release of the First Loan as to a Unit, Parking Space (each a “First Mortgagee’s Partial Release”) or First Mortgagee’s agreement or undertaking to Escrowee to deliver same, the Escrowee shall attach legal descriptions of such Units and Parking Spaces from time to time consistent with the provisions of Paragraph 2 above to the First Mortgagee’s Partial Release and the Partial Release and shall record the First Mortgagee’s Partial Release and the Partial Release for such Unit and Parking Space with the Cook County Recorder of Deeds, and concurrently therewith, make the following payments:

(a) Escrowee shall pay to First Mortgagee an amount equal to 100% of the “Net Sales Proceeds” (as defined in the Loan Agreement) for such Unit and Parking Space (as such Net Sales Proceeds are computed pursuant to a closing statement for each

UNOFFICIAL COPY

Unit and Parking Space signed by the First Mortgagee), provided that except as provided below, in no event shall First Mortgagee release the lien of the First Mortgage from any Unit or Parking Space if the gross sales price for such Unit or Parking Space (the "**Sale Price**") is less than eighty percent (80%) of the gross base sales price for such Unit or Parking Space shown on Exhibit "C" (the "**Minimum Sales Price**") attached hereto unless agreed to in writing by Second Mortgagee. Notwithstanding the foregoing, if First Mortgagee notifies Escrowee and Second Mortgagee in writing that an Event of Default has occurred under the First Loan Documents (A) at each closing Escrowee shall pay to First Mortgagee 100% of the total gross sales proceeds from the sale of such Unit or Parking Space and (B) First Mortgagee may request Escrowee to release the lien of the First Mortgage from any Unit or Parking Space without any limitation on the Sale Price for such Unit or Parking Space, and Second Mortgagee agrees that the lien of the Second Mortgage also shall be released upon such request.

(b) [Intentionally omitted].

(c) Release Fee. At such time as First Mortgagee delivers to Escrowee a full release of all remaining Units, Escrowee shall pay First Mortgagee an amount equal to \$200.00 multiplied by the number of remaining Units listed on the legal description for such release (which shall be the total number of all Units not previously released by First Mortgagee).

First Mortgagee agrees to deliver its First Mortgagee's Releases to Escrowee in a timely fashion following the Sale of each Unit or Parking Space, provided, however, that First Mortgagee may accumulate its releases so that multiple sales of Units and Parking Spaces can be covered in one release.

4. First Mortgage Final Release. Upon repayment in full of the First Loan and termination of any additional funding obligations of First Mortgagee under the Loan Agreement, the First Mortgagee shall deliver to Escrowee a release of all remaining Units and Parking Spaces subject to the First Mortgage (the "**First Mortgage Final Release**"). Escrowee will, within five (5) days of receipt, record the First Mortgagee's Final Release with the Cook County Recorder of Deeds and pay to First Mortgagee the balance of the partial release fee pursuant to Paragraph 3(c). Upon delivery of the First Mortgage Final Release to Escrowee, Escrowee shall continue to hold all remaining Partial Releases executed by Second Mortgagee in accordance with Paragraph 2 above and shall record the same upon receipt of written authorization from Second Mortgagee as set forth in Paragraph 5 below.

5. Second Mortgage Pay-Down. Following repayment in full of the First Loan, upon the delivery to Escrowee of written authorization signed by Second Mortgagee instructing Escrowee to release the Second Loan as to one or more specified Units and Parking Spaces, the Escrowee shall attach to a Partial Release the legal descriptions of such Units and Parking Spaces from time to time consistent with the provisions of Paragraphs 2 above and shall record the Partial Release for such Units and Parking Spaces with the Cook County Recorder of Deeds, and concurrently therewith, Escrowee shall, by wire transfer pursuant to the instructions attached hereto as Exhibit D, pay to Second Mortgagee 100% of the Net Disposition Proceeds (as defined in the Second Note) for such Unit and Parking Space (as such Net Disposition Proceeds are

UNOFFICIAL COPY

computed pursuant to a pro-forma closing statement for each Unit and Parking Space signed by the Second Mortgagee). Upon the indefeasible repayment in full of the Second Loan (together with all interest thereon and other sums payable with respect thereto), the Second Mortgagee shall deliver to Escrowee a release of all remaining Units and Parking Spaces subject to the Second Mortgage (the "Second Mortgage Final Release"). Escrowee will, within five (5) days of receipt, record the Second Mortgagee's Final Release with the Cook County Recorder of Deeds. Upon delivery of the Second Mortgage Final Release to Escrowee this Escrow Agreement shall terminate.

6. Review of Documents. Upon receipt of any release pursuant to the terms of this Escrow Agreement (including, without limitation, a Partial Release, First Mortgagee's Partial Release, First Mortgagee's Final Release), Escrowee shall review such release to assure that such release (i) has been fully executed and acknowledged by the relevant parties; (ii) is complete and in form sufficient for recordation and filing with the Cook County Recorder of Deeds. In the event any release is not in sufficient form to satisfy any of the foregoing conditions, Escrowee shall immediately notify all parties hereto, and First Mortgagee or Second Mortgagee, as appropriate, shall immediately take all actions necessary to conform the release to the required conditions.

7. Maintenance of Documents. Escrowee shall hold the Partial Releases and any other release delivered to Escrowee by any party hereto in accordance with the terms and conditions set forth herein. The parties hereto shall be entitled to cause the recordation of a release in accordance with the terms of this Escrow Agreement, but in no event shall Borrower be entitled to cause the recordation of any release.

8. Miscellaneous.

(a) Opposite each party's signature on this Escrow Agreement is the address to which notices to each such party shall be sent pursuant to or in connection with this Escrow Agreement. Notices hereunder shall be deemed received by the addressees therein upon the earlier of: (i) hand delivery to the addressee, (ii) one business day after deposit with Federal Express or UPS, provided the sender designates next day delivery to the applicable courier service, or (iii) three business days after mailing same, postage prepaid, by certified mail with return receipt requested. A party may hereafter designate a different address for notices to it, and such new designation shall be effective as to each party hereto who receives notice of such change in accordance with the foregoing.

(b) This Escrow Agreement shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of each party hereto.

(c) The Escrowee's fees and costs in connection with this Escrow Agreement shall be paid solely by Borrower.

(d) This Escrow Agreement may be executed by the parties hereto or their respective counsel.

(e) This Escrow Agreement may be executed in counterparts and all such counterparts, when taken together, shall constitute a complete document.

UNOFFICIAL COPY

(f) The terms and provisions of this Escrow Agreement shall create no right in any person, firm or corporation other than the parties hereto and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

(g) This Escrow Agreement may not be amended, varied or terminated except by an agreement in writing executed by all parties hereto.

(h) The duties and obligations of Escrowee under this Escrow Agreement shall be determined solely by the provisions of this Escrow Agreement, and Escrowee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Escrow Agreement.

(i) This Escrow Agreement shall be binding upon a party if executed and transmitted by facsimile; provided that each such party agrees to deliver an original executed copy hereof to the Escrowee within five business days after executing this instrument by facsimile.

9. Multiple Counterparts. This Agreement may be signed in multiple counterparts, each of which shall constitute an original hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

Address:

2636 North Lincoln Avenue
First Floor
Chicago, Illinois 60614
Attn: Steven Golovan

BORROWER:

3900 N. PINE GROVE LLC,
an Illinois limited liability company

By: _____
Christopher R. Feurer, Managing Member

Address:

8303 West Higgins Road
6th Floor
Chicago, Illinois 60631
Attention: James A. Pape

FIRST MORTGAGEE:

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

By: _____
Its: _____

Address:

One North Franklin
Suite 1800
Chicago, Illinois 60601
Attention: Carolyn Brocavich

SECOND MORTGAGEE:

CIG INTERNATIONAL, LLC, a
Delaware limited liability company

By: _____
Its: _____

Address:

171 North Clark Street
Chicago, Illinois 60601
Attention: _____

ESCROWEE:

CHICAGO TITLE INSURANCE COMPANY

By: _____
Its: _____

UNOFFICIAL COPY

EXHIBIT A TO EXHIBIT "E-1"

LEGAL DESCRIPTION

LOTS 1 AND 2 AND THE EAST 15 FEET OF LOT 3 IN BLOCK 2 IN PELEG HALL'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL ¼ OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 3900 Pine Grove
Chicago, IL

PIN: 14-21-100-015-0000

UNOFFICIAL COPY

EXHIBIT B TO EXHIBIT "E-1"

FORM OF PARTIAL RELEASES

STATE OF ILLINOIS)
)
COUNTY OF COOK)

PARTIAL RELEASE DEED

KNOW ALL MEN BY THESE PRESENTS, THAT, CIG INTERNATIONAL, LLC, a Delaware limited liability company, in consideration of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby RELEASE, CONVEY AND QUIT CLAIM unto 3900 N. PINE GROVE LLC, an Illinois limited liability company, all of the right, title, interest, claim or demand whatsoever which the undersigned may have acquired in, through or by the mortgage listed below, filed for record in the Recorder's Office of Cook County in the State of Illinois, encumbering those premises situated in Cook County, in the State of Illinois, described in EXHIBIT "A" attached hereto and made a part hereof, together with all appurtenances and privileges thereunto belonging or appertaining:

<u>DOCUMENT NAME</u>	<u>DATE OF RECORDING</u>	<u>DOCUMENT NUMBER</u>
Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents	_____	_____

THIS IS A PARTIAL RELEASE DEED and shall not adversely affect the enforceability, validity, or priority of the document listed above and the liens and security interests created thereby with respect to the real estate and other rights and property described in the document listed above but not specifically described in Exhibit "A" attached hereto.

UNOFFICIAL COPY

IN WITNESS WHEREOF, CIG INTERNATIONAL, LLC has caused these presents to be signed by their authorized signatories as of October __, 2004.

CIG INTERNATIONAL, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

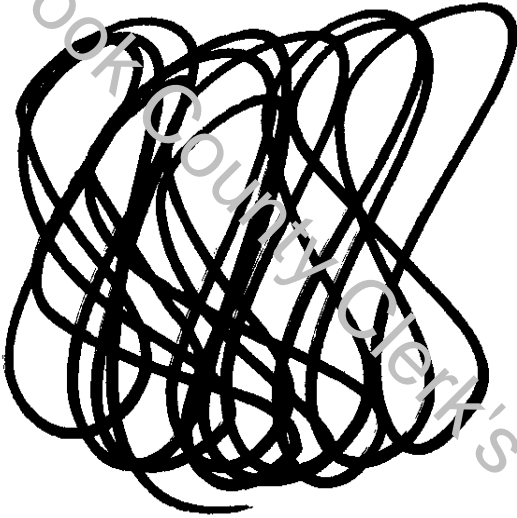
Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A" TO EXHIBIT B TO EXHIBIT "E-1"

LEGAL DESCRIPTION

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXHIBIT C TO EXHIBIT "E-1"

MINIMUM SALES PRICE SCHEDULE

Property of Cook County Clerk's Office

