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Eugene "Gene" Moore Fee: \$144.00
Cook County Recorder of Deeds
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Document prepared by
and after recording to
be returned to:

Fremont Investment & Loan
303 W. Madison Street
Suite 900
Chicago, IL 60606
Attn: Todd Finnely
Loan Number: 950114610

AMENDED AND RESTATED
INTERCREDITOR AGREEMENT

THIS AMENDED AND RESTATED INTERCREDITOR AGREEMENT (this "Agreement") is made as of the 12 day of October, 2004, by and between **FREMONT INVESTMENT & LOAN**, a California industrial bank ("First Mortgage Lender"), **ROOSEVELT RIVER PARTNERS, A JOINT VENTURE**, an Illinois joint venture ("Second Mortgage Lender"), and **LEHMAN BROTHERS HOLDINGS INC.**, a Delaware corporation ("Third Mortgage Lender").

RECITALS

A. LaSalle Bank National Association, as Trustee, under a Trust Agreement dated June 6, 2001 and known as Trust No. 127726, and Roosevelt/Clark Development, L.P., a Delaware limited partnership (collectively, "Borrower"), is the owner of certain real property and all improvements thereon located in the City of Chicago, County of Cook, State of Illinois as legally described in Exhibit A attached hereto (the "Property").

B. Pursuant to the terms of that certain Loan Agreement, dated May 4, 2004, among Borrower and First Mortgage Lender (such agreement as it may from time to time be amended, supplemented or modified collectively, the "First Mortgage Loan Agreement"), First Mortgage Lender made a loan to or for the benefit of Borrower in connection with the development of the Property (the "First Mortgage Loan"). Borrower's obligations with respect to such loan are evidenced by that certain Promissory Note (the "First Mortgage Note"), dated May 4, 2004, in the principal amount of Sixty Million Dollars (\$60,000,000).

C. Borrower's obligation to repay the First Mortgage Note is secured by, among other things, (i) that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "First Mortgage"), dated May 4, 2004, made by Borrower for the benefit of First Mortgage Lender, encumbering the Property; (ii) that certain Guaranty of Payment and Performance, dated May 4, 2004 (the "First Mortgage Guaranty Agreement") made by Daniel Mahru, an individual and Antoin Rezko, an individual (collectively, "Guarantor"), to and for the benefit of First Mortgage Lender; (iii) that certain Unsecured Hazardous Materials Indemnity

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Agreement, dated May 4, 2004, made by Borrower and Guarantor to First Mortgage Lender (the "**First Mortgage Environmental Indemnity**"); and (iv) certain other "Loan Documents", as such term is defined in the First Mortgage (the Loan Documents, the First Mortgage Note, the First Mortgage Loan Agreement, the First Mortgage, the First Mortgage Guaranty Agreement, the First Mortgage Environmental Indemnity and all other loan documents evidencing and securing the First Mortgage Loan are referred to herein collectively as the "**First Mortgage Instruments**").

D. The First Mortgage Instruments provide that there was an initial principal advance made in the amount of 40,000,000.00, which included an interest reserve of \$2,500,000 ("**Initial Advance**") and, provided that certain conditions set forth in the First Mortgage Instruments are satisfied, one or more additional principal advances from the Holdback for TIF Approval (as defined in the First Mortgage Instruments) may be made in an aggregate amount not to exceed \$20,000,000.00 ("**Subsequent Advances**").

E. Second Mortgage Lender has previously made a loan to and for the benefit of Borrower in connection with the acquisition of the Property (the "**Second Mortgage Loan**"). Borrower's obligations with respect to such commitments are evidenced by that certain Junior Mortgage Note (as amended by the Second Mortgage Loan Amendment described below, the "**Second Mortgage Note**") dated March 15, 2002 made by Borrower payable to the order of Second Mortgage Lender in the aggregate principal amount of Twenty Two Million Five Hundred Thousand and No/100 Dollars (\$22,500,000.00) which provides for a term of five years and an interest rate of 10% per annum which shall accrue during the term of the Second Mortgage Note and be payable on the maturity date of the Second Mortgage Note.

F. The obligation of Borrower to repay the Second Mortgage Note is secured by, among other things, (i) that certain Junior Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement (as amended by the Second Mortgage Loan Amendment described below, the "**Second Mortgage**"), dated March 15, 2002 made by Borrower for the benefit of Second Mortgage Lender encumbering the Property; (ii) that certain Junior Environmental Indemnity Agreement of March 15, 2002 made by Borrower and Guarantor to Second Mortgage Lender (the "**Second Mortgage Environmental Indemnity**"); and (iii) certain other "Junior Loan Documents", as such term is defined in the Second Mortgage (such Junior Loan Documents, the Second Mortgage Note, the Second Mortgage, the Second Mortgage Environmental Indemnity and all other loan documents evidencing and securing the Second Mortgage Loan are referred to herein collectively as the "**Second Mortgage Instruments**").

G. Borrower and Second Mortgage Lender have entered into that certain First Amendment to Loan Documents and Assignment and Assumption Agreement and other Agreements concurrently herewith (the "**Second Mortgage Loan Amendment**") to (i) add a consent fee of \$500,000 ("**Second Mortgage Consent Fee**") to the indebtedness evidenced by the Second Mortgage Note, (ii) increase the interest rate under the Second Mortgage Note from 10% per annum to 15% per annum if the Second Mortgage Loan is not paid in full within 9 months after the date of the Second Mortgage Loan Amendment, and (iii) provide that the Second Mortgage secures the Second Mortgage Consent Fee.

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H. Pursuant to the terms of that certain Loan Agreement of even date herewith among Borrower and Third Mortgage Lender (such agreement as it may from time to time be amended, supplemented or modified collectively, the "**Third Mortgage Loan Agreement**"), Third Mortgage Lender has made certain financial commitments to or for the benefit of Borrower in connection with the development of the Property (the "**Third Mortgage Loan**"). Borrower's obligations with respect to such commitments are evidenced by that certain Secured Promissory Note (the "**Third Mortgage Note**") dated of even date herewith in the principal amount of Thirteen Million Five Hundred Thousand Dollars (\$13,500,000).

I. Borrower's obligation to repay the Third Mortgage Note is secured by, among other things, (i) that certain Third Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement (the "**Third Mortgage**"), dated of even date herewith made by Borrower for the benefit of Third Mortgage Lender, encumbering the Property; (ii) that certain Guaranty of Recourse Obligations of even date herewith (the "**Third Mortgage Guaranty Agreement**") made by Guarantor to and for the benefit of Third Mortgage Lender; (iii) that certain Environmental Indemnity Agreement of even date herewith made by Borrower and Guarantor to Third Mortgage Lender (the "**Third Mortgage Environmental Indemnity**"); and (iv) certain other "Loan Documents", as such term is defined in the Third Mortgage Loan Agreement (the Loan Documents, the Third Mortgage Note, the Third Mortgage Loan Agreement, the Third Mortgage, the Third Mortgage Guaranty Agreement, the Third Mortgage Environmental Indemnity and all other loan documents evidencing and securing the Third Mortgage Loan are referred to herein collectively as the "**Third Mortgage Instruments**").

J. First Mortgage Lender, Second Mortgage Lender and Third Mortgage Lender may be referred to herein, collectively, as "**Lenders**," and individually as a "**Lender**." The First Mortgage Loan, the Second Mortgage Loan and the Third Mortgage Loan may be referred to herein, collectively, as the "**Loans**," and individually as a "**Loan**." The First Mortgage Note, the Second Mortgage Note and the Third Mortgage Note may be referred to herein, collectively, as the "**Notes**," and individually as a "**Note**." The First Mortgage Instruments, the Second Mortgage Instruments and the Third Mortgage Instruments may be referred to herein, collectively, as the "**Instruments**," and individually as a "**Instrument**." As used herein, "**Senior Lender**" shall mean (i) First Mortgage Lender, until the First Mortgage Note is paid in full and all obligations of Borrower with respect to the First Mortgage Instruments are fully discharged; then (ii) Second Mortgage Lender, until the Second Mortgage Note is paid in full and all obligations of Borrower with respect to the Second Mortgage Instruments are fully discharged; and then (iii) Third Mortgage Lender, until the Third Mortgage Note is paid in full and all obligations of Borrower with respect to the Third Mortgage Instruments are fully discharged.

K. In connection with the making of the First Mortgage Loan, First Mortgage Lender and Second Mortgage Lender entered into a certain Intercreditor Agreement, dated as of May 4, 2004 (the "**Prior Intercreditor Agreement**").

L. Third Mortgage Lender is unwilling to make the Third Mortgage Loan, and First Mortgage Lender and Second Mortgage Lender are unwilling to consent to the Third Mortgage Loan, unless the parties agree to amend and restate the Prior Intercreditor Agreement and enter into this Agreement to set forth certain agreements between them in respect to their exercise of

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certain rights under the First Mortgage Instruments, the Second Mortgage Instruments and the Third Mortgage Instruments, respectively.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby execute and deliver this Agreement, which shall amend, completely restate and supersede the Prior Intercreditor Agreement in its entirety, and the parties hereto hereby agree as follows:

1. **Incorporation of Recitals.** The recitals to this Agreement are incorporated herein and made a part hereof by this reference. All exhibits referred to in the recitals, or elsewhere in this Agreement, and attached hereto are incorporated herein and made a part of this Agreement by this reference.

2. **Mutual Consents.**

(a) **Consent to Third Mortgage Loan.** Subject to the terms of this Agreement, First Mortgage Lender and Second Mortgage Lender consent to the making of the Third Mortgage Loan, the terms and provisions of the Third Mortgage Instruments, the third priority encumbrance of the beneficial interests of the aforesaid trust thereby and the third priority encumbrance of the Borrower's estate in the Property thereby, and agree that the continued existence thereof shall not constitute a default under the terms and provisions of the First Mortgage Instruments or the Second Mortgage Instruments.

(b) **Consent to Second Mortgage Loan.** Subject to the terms of this Agreement, First Mortgage Lender and Third Mortgage Lender consent to the Second Mortgage Loan, the terms and provisions of the Second Mortgage Instruments, the second priority encumbrance of the beneficial interests of the aforesaid trust thereby and the second priority encumbrance of the Borrower's estate in the Property thereby, and agree that the continued existence thereof shall not constitute a default under the terms and provisions of the First Mortgage Instruments or the Third Mortgage Instruments. Until such time as the Third Mortgage Loan is paid in full, Second Mortgage Lender shall not consent to a subordinate mortgage.

(c) **Consent to First Mortgage Loan.** Subject to the terms of this Agreement, Second Mortgage Lender and Third Mortgage Lender consent to the First Mortgage Loan, the terms and provisions of the First Mortgage Instruments and the first priority encumbrance of the beneficial interests of the aforesaid trust thereby and the first priority encumbrance of the Borrower's estate in the Property thereby, and agree that the execution, delivery and performance thereof shall not constitute a default under the terms and provisions of the Second Mortgage Instruments or the Third Mortgage Instruments. Until such time as the Second Mortgage Loan and the Third Mortgage Loan are paid in full, First Mortgage Lender shall not consent to a subordinate mortgage.

3. **[Intentionally Omitted]**

4. **Subordination.**

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(a) **Subordination of Second Mortgage Instruments.** Notwithstanding anything to the contrary contained in the Second Mortgage Instruments, subject to the terms of this Agreement:

(i) Second Mortgage Lender hereby agrees (A) that all of the liens, security interests, terms, rights, covenants and conditions of the Second Mortgage Instruments (and any further extensions of credit by Second Mortgage Lender to Borrower) shall at all times be subordinate to the liens, security interests, terms, rights, covenants and conditions of the First Mortgage Instruments only to the extent of principal in the amount of \$40,000,000.00 ("**Superior First Mortgage Principal**"), all unpaid interest accrued on the Superior First Mortgage Principal ("**Superior First Mortgage Principal Interest**") and all amounts expended by First Mortgage Lender after a default has occurred under the First Mortgage Instruments to cure such default or to protect its collateral in accordance with the provisions of the First Mortgage Instruments ("**First Mortgage Protective Advances**"; together with the Superior First Mortgage Principal and the Superior First Mortgage Principal Interest, the "**Superior First Mortgage Indebtedness**"); and (B) that all amounts due to Second Mortgage Lender under the Second Mortgage Instruments (including interest and/or principal payments or prepayments, assignments of leases and rents, rights with respect to insurance proceeds and condemnation awards, advances of expenses with interest), are hereby and shall at all times continue to be expressly subject and subordinated in right of payment to the Superior First Mortgage Indebtedness. Notwithstanding anything to the contrary herein, no amounts advanced by First Mortgage Lender to purchase the Third Mortgage Loan, and no interest on such advances, shall be or be deemed to be Superior First Mortgage indebtedness.

(ii) Second Mortgage Lender shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property (including without limitation any which may arise in respect to real estate taxes, assessments or other governmental charges) until the Superior First Mortgage Indebtedness has been paid in full.

(b) **Subordination of Third Mortgage Instruments.** Notwithstanding anything to the contrary contained in the Third Mortgage Instruments, subject to the terms of this Agreement:

(i) Third Mortgage Lender hereby agrees, subject to Section 5(b), (A) that all of the liens, security interests, terms, rights, covenants and conditions of the Third Mortgage Instruments (and any further extensions of credit by Third Mortgage Lender to Borrower) shall at all times be subordinate to the liens, security interests, terms, rights, covenants and conditions of the Second Mortgage Instruments; and (B) that all amounts due to Third Mortgage Lender under the Third Mortgage Instruments (including interest and/or principal payments or prepayments, assignments of leases and rents, rights with respect to insurance proceeds and condemnation awards, advances of expenses with interest), are hereby and shall at all times continue to be expressly subject and subordinated in right of payment to the indebtedness of Borrower evidenced by the Second Mortgage Instruments and any and all advances (whether or not obligatory) advanced or incurred in accordance therewith. Third Mortgage Lender shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property (including without limitation any which may arise in

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respect to real estate taxes, assessments or other governmental charges) until the Second Mortgage Loan has been paid in full.

(ii) Third Mortgage Lender hereby agrees (A) that all of the liens, security interests, terms, rights, covenants and conditions of the Third Mortgage Instruments (and any further extensions of credit by Third Mortgage Lender to Borrower) shall at all times be subordinate to the liens, security interests, terms, rights, covenants and conditions of the First Mortgage Instruments ("**First Mortgage Indebtedness**"); and (B) that all amounts due to Third Mortgage Lender under the Third Mortgage Instruments (including interest and/or principal payments or prepayments, assignments of leases and rents, rights with respect to insurance proceeds and condemnation awards, advances of expenses with interest), are hereby and shall at all times continue to be expressly subject and subordinated in right of payment to the First Mortgage Indebtedness and any and all advances (whether or not obligatory) advanced or incurred in connection therewith. Third Mortgage Lender shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property (including without limitation any which may arise in respect to real estate taxes, assessments or other governmental charges) until the First Mortgage Indebtedness has been paid in full.

5. Limitation on Loans.

(a) Limitation on Third Mortgage Loan. The indebtedness secured by the Third Mortgage Instruments shall be limited to the sum of the following:

- (i) The outstanding principal amount of the Third Mortgage Note on the date hereof plus interest accrued thereon, reduced by any and all payments made to Third Mortgage Lender;
- (ii) The Third Mortgage Lender Costs (as hereinafter defined); and
- (iii) Advances made to cure any default under the First Mortgage Loan or the Second Mortgage Loan.

(b) Limitation on Second Mortgage Loan. The indebtedness secured by the Second Mortgage Instruments shall be limited to the sum of the following:

- (i) The outstanding principal amount of the Second Mortgage Note on the date hereof plus interest accrued thereon and the Second Mortgage Consent Fee, reduced by any and all payments made to Second Mortgage Lender;
- (ii) The Second Mortgage Lender Costs (as hereinafter defined); and
- (iii) Advances made to cure any default under the First Mortgage Loan.

(c) Limitations on First Mortgage Loan. First Mortgage Lender shall not disburse any portion of the Subsequent Advances unless such portion of the Subsequent Advances together with any other amounts paid to Second Mortgage Lender by or on behalf of Borrower concurrently with such disbursement are sufficient to pay the Second Mortgage Indebtedness in full.

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6. **Transfer of Third Mortgage Loan.** Third Mortgage Lender shall not sell the Third Mortgage Loan, or pledge, hypothecate, convey or assign any of its rights under this Agreement or the Third Mortgage Instruments without First Mortgage Lender's prior written consent, which consent may be withheld in First Mortgage Lender's good faith discretion; provided, however, that First Mortgage Lender's consent shall not be required for a sale, pledge, hypothecation, conveyance or assignment to a Qualified Transferee so long as written notice thereof is provided to First Mortgage Lender within 30 days following such sale, pledge, hypothecation, conveyance or assignment. In the event First Mortgage Lender consents to the Transfer (as defined in the First Mortgage Instruments) of the Third Mortgage Loan or any Third Mortgage Instruments or such Transfer (as defined in the First Mortgage Instruments) is otherwise permitted hereunder without such consent, such Transfer (as defined in the First Mortgage Instruments) shall be subject to all of the terms and conditions of this Agreement and the Subordination Agreement (defined below).

7. **Allocation of Proceeds.** Except in connection with the sale of a Release Parcel (hereinafter defined) or any other collateral for the First Mortgage Loan and the Second Mortgage Loan in accordance with Section 12 of this Agreement, all condemnation, insurance and foreclosure proceeds received by First Mortgage Lender or Second Mortgage Lender, whether pursuant to the First Mortgage Instruments, Second Mortgage Instruments, or otherwise, shall be applied as follows:

First, to reimburse First Mortgage Lender for all costs, expenses, fees and charges (including, without limitation, attorneys' fees, costs, disbursements and expenses) relating to the exercise of any right or remedy of First Mortgage Lender under the First Mortgage Instruments, related to the Superior First Mortgage Indebtedness, including, without limitation, the obtaining, taking possession of, holding, preparing for sale, disposing of and/or realizing on the Property;

Second, to First Mortgage Lender in payment of the Superior First Mortgage Indebtedness, until all such amounts are paid in full;

Third, to reimburse Second Mortgage Lender for (i) all costs, expenses, fees and charges (including, without limitation, attorneys' fees, costs, disbursements and expenses) relating to the exercise of any right or remedy of Second Mortgage Lender under the Second Mortgage Instruments, including, without limitation, the obtaining, taking possession of, holding, preparing for sale, disposing of and/or realizing on the Property, and (ii) protective advances made with respect to the Second Mortgage Instruments (the "**Second Mortgage Lender Costs**");

Fourth, to Second Mortgage Lender in payment of all principal, accrued and unpaid interest, and all other amounts due to Second Mortgage Lender under the Second Mortgage Note, the Second Mortgage and the other Second Mortgage Instruments (the "**Second Mortgage Indebtedness**"), until all such amounts are paid in full;

Fifth, provided that the Second Mortgage Indebtedness has been fully repaid and Second Mortgage Lender has been fully reimbursed for all Second Mortgage Lender Costs, then to First Mortgage Lender in payment of the First Mortgage Indebtedness and all other amounts due under the First Mortgage Instruments;

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Sixth, to reimburse Third Mortgage Lender for (i) all costs, expenses, fees and charges (including, without limitation, attorneys' fees, costs, disbursements and expenses) relating to the exercise of any right or remedy of Third Mortgage Lender under the Third Mortgage Instruments, including, without limitation, the obtaining, taking possession of, holding, preparing for sale, disposing of and/or realizing on the Property, and (ii) Protective Advances, as defined in the Third Mortgage Loan Agreement (the "**Third Mortgage Lender Costs**");

Seventh, to Third Mortgage Lender in payment of all principal, accrued and unpaid interest, and all other amounts due to Third Mortgage Lender under the Third Mortgage Note, the Third Mortgage and the other Third Mortgage Instruments, until all such amounts are paid in full (the "**Third Mortgage Indebtedness**"); and

Eighth, the remainder, if any, to Borrower.

8. Payments.

(a) **Payments to Second Mortgage Lender.** Except as provided in Sections 7 and 12 of this Agreement, and except for any payments received by Second Mortgage Lender (i) from Subsequent Advances of the First Mortgage Loan, and (ii) from or on behalf of Borrower to fully pay the Second Mortgage Indebtedness in connection with such Subsequent Advances (as described in Section 5(c) above), Second Mortgage Lender shall not apply any payments received to any principal, interest or other sums due under the Second Mortgage Instruments until the Superior First Mortgage Indebtedness is paid in full. Except as provided in Sections 7 and 12 of this Agreement, and except for any payments received by Second Mortgage Lender (i) from Subsequent Advances of the First Mortgage Loan, and (ii) from or on behalf of Borrower to fully pay the Second Mortgage Indebtedness in connection with such Subsequent Advances (as described in Section 5(c) above), in the event Second Mortgage Lender at any time prior to the payment in full of the Superior First Mortgage Indebtedness receives any payments from Borrower, any guarantor or otherwise, directly or indirectly, in cash or other property or by setoff or in any other manner in connection with the Second Mortgage Note, the Second Mortgage Instruments or the Property, Second Mortgage Lender shall hold same in trust solely for the benefit of First Mortgage Lender and immediately remit such payments to First Mortgage Lender. Except as provided in Sections 7 and 12 of this Agreement, in the event First Mortgage Lender, at any time subsequent to the payment in full of the Superior First Mortgage Indebtedness, and so long as the Second Mortgage Loan has not been paid in full, receives any payments from Borrower, then First Mortgage Lender shall notify Second Mortgage Lender and shall, upon the request of Second Mortgage Lender, immediately remit such payments to Second Mortgage Lender.

(b) **Payments to Third Mortgage Lender.** Except as provided in Section 7 of this Agreement, Third Mortgage Lender shall not apply any payments received to any principal, interest or other sums due under the Third Mortgage Instruments until the First Mortgage Indebtedness and the Second Mortgage Indebtedness are each paid in full. In the event Third Mortgage Lender, at any time prior to the payment in full of the First Mortgage Indebtedness and the Second Mortgage Indebtedness, receives any payments from Borrower, any guarantor or otherwise, directly or indirectly, in cash or other property or by setoff or in any other manner in connection with the Third Mortgage Note, the Third Mortgage Instruments or

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the Property, Third Mortgage Lender shall hold same in trust solely for the benefit of either (i) First Mortgage Lender if the Superior First Mortgage Indebtedness has not been paid in full, (ii) Second Mortgage Lender if the Superior First Mortgage Indebtedness has been paid in full and the Second Mortgage Indebtedness has not been paid in full, and (iii) First Mortgage Lender if the First Mortgage Indebtedness has not been paid in full and the Second Mortgage Indebtedness has and paid in full, and in each case, shall immediately remit such payments to the Lender entitled thereto in accordance with clauses (i), (ii) and (iii) above. In the event First Mortgage Lender or Second Mortgage Lender, at any time subsequent to the payment in full of the First Mortgage Indebtedness and the Second Mortgage Indebtedness, receives any payments from Borrower, then First Mortgage Lender or Second Mortgage Lender, as applicable, shall notify Third Mortgage Lender and shall, upon the request of Third Mortgage Lender, immediately remit such payments to Third Mortgage Lender.

9. Amendment of First Mortgage Instruments, Second Mortgage Instruments and Third Mortgage Instruments. First Mortgage Lender may, without being required to obtain the written consent of the other Lenders, amend or modify the First Mortgage Instruments for any and all purposes other than to: (i) increase the interest rate or the principal amount other than increases in the principal amount equal to the amount of any First Mortgage Protective Advances and any advances made to cure defaults under the Second Mortgage Loan or the Third Mortgage Loan, plus interest thereon, (ii) increase, in any other material respect, any monetary obligations of Borrower under the First Mortgage Instruments, (iii) amend the definition of an Event of Default or amend the maturity date of the First Mortgage Loan, unless the extension or acceleration of the maturity date is expressly provided in the First Mortgage Instruments, (iv) convert or exchange the First Mortgage Loan into or for any other indebtedness or subordinate (except as expressly provided for hereunder with respect to Subsequent Advances) any of the First Mortgage Loan to any indebtedness of Borrower, (v) increase or decrease the minimum Release Prices, as set forth on Exhibit G to the First Mortgage Loan Agreement, (vi) otherwise make the terms thereof more onerous to Borrower, or (vii) be in conflict with the terms and provisions of this Agreement.

Second Mortgage Lender may, without being required to obtain the written consent of the other Lenders, amend or modify the Second Mortgage Instruments for any and all purposes other than to: (i) increase the interest rate or the principal amount other than increases in the principal amount equal to the amount of any protective advances made with respect to the Second Mortgage Instruments and any advances made to cure defaults under the First Mortgage Loan or the Third Mortgage Loan, plus interest thereon, (ii) increase, in any other material respect, any monetary obligations of Borrower under the Second Mortgage Instruments, (iii) amend the definition of an Event of Default or amend the maturity date of the Second Mortgage Loan, unless the extension or acceleration of the maturity date is expressly provided in the Second Mortgage Instruments, (iv) convert or exchange the Second Mortgage Loan into or for any other indebtedness or subordinate any of the Second Mortgage Loan to any indebtedness of Borrower, (v) increase or decrease the Net Release Prices, as defined in the Second Mortgage Instruments, (vi) otherwise make the terms thereof more onerous to Borrower, (provided, however, that Second Mortgage Lender may amend Borrower's set-off rights pursuant to Section 17(c) of the Second Mortgage Note and Section 3.31 of the Second Mortgage), or (vii) be in conflict with the terms of this Agreement.

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Third Mortgage Lender may, without being required to obtain the written consent of the other Lenders, amend or modify the Third Mortgage Instruments for any and all purposes other than to: (i) increase the interest rate or the principal amount other than increases in the principal amount equal to the amount of any protective advances made with respect to the Third Mortgage Instruments and any advances made to cure defaults under the First Mortgage Loan or the Second Mortgage Loan, plus interest thereon, (ii) increase, in any other material respect, any monetary obligations of Borrower under the Third Mortgage Instruments, (iii) amend the definition of an Event of Default or amend the maturity date of the Third Mortgage Loan, unless the extension or acceleration of the maturity date is expressly provided in the Third Mortgage Instruments, (iv) convert or exchange the Third Mortgage Loan into or for any other indebtedness, (v) increase or decrease the Net Release Prices, as defined in the Third Mortgage, (vi) otherwise make the terms thereof more onerous to Borrower, or (vii) be in conflict with the terms of this Agreement.

10. Defaults of Borrower.

(a) Each Lender agrees that, promptly upon any default by Borrower under the Loan made by such Lender, such Lender shall deliver to the other Lenders copies of all notices of default delivered by it to Borrower at the same time and in the same manner provided for the giving of such notice to Borrower, at the addresses given in Section 19 of this Agreement.

(b) In the event that a default or an event of default exists under the First Mortgage Instruments (such a default, a "**First Mortgage Default**"), First Mortgage Lender may take any action which First Mortgage Lender deems necessary or appropriate to enforce its security interests or liens on, or exercise any other rights or remedies, or foreclose or otherwise realize on, the Property or any other collateral in which First Mortgage Lender has a security interest.

(c) In the event that a default or an event of default exists under any Second Mortgage Instruments (a "**Second Mortgage Default**") which is not a default solely because of the existence of a First Mortgage Default, then the holder of the Second Mortgage Instruments, upon sixty (60) days' prior written notice to all other Lenders, may take any action to enforce its security interests or liens on, or exercise any other rights or remedies, or foreclose or otherwise realize on, the Property or any other collateral in which such holder has a security interest, without the prior written consent of any other Lender.

(d) In the event that a default or an event of default exists under any Third Mortgage Instruments (a "**Third Mortgage Default**"; a First Mortgage Default or a Second Mortgage Default or a Third Mortgage Default may be referred to as a "**Default**") which is not a default solely because of the existence of a First Mortgage Default or a Second Mortgage Default, then any exercise by Third Mortgage Lender of any remedies against the Property or any other assets of Borrower (including, without limitation, the commencement of any judicial or nonjudicial foreclosure proceedings other than judicial or nonjudicial proceedings under that certain Junior and Subordinate Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust ("**Subordinate ABI**") in accordance with the terms of this Agreement) shall constitute a default under the First Mortgage Instruments; further provided, however, that any event under or in connection with the First Mortgage Loan or the exercise of any remedy by

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Third Mortgage Lender which results in Third Mortgage Lender becoming the record, the beneficial or economic owner of any or all of the beneficial interest in Trust No. 127726 shall not constitute a default as a result of the limitations on Transfers set forth in Section 1.10 of the First Mortgage, or the other provisions of the First Mortgage Instruments (and First Mortgage Lender shall not require an assumption of the First Mortgage Loan or the First Mortgage Guaranty Agreement in connection with Third Mortgage Lender's exercise of its remedies under the Subordinate ABI), so long as (i) Third Mortgage Lender has provided to First Mortgage Lender the notices required by Section 10(a) of this Agreement, (ii) Third Mortgage Lender has retained, upon taking such beneficial interest in Trust No. 127726, third party professional project management of the Property by one of the pre-approved project managers listed on Exhibit F, or another project manager, acceptable to Fremont in its reasonable discretion, which (a) is a reputable management company having at least five (5) years' national experience in the management of projects substantially similar to the Property, (b) has, for at least five (5) years prior to its engagement as project manager, managed at least five (5) projects substantially similar to the Property, (c) at the time of its engagement as project manager has projects under management of the same type of development as the Property and of at least the same scope and size as the Property and (d) is not the subject of a bankruptcy or similar insolvency proceeding, (iii) Third Mortgage Lender has retained, upon taking such beneficial interest in Trust No. 127726, one of the pre-approved third party professional brokers listed on Exhibit F, or another third party professional broker, acceptable to Fremont in its reasonable discretion, which (a) is a reputable professional brokerage company having at least five (5) years' national experience in the sale of projects substantially similar to the Property, (b) has, during the five (5) years prior to its engagement as Property broker, sold at least five (5) projects substantially similar to the Property, (c) at the time of its engagement as Property broker has projects under listing agreements of the same type of development as the Property and of at least the same scope and size as the Property and (d) is not the subject of a bankruptcy or similar insolvency proceeding, for the sale of any portion of the Property not then covered by any sale agreement or required for any governmental dedication, (iv) within thirty (30) days following any foreclosure or UCC sale by Third Mortgage Lender or acquisition of any of the beneficial interest in Trust No. 127726 by assignment in lieu of foreclosure or UCC sale, Third Mortgage Lender has submitted to First Mortgage Lender for review and approval, such approval not to be unreasonably withheld, a written project management agreement and brokerage agreement, (v) concurrently with Third Mortgage Lender becoming the record, beneficial or economic owner of any or all of the beneficial interest in Trust No. 127726, Third Mortgage Lender delivers to Lender a guaranty or guaranties and an environmental indemnity from an Affiliate of Third Mortgage Lender, or other entity, with a tangible net worth of not less than Fifty Million Dollars (\$50,000,000), substantially in the form of Exhibit E attached to that certain Subordination and Recognition Agreement between First Mortgage Lender and Third Mortgage Lender dated even herewith ("Subordination Agreement"), (vi) Third Mortgage Lender has retained, upon taking such beneficial interest in Trust No. 127726, a pre-approved construction manager and general contractor for the Property listed on Exhibit F, or another construction manager and general contractor for the Property, acceptable to Fremont in its good faith sole discretion, which (a) is a reputable construction manager and a reputable general contractor having at least five (5) years' national experience in the construction of projects substantially similar to the Property, (b) has, for at least five (5) years prior to its engagement as construction manager or general contractor, managed at least five (5) construction projects substantially similar to the Property, (c) at the

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time of its engagement as construction manager or general contractor has construction projects under management of the same type of development as the Property and of at least the same scope and size as the Property and (d) is not the subject of a bankruptcy or similar insolvency proceeding, and First Mortgage Lender shall have approved, in its good faith sole discretion, all agreements with such construction manager and general contractor, and (vii) on or before Third Mortgage Lender becomes the record, beneficial or economic owner of any or all of the beneficial interest in Trust No. 127726, First Mortgage Lender shall have determined, in its good faith sole discretion, that Third Mortgage Lender's taking of such beneficial interest in Trust No. 127726 shall not materially and adversely affect (a) any sale agreement or any other agreement, instrument or document affecting the Property, the development thereof or the construction of improvements thereon, or Borrower's ability to timely perform its obligations under any sale agreement or any such other agreement, instrument or document, or (b) the timing of the construction of any improvements on any portion of the Property or required in connection with the development of any of the Property.

First Mortgage Lender further agrees that a default under the Third Mortgage Instruments shall not in and of itself constitute a default under the First Mortgage Instruments, but the exercise by Third Mortgage Lender of any remedies against the Property or any other assets of Borrower (including, without limitation, the commencement of any judicial or nonjudicial foreclosure proceedings other than judicial or nonjudicial foreclosure proceedings under the Subordinate ABI which proceedings do not affect the record title to or ownership of the Property by Trust No. 127726 or the priority or validity of the first lien of First Mortgage Instruments on the Property and the beneficial interest in Trust No. 127726 and conducted in accordance with this Agreement) shall in and of itself constitute a default under the First Mortgage Instruments; provided, however, that the foregoing restriction contained in this grammatical paragraph shall not affect First Mortgage Lender's right to declare a default or pursue any remedies under the First Mortgage Instruments or otherwise as the result of the occurrence of any event (other than the commencement of any judicial or nonjudicial foreclosure proceedings under the Subordinate ABI after a default under the Third Mortgage Instruments which proceedings do not affect the record title to or ownership of the Property by Trust No. 127726 or the priority or validity of the first lien of the First Mortgage Instruments on the Property and the beneficial interest in Trust No. 127726 and conducted in accordance with this Agreement) which is expressly a default under the First Mortgage Instruments even though such event is also, or is not, a default under the Third Mortgage Instruments, subject to Third Mortgage Lender's right to cure such defaults as set forth herein; further provided, however, notwithstanding anything herein to the contrary, that any event, including, without limitation, any event under or in connection with the Third Mortgage Loan or the exercise of any remedy by Third Mortgage Lender, which results in any person or persons other than a Qualified Transferee (as defined in the Subordination Agreement) becoming the record, beneficial or economic owner of Trust No. 127726 in accordance with the terms of this Agreement, shall constitute a default under the First Mortgage Instruments unless otherwise expressly permitted under the First Mortgage Instruments or this Agreement. Except as expressly set forth herein with respect to Third Mortgage Lender, nothing contained in this Agreement constitutes or shall be deemed or construed to constitute a waiver of any of the terms of the First Mortgage Instruments.

(e) In the event that a default or an event of default exists under any Instruments other than the Senior Instruments which is a default solely because of a Senior

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Default, then the Lender holding such Instruments may not, except after Senior Lender has filed a foreclosure action with respect to a Senior Default, take any action to enforce its security interests or liens on, or exercise any other rights or remedies, or foreclose or otherwise realize on, the Property or any other collateral in which such Lender has a security interest, without the prior written consent of Senior Lender.

(f) Notwithstanding anything in **subsections (b), (c) (d) and (e)** above, if the First Mortgage Default or the Second Mortgage Default or the Third Mortgage Default, as the case may be, is by its nature capable of being cured (e.g., the nonpayment of any amount due under the applicable Instruments), then each Lender shall, with respect to a monetary default, have fifteen (15) days from the date of receiving notice of the First Mortgage Default or the Second Mortgage Default or the Third Mortgage Default, as the case may be, to cure the monetary First Mortgage Default or the monetary Second Mortgage Default or the monetary Third Mortgage Default, as the case may be, and, with respect to a non-monetary default, have forty five (45) days from the date of such notice to cure the non-monetary First Mortgage Default or the non-monetary Second Mortgage Default or the non-monetary Third Mortgage Default, as the case may be; provided, however, that no Lender shall be obligated to cure any such Default. Subject to **Sections 10(c), (d) and (e)**, failure of any Lender receiving notice of the First Mortgage Default or the Second Mortgage Default or the Third Mortgage Default to cure such Default within such fifteen (15) day period or forty five (45) day period, as the case may be, shall be deemed a waiver by such Lender of its right to cure such Default, in which event, the Lender holding the Instruments that are in default may exercise any rights or remedies it may have under such Instruments.

If more than one Lender desires to cure a Default, then the Lender with the most senior lien priority shall have the right to cure such Default, provided, however, that if such Lender fails to cure such Default within the fifteen (15) day period or forty five (45) day period specified above, then the second most senior Lender shall have an additional five (5) days to cure such Default; and provided further that if such second most senior Lender fails to cure such Default within such five (5) day period, then the third most senior Lender shall have an additional five (5) days to cure such Default.

It is expressly agreed that the curing by any Lender of any defaults under the Instruments of any other Lender or the taking of any action by any Lender in connection therewith shall not be deemed an assumption by such Lender of any of Borrower's obligations under such Instruments.

11. Casualty and Condemnation Proceeds. In the case of any loss or damage with respect to the Property, or a taking by condemnation or eminent domain of all or any portion of the Property, then Senior Lender shall have the absolute right, in its sole discretion, and without notifying or obtaining the consent of approval of any other Lender, to determine whether to repair or restore the Property, and in such event the provisions of the Senior Instruments shall govern the distribution of the proceeds of any casualty or taking by condemnation or eminent domain.

12. Minimum Release Prices. Notwithstanding anything to the contrary in any Lender's Instruments, each Lender hereby agrees that such Lender shall execute and deliver on

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or before the scheduled date of closing of a partial release a recordable release of the lien of such Lender's Instruments on such portion of the such Lender's Loan collateral, provided the Lenders receive proceeds in the manner hereinafter provided.

Subparagraph 3.20(b) of the Second Mortgage, entitled "Partial Release" is attached hereto as Exhibit B ("**Partial Release Provisions**"). The hereafter capitalized terms shall have the same meaning as set forth in the Partial Release Provisions; provided, however, that the definition of Full Consideration shall mean the purchase price for the Transfer of a Release Parcel together with any additional funds provided by or on behalf of Borrower to First Mortgage Lender in connection with such Release Parcel Transaction.

(a) The Net Release Price from a Release Parcel Transaction shall, contemporaneous with the First Mortgage Lender's release of the First Mortgage, the Second Mortgage Lender's release of the Second Mortgage, and the Third Mortgage Lender's release of the Third Mortgage, with respect to such Release Parcel, be distributed as follows:

(i) During any time in which the First Mortgage Indebtedness and the Second Mortgage Indebtedness have not been fully repaid:

(x) 80% of the Net Release Price, to the First Mortgage Lender; and

(y) 20% of the Net Release Price, plus the costs provided for in Subparagraph 3.20(b)(5) of the Partial Release Provisions to the Second Mortgage Lender.

(ii) During any time in which the First Mortgage Indebtedness and the Third Mortgage Indebtedness have not been fully repaid and the Second Mortgage Indebtedness has been fully repaid, 100% of the Net Release Price to the First Mortgage Lender

(iii) During any time in which the First Mortgage Indebtedness has been fully repaid and the Second Mortgage Indebtedness and the Third Mortgage Indebtedness have not been fully repaid, 100% of the Net Release Price, plus the costs provided for in Subparagraph 3.20(b)(5) of the Partial Release Provisions to the Second Mortgage Lender.

(iv) During any time in which the First Mortgage Indebtedness and the Second Mortgage Indebtedness have been fully repaid, 100% of the Net Release Price to Third Mortgage Lender.

(b) The Net Release Price, if any, from a release of First Mortgage, Second Mortgage and Third Mortgage liens on a Public Infrastructure Parcel shall, contemporaneous with First Mortgage Lender's release of the First Mortgage, Second Mortgage Lender's release of the Second Mortgage, and Third Mortgage Lender's release of the Third Mortgage, with respect to such Public Infrastructure Parcel, be distributed as follows:

(i) During any time in which the First Mortgage Indebtedness and the Second Mortgage Indebtedness have not been fully repaid:

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- (x) 80% of the Net Release Price, to the First Mortgage Lender; and
- (y) 20% of the Net Release Price, plus the costs provided for in Subparagraph 3.20(b)(5) of the Partial Release Provisions to the Second Mortgage Lender.
- (ii) During any time in which the First Mortgage Indebtedness and the Third Mortgage Indebtedness have not been fully repaid and the Second Mortgage Indebtedness has been fully repaid, 100% of the Net Release Price to the First Mortgage Lender.
- (iii) During any time in which the First Mortgage Indebtedness has been fully repaid and the Second Mortgage Indebtedness and the Third Mortgage Indebtedness have not been fully repaid, 100% of the Net Release Price, plus the costs provided for in Subparagraph 3.20(b)(5) of the Partial Release Provisions to the Second Mortgage Lender.
- (iv) During any time in which the First Mortgage Indebtedness and the Second Mortgage Indebtedness have been fully repaid, 100% of the Net Release Price to Third Mortgage Lender.
- (c) In the event (i) a monetary Default of the Borrower occurs and continues uncured pursuant to the First Mortgage Instruments; (ii) First Mortgage Lender has not accelerated the First Mortgage Note and commenced a foreclosure action pursuant to the First Mortgage and in accordance with this Agreement; and (iii) the Net Release Price from a Release Parcel Transaction or the release of the First Mortgage, Second Mortgage and Third Mortgage in connection with a release of a Public Infrastructure Parcel is available to be disbursed to First Mortgage Lender, and Second Mortgage Lender or Third Mortgage Lender, then First Mortgage Lender may deduct from the portion of the Net Release Price payable to Second Mortgage Lender or Third Mortgage Lender, as applicable, such amounts as shall be required, pursuant to the First Mortgage Instruments, to cure such monetary default and any subsequent default under the First Mortgage Loan occurring within the following ninety (90) days under the First Mortgage Instruments, and the balance of the Net Release Price payable to the Second Mortgage Lender or Third Mortgage Lender, as applicable, if any, shall be held by the First Mortgage Lender for a period of ninety (90) days from the date the Net Release Price is available to be disbursed, and unless First Mortgage Lender accelerates the First Mortgage Note and commences a foreclosure proceeding pursuant to the First Mortgage and in accordance with this Agreement within said ninety (90) day period (in which event the balance, if any, of the Net Minimum Release Price otherwise payable to Second Mortgage Lender or Third Mortgage Lender, as applicable, shall, pursuant to (f) below be applied to the Superior First Mortgage Indebtedness), the balance, if any, of the Net Release Price shall be promptly paid pursuant to Section 12(a) or (b), as applicable.
- (d) In the event (i) a non-monetary Default occurs and continues uncured pursuant to the First Mortgage Instruments which cannot be cured by the payment of money, e.g. the Borrower's breach of assignment provisions, (ii) First Mortgage Lender has not accelerated the First Mortgage Note and commenced a foreclosure action pursuant to the First Mortgage and in accordance with this Agreement, and (iii) the Net Release Price from a Release Parcel

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Transaction or the release of the First Mortgage, Second Mortgage and Third Mortgage liens in connection with a release of a Public Infrastructure Parcel is available to be disbursed to First Mortgage Lender, and Second Mortgage Lender or Third Mortgage Lender, then First Mortgage Lender shall hold the portion of the Net Release Price payable to Second Mortgage Lender or Third Mortgage Lender, as applicable, for a period of one hundred fifty (150) days from the date the Net Release Price is available to be disbursed, having the right to use the funds so held to cure defaults by the Borrower occurring during such one hundred fifty (150) day period, and unless the First Mortgage Lender accelerate the First Mortgage Note and commences a foreclosure proceeding pursuant to the First Mortgage and in accordance with this Agreement within said one hundred fifty (150) day period, in which event the balance of the Net Release Price otherwise payable to Second Mortgage Lender or Third Mortgage Lender, as applicable, shall, pursuant to (f) below, be applied to the Superior First Mortgage Indebtedness, the balance of the Net Release Price shall be promptly paid pursuant to Section 12(a) or (b), as applicable.

(e) In the event (i) a non-monetary Default occurs and continues uncured pursuant to the First Mortgage Instruments which can be cured by the payment of money, e.g., the Borrower's failure to purchase required insurance or the failure to maintain or repair the Property, (ii) First Mortgage Lender has not accelerated the First Mortgage Note and commenced a foreclosure proceeding pursuant to the First Mortgage and in accordance with this Agreement, and (iii) the Net Release Price from a Release Price Transaction or the release of the First Mortgage, Second Mortgage and Third Mortgage liens in connection with the release of a Public Infrastructure Parcel is available to be disbursed to the First Mortgage Lender, and Second Mortgage Lender or Third Mortgage Lender, First Mortgage Lender may deduct from the portion of the Net Release Price payable to the Second Mortgage Lender or Third Mortgage Lender, as applicable, such amounts as shall be required pursuant to the First Mortgage Instruments to cure such default under the First Mortgage Loan and any subsequent default under the First Mortgage Loan occurring within the next one hundred fifty (150) days, and the balance of the Net Release Price otherwise payable to the Second Mortgage Lender or Third Mortgage Lender, as applicable, shall be held by First Mortgage Lender for a period of one hundred fifty (150) days from the date the Net Release Price is available to be disbursed, First Mortgage Lender having the right to use the funds so held to cure subsequent defaults, and unless First Mortgage Lender accelerates the First Mortgage Note and commences foreclosure proceeding pursuant to the First Mortgage and in accordance with this Agreement within said one hundred fifty (150) day period (in which event the Net Release Price shall, pursuant to (f) below, be applied to the Superior First Mortgage Indebtedness), the balance of the Net Release Price shall promptly be paid pursuant to Section 12(a) or (b), as applicable.

(f) In the event a Default has occurred and continues uncured pursuant to the First Mortgage Instruments, and First Mortgage Lender has accelerated the First Mortgage Loan and commenced a foreclosure action pursuant to the First Mortgage, and such action has not been dismissed, all of the Net Release Price from a Release Parcel Transaction or release of the First Mortgage, Second Mortgage and Third Mortgage liens in connection with a release of a Public Infrastructure Parcel shall be applied by First Mortgage Lender to the First Mortgage Indebtedness, until finally paid.

The foregoing provisions of Section 9 or this Section 12 or both notwithstanding, no partial release of any Senior Loan collateral shall be required to be given by Senior Lender

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unless (i) all requirements for any such requested partial release set forth in the Senior Instruments have been fully satisfied, (ii) Senior Lender has consented thereto, and (iii) the amount actually paid to Senior Lender in connection with any requested partial release is not less than the minimum release price set forth in the Senior Instruments. So long as the foregoing conditions have been satisfied, then First Mortgage Lender, Second Mortgage Lender and Third Mortgage Lender shall each promptly release the lien against the subject parcel that was created by such Lender's Instruments.

13. Cross-Default. Each Lender covenants that such Lender's Loan is not and will not be cross-defaulted with any loan or indebtedness other than the Loans of the other Lenders.

14. Loan Purchase Rights.

(a) **Right to Purchase the First Mortgage Loan.**

(i) **Rights of Second Mortgage Lender.** If (A) a Default shall have occurred under the terms of the First Mortgage Instruments; (B) First Mortgage Lender has accelerated the First Mortgage Loan; (C) a bankruptcy proceeding shall have commenced and be continuing with respect to Borrower; (D) a default shall have occurred under the terms of the Second Mortgage Instruments; or (E) Second Mortgage Lender shall have otherwise requested in writing to purchase the First Mortgage Loan and First Mortgage Lender consents to such purchase, then and in any of the foregoing cases, First Mortgage Lender agrees that Second Mortgage Lender shall have the right (but not the obligation), upon thirty (30) days written notice to First Mortgage Lender which notice must be served upon First Mortgage Lender no later than ninety (90) days after First Mortgage Lender shall have accelerated the First Mortgage Note and commenced foreclosure proceedings pursuant to the First Mortgage and in accordance with this Agreement, to purchase the First Mortgage Loan upon the payment to First Mortgage Lender of all principal, interest and other charges outstanding (including, without limitation, any late charges, default interest, any Prepayment Charge (as defined in the First Mortgage Instruments), Exit Fee (as defined in the First Mortgage Instruments), advances and post-petition interest, any First Mortgage Protective Advances made by First Mortgage Lender and any interest charged by First Mortgage Lender on any First Mortgage Protective Advances) (collectively, the "**Loan Purchase Price**") under the First Mortgage Instruments, including costs of enforcement and foreclosure to the date of the purchase.

(ii) **Rights of Third Mortgage Lender.** If (A) a Default shall have occurred under the terms of the First Mortgage Instruments; (B) First Mortgage Lender has accelerated the First Mortgage Loan; or (C) a bankruptcy proceeding shall have commenced and be continuing with respect to Borrower, then and in any of the foregoing cases, First Mortgage Lender agrees that Third Mortgage Lender shall have the right (but not the obligation), upon thirty (30) days written notice to First Mortgage Lender which notice must be served upon First Mortgage Lender no later than ninety (90) days after First Mortgage Lender shall have accelerated the First Mortgage Note and commenced foreclosure proceedings pursuant to the First Mortgage and in accordance with this Agreement, to purchase the First Mortgage Loan upon the payment to First Mortgage Lender of the Loan Purchase Price, including costs of enforcement and foreclosure to the date of the purchase.

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(iii) **Competing Claims to Purchase.** If (A) Second Mortgage Lender and Third Mortgage Lender each notify First Mortgage Lender that such Lenders desire to purchase the First Mortgage Loan pursuant to this Section 14(a), or (B) Third Mortgage Lender notifies First Mortgage Lender that Third Mortgage Lender desires to purchase the First Mortgage Loan pursuant to Section 14(a)(ii), and prior to the consummation of such purchase, Second Mortgage Lender notifies First Mortgage Lender that Second Mortgage Lender desires to purchase the First Mortgage Loan under Section 14(a)(i), then, in each such case, the rights of Third Mortgage Lender under Section 14(a)(ii) shall be subject and subordinate to the rights of Second Mortgage Lender under Section 14(a)(i); provided, however, that if Second Mortgage Lender fails to purchase the First Mortgage Loan within thirty (30) days after delivering such notice to First Mortgage Lender, then Third Mortgage Lender shall have the right to purchase the First Mortgage Loan under Section 14(a)(ii), which right shall not be subject or subordinate to the rights of Second Mortgage Lender under Section 14(a)(i).

(iv) **Subsequent Purchases.** If Second Mortgage Lender or Third Mortgage Lender purchases the First Mortgage Loan in accordance with Section 14(a)(i) or Section 14(a)(ii), respectively, then the purchasing Lender shall hold the First Mortgage Loan subject to the rights of the non-purchasing Lender to acquire the First Mortgage Loan under this Section 14(a); provided, however, that

(A) if Third Mortgage Lender is the purchasing Lender, then (x) Second Mortgage Lender's rights to purchase the First Mortgage Loan shall be limited to clauses (A), (B), (C) and (D) of Section 14(a)(i); (y) any Default under the First Mortgage Instruments referenced in clause (A) of Section 14(a)(i) that has occurred shall be a continuing Default under the First Mortgage Instruments at the time Second Mortgage Lender exercises its right to purchase the First Mortgage Loan; and (z) any default under the Second Mortgage Instruments referenced in clause (D) of Section 14(a)(i) that has occurred shall be a continuing default under the Second Mortgage Instruments at the time Second Mortgage Lender exercises its right to purchase the First Mortgage Loan; and

(B) if Second Mortgage Lender is the purchasing Lender, and the Second Mortgage Loan and the First Mortgage Loan are held under common ownership, then contemporaneously with Third Mortgage Lender's purchase of the First Mortgage Loan, Third Mortgage Lender shall also be required to purchase the Second Mortgage Loan by paying the Second Mortgage Loan Purchase Price (as defined in Section 14(b) below) to Second Mortgage Lender.

(v) **Obligations of First Mortgage Lender.** Upon payment to First Mortgage Lender of the Loan Purchase Price, First Mortgage Lender will execute assignment documents to assign (without recourse, representation or warranty, except for representations as to the outstanding balance of the First Mortgage Loan and that First Mortgage Lender has not assigned or encumbered its rights in the First Mortgage Loan) the First Mortgage Loan to the purchasing Lender or its designee.

(b) **Right to Purchase the Second Mortgage Loan.** With respect to Third Mortgage Lender only (as used in this paragraph (a), the "**Purchasing Lender**"), if (i) a Default shall have occurred under the terms of the Second Mortgage Instruments; (ii) Second Mortgage

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Lender has accelerated the Second Mortgage Loan; (iii) a bankruptcy proceeding shall have commenced and be continuing with respect to Borrower; (iv) a default shall have occurred under the terms of the Instruments held by Purchasing Lender; or (v) Purchasing Lender shall have otherwise requested in writing to purchase the Second Mortgage Loan and Second Mortgage Lender consents to such purchase, then and in any of the foregoing cases, Second Mortgage Lender agrees that Purchasing Lender shall have the right (but not the obligation), upon thirty (30) days written notice to Second Mortgage Lender which notice must be served upon Second Mortgage Lender no later than ninety (90) days after Second Mortgage Lender shall have accelerated the Second Mortgage Note and commenced foreclosure proceedings pursuant to the Second Mortgage and in accordance with this Agreement to purchase the Second Mortgage Loan upon the payment to Second Mortgage Lender of all principal, interest and other charges outstanding (collectively, the "**Second Mortgage Loan Purchase Price**") under the Second Mortgage Instruments, including costs of enforcement and foreclosure to the date of the purchase. Upon payment to Second Mortgage Lender of the Second Mortgage Loan Purchase Price, Second Mortgage Lender will execute assignment documents to assign (without recourse, representation or warranty, except for representations as to the outstanding balance of the Second Mortgage Loan and that Second Mortgage Lender has not assigned or encumbered its rights in the Second Mortgage Loan) the Second Mortgage Loan to Purchasing Lender or its designee.

15. Agreement Relating to Senior Lender Foreclosure. If Senior Lender shall seek to exercise any remedy under the Senior Instruments, including without limitation, filing a foreclosure action with respect to the Property, seeking the appointment of a receiver or seeking its appointment as mortgagee in possession, each other Lender agrees not to object to or defend against any such action; provided that each such Lender was afforded all of its rights under this Agreement, including without limitation, notice rights, cure rights and loan purchase rights with respect to the Loan made by the Senior Lender.

16. Bankruptcy. Subject to the rights of Second Mortgage Lender and Third Mortgage Lender to purchase the First Mortgage Loan (Section 14(a) of this Agreement), each of Second Mortgage Lender and Third Mortgage Lender hereby covenants and agrees that it will not acquiesce, petition or otherwise invoke or cause or join with any other person or entity to invoke or commence the process of the United States of America, any state or other political subdivision thereof or any other jurisdiction, or of any entity exercising executive, legislative, judicial, regulatory or administrative functions of government: (i) for the purpose of commencing or sustaining a case against Borrower, under a Federal or state bankruptcy, insolvency or similar law, or (ii) for the purpose of appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official with respect to Borrower or with respect to all or any part of Borrower's property or assets (but not in connection with a foreclosure proceeding), or (iii) for the purpose of ordering the winding-up or liquidation of the affairs of Borrower. In the event of any proceeding with respect to Borrower or any significant part of Borrower's properties or assets, involving insolvency or bankruptcy, including without limitation any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition, arrangement or other similar proceeding, or any such proceeding by, among or on behalf of any of Borrower's creditors, as such, or any proceeding for the voluntary liquidation, dissolution or other winding up of Borrower (whether or not involving insolvency or bankruptcy proceedings) or any assignment for the benefit of Borrower's creditors, or any other marshalling of its assets, then and in any such event: (x) First Mortgage Lender shall be paid in full before any payment or

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distribution of any character, whether in cash, securities or other property, shall be made on account of the Second Mortgage Loan or the Third Mortgage Loan, and (y) each of Second Mortgage Lender and Third Mortgage Lender hereby assigns to First Mortgage Lender, absolutely, irrevocably and unconditionally all of such Lender's rights if any, to vote to approve or reject any plan of reorganization in respect of Borrower in any insolvency proceeding. Each of Second Mortgage Lender and Third Mortgage Lender further agrees that it shall not object to any request or motion by First Mortgage Lender for an order establishing that proceeds, product, offspring, rents and profits of the Property constitute cash collateral under §363 of Title 11 of the United States Code ("**Cash Collateral**") and each of Second Mortgage Lender and Third Mortgage Lender hereby consents to any application by First Mortgage Lender to have such Cash Collateral applied to the payment of the First Mortgage Loan prior to the application of any such sums to the Second Mortgage Loan or the Third Mortgage Loan until the First Mortgage Loan is paid in full. If First Mortgage Lender consents to any use of the Cash Collateral by Borrower, each of Second Mortgage Lender and Third Mortgage Lender shall also consent, and if First Mortgage Lender objects to any such use, each of Second Mortgage Lender and Third Mortgage Lender shall also object. First Mortgage Lender agrees that it shall notify each of Second Mortgage Lender and Third Mortgage Lender of First Mortgage Lender's consent or objection not later than five (5) days prior to the expiration of the period provided by applicable laws or by court order to so consent or object. Neither Second Mortgage Lender nor Third Mortgage Lender shall move for any stay in any insolvency proceeding unless First Mortgage Lender has moved for a similar stay.

17. Estoppel Certificates. Within ten (10) days after request from any Lender (the "**Requesting Lender**") to any other Lender (the "**Receiving Lender**"), Receiving Lender shall execute and deliver to Requesting Lender an estoppel certificate stating (i) the outstanding principal balance of the Note held by Receiving Lender and any accrued but unpaid interest thereof, (ii) the date to which interest and principal has been paid, (iii) that the Instruments held by Receiving Lender have not been modified or amended, except as specified therein, and (iv) whether a notice of default has been sent under the Instruments held by Receiving Lender, which default remains uncured.

18. [INTENTIONALLY OMITTED]

19. Notices. Any notice that any Lender may desire or be required to give to any other Lender under this Agreement shall be deemed given (i) upon receipt when delivered or if sent by nationally recognized overnight air courier, or (ii) two (2) business days after being deposited in the United States certified mail, return receipt requested, properly addressed to the party, at the address of such party set forth below, or at such other address, as the party to whom notice is to be given has specified by notice hereunder to the party seeking to give such notice:

If to First Mortgage Lender:	Fremont Investment & Loan 303 W. Madison Street Suite 900 Chicago, IL 60606 Attn: Todd Finnely Loan No.: 950114610
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With a copy to: Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, Illinois 60603
Attention: Ronald R. Dietrich

If to Second Mortgage Lender: U.S. Equities Realty, LLC
20 North Michigan Avenue
Suite 400
Chicago, IL 60602
Attention: Robert A. Wislow and
Martin Stern

Victor Cacciatore
Suite 800
527 South LaSalle Street
Chicago, IL 60627

With copies to: Robert H. Gerstein
Holland & Knight, LLP
131 S. Dearborn Street
30th Floor
Chicago, IL 60603

Joseph Cacciatore and
Peter Cacciatore
Suite 700
527 South LaSalle Street
Chicago, IL 60607

Sheldon Baskin and Daniel Epstein
222 North LaSalle Street
Suite 1414
Chicago, IL 60611

If to Third Mortgage Lender: Lehman Brothers Holdings Inc.
399 Park Avenue
8th Floor
New York, New York 10022
Attention: David S. Broderick

With copies to: Sidley Austin Brown & Wood LLP
555 West Fifth Street
40th Floor
Los Angeles, California 90013
Attention: William D. Ellis, Esq.

or to each Lender at such other address as such party may designate in a written notice to the other parties in the manner set forth above.

20. Further Assurances. So long as the Instruments of any Lender ("**Requesting Lender**") shall remain a lien upon the Property, the beneficial interest in Trust No. 127726, or any part of either thereof, the other Lenders shall execute, acknowledge and deliver, upon Requesting Lender's reasonable demand, at any time or from time to time, any and all further subordinations, agreements or other instruments in recordable form as Requesting Lender may reasonably require for carrying out the purpose and intent of the covenants contained herein.

21. Entire Agreement; Amendments. This Agreement shall be the entire agreement with regard to the priority of the liens and charges of the Instruments, and shall supersede and

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cancel any prior agreements as to such subordination, including, without limitation, the Prior Intercreditor Agreement and those provisions (if any) contained in the Instruments which provide for the subordination of any further encumbrances to the lien of the Instruments. No amendment or modification of any of the provisions of this Agreement shall be binding except as expressly set forth in a writing duly signed by each of the parties hereto. Where the terms of this Agreement are in conflict with any provisions of the Instruments, the terms of this Agreement shall prevail and control.

22. **Time of Essence.** It is specifically agreed that time is of the essence of this Agreement.

23. **Sections and Headings.** Unless otherwise indicated either expressly or by context, any reference in this Agreement to a "section" or "paragraph" shall be deemed to refer to a section of this Agreement. The headings of sections and paragraphs in this Agreement are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

24. **Grammar.** As used in this Agreement, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Agreement, they should be interpreted in a non-exclusive manner as though the words "without limitation," immediately followed the same.

25. **No Joint Venture.** This Agreement is not intended to constitute, and shall not be construed to establish, a partnership or joint venture between the parties. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement. No party will have any obligation or responsibility to the other, except to the extent specifically stated herein. Nothing in this Agreement, whether express or implied, is intended or shall be construed to impose upon the parties any obligations with respect to the transactions contemplated hereby except as expressly set forth herein. Neither the execution of this Agreement, nor the performances of any of the terms and provisions hereof or the performance or exercise of any obligations or rights pursuant hereto, shall have the effect of constituting any party an owner, holder, purchaser or seller of any security (as that term is defined in the Securities Act of 1933 or the Securities Exchange Act of 1934) issued, owned, purchased or sold by a party, either as a principal or agent for Borrower.

26. **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of the counterparts, when so executed and delivered, shall be deemed an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

27. **Governing Law; Litigation.** This Agreement shall be construed and enforced according to the laws of the State of Illinois. To the extent that this Agreement may operate as a security agreement under the Uniform Commercial Code, each party shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH LENDER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS

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AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT.

28. Unenforceability. The invalidity, illegality or unenforceability of any provision in or obligation under this Agreement shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement.

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

30. Termination and Releases. Except with respect to the second and third sentences of this Section 30, Section 33 and Section 34, which sections shall survive the termination of this Agreement, this Agreement shall terminate and be of no further force and effect concurrently with the payment in full of all amounts secured by or due and payable under the Second Mortgage Instruments and all of the rights and obligations of First Mortgage Lender and Third Mortgage Lender with respect to each other and their respective loans shall be governed by the terms and provisions of the Subordination Agreement. Upon payment in full of all amounts secured by any Lender's Instruments, such Lender shall, upon request by any other Lender, execute an instrument in form and substance satisfactory to the other Lenders, releasing any rights such Lender may have hereunder and thereunder. Each Lender shall be responsible for any and all of its fees, costs or expenses associated with such release.

31. No Third Party Beneficiaries. All of the terms, conditions and obligations of Lenders hereunder are imposed solely and exclusively for the benefit of such parties, their successors and assigns, and no other person or entity shall have standing to require the observance of satisfaction of such terms, conditions and obligations. It is not the intent of the parties, hereto that any other party be a third party beneficiary hereunder or have any other rights with respect to this Agreement.

32. Priority of Interests. The priorities of the security interests established, altered or specified by this Agreement, shall be applicable, irrespective of the time or order of attachment or perfection thereof, the method of perfection, the time or order of the recording of any mortgage or filing of financing statements, or taking of possession, or the giving of or failure to give notice of other security interests and any other matter.

33. JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF LENDERS WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

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TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT SUCH LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

34. Attorneys' Fees. If any lawsuit or other proceeding is commenced which arises out of, under or in connection with, or which relates to, this Agreement, including, without limitation, any alleged tort action, the prevailing party shall be entitled to recover from each other party to such lawsuit or proceeding such sums as the court or other party presiding over such lawsuit or proceeding as may adjudge to be reasonable attorneys' fees and costs in the lawsuit or proceeding, in addition to costs and expenses otherwise allowed by law. As used herein, "attorneys' fees and costs" means the reasonable fees and expenses of counsel to the applicable party, which may include, without limitation, printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings and any post-judgment proceedings to collect any judgment, and whether or not any action or proceeding is brought with respect to the matter for which such fees, costs and expenses were incurred. The provisions allowing for the recovery of post-judgment fees, costs and expenses are separate and several and shall survive the merger of this Agreement into any judgment.

35. Representations and Warranties.

(a) First Mortgage Lender hereby represents and warrants as follows:

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the First Mortgage Instruments as of the date hereof. To First Mortgage Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the First Mortgage Instruments.

(ii) First Mortgage Lender is the legal and beneficial owner of the entire First Mortgage Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(b) Second Mortgage Lender hereby represents and warrants as follows:

(i) Exhibit D attached hereto and made a part hereof is a true, correct and complete listing of all of the Second Mortgage Instruments as of the date hereof. To Second Mortgage Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Second Mortgage Instruments.

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(ii) Second Mortgage Lender is the legal and beneficial owner of the entire Second Mortgage Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(c) Third Mortgage Lender hereby represents and warrants as follows:

(i) Exhibit E attached hereto and made a part hereof is a true, correct and complete listing of all of the Third Mortgage Instruments as of the date hereof. To Third Mortgage Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Third Mortgage Instruments.

(ii) Third Mortgage Lender is the legal and beneficial owner of the entire Third Mortgage Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(d) Each Lender, on behalf of itself, hereby represents and warrants as follows:

(i) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(ii) Such Lender has, independently and without reliance upon any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(iii) Such Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(iv) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of such Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(v) Such Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such Lender enforceable against such Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(vi) To such Lender's knowledge, no consent of any other person or entity and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by such Lender of this Agreement or consummation by such Lender of the transactions contemplated by this Agreement.

(vii) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement by such

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Lender will (v) violate or conflict with any provision of the organizational or governing documents of such Lender, (w) to such Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other person or entity the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such Lender is a party or to which any of its properties are subject, (x) to such Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of such Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument, (y) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency or governmental or regulatory body of which such Lender has knowledge against, or binding upon, such Lender or upon any of the securities, properties, assets, or business of such Lender or (z) to such Lender's knowledge, constitute a violation by such Lender of any statute, law or regulation that is applicable to such Lender.

(vii) The Loan held by such Lender is not cross-defaulted with any loan other than the other Loans. The Property does not secure any loan from such Lender to Borrower or any affiliate of either of them other than such Lender's Loan.

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FIRST MORTGAGE LENDER:

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: Grant Hill
Grant Hill
Vice President

SECOND MORTGAGE LENDER:

ROOSEVELT RIVER PARTNERS, A JOINT VENTURE,
an Illinois joint venture

By: BURNHAM PARK ASSOCIATES,
an Illinois limited partnership,
a joint venturer

By: SOUTH LOOP LIMITED PARTNERSHIP,
an Illinois limited partnership,
its general partner

By: U.S. EQUITIES LAND HOLDINGS, INC.,
an Illinois corporation,
its general partner

By: _____
Robert A. Wislow
President

By: HUNTER-BURNHAM LIMITED PARTNERSHIP,
an Illinois limited partnership,
a joint venturer

By: HUNTER RIVER FRONT PROPERTIES, L.P.,
an Illinois limited partnership,
its general partner

By: HUNTER LAND INVESTMENTS COMPANY LLC,
an Illinois limited liability company,
its general partner

By: _____
Victor J. Cacciatore
Managing Member

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FIRST MORTGAGE LENDER:

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: _____
Robert J. Walter
President

SECOND MORTGAGE LENDER:

ROOSEVELT RIVER PARTNERS, A JOINT VENTURE,
an Illinois joint venture

By: BURNHAM PARK ASSOCIATES,
an Illinois limited partnership
a joint venturer

By: SOUTH LOOP LIMITED PARTNERSHIP,
an Illinois limited partnership,
its general partner

By: U.S. EQUITIES LAND HOLDING, INC.,
an Illinois corporation,
its general partner

By: _____
Robert A. Wislow
President

By: HUNTER-BURNHAM LIMITED PARTNERSHIP,
an Illinois limited partnership,
a joint venturer

By: HUNTER RIVER FRONT PROPERTIES, L.P.,
an Illinois limited partnership,
its general partner

By: HUNTER LAND INVESTMENTS COMPANY LLC,
an Illinois limited liability company,
its general partner

By: _____
Victor J. Cacciatore
Managing Member

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FIRST MORTGAGE LENDER:

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: _____
Robert J. Walter
President

SECOND MORTGAGE LENDER:

ROOSEVELT RIVER PARTNERS, A JOINT VENTURE,
an Illinois joint venture

By: BURNHAM PARK ASSOCIATES,
an Illinois limited partnership,
a joint venturer

By: SOUTH LOOP LIMITED PARTNERSHIP,
an Illinois limited partnership,
its general partner

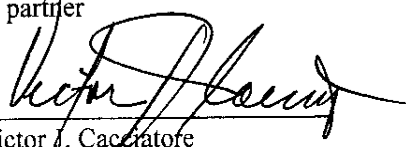
By: U.S. EQUITIES LAND HOLDINGS INC.,
an Illinois corporation,
its general partner

By: _____
Robert A. Wislow
President

By: HUNTER-BURNHAM LIMITED PARTNERSHIP,
an Illinois limited partnership,
a joint venturer

By: HUNTER RIVER FRONT PROPERTIES, L.P.,
an Illinois limited partnership,
its general partner

By: HUNTER LAND INVESTMENTS COMPANY LLC,
an Illinois limited liability company,
its general partner

By: 
Victor J. Cacciatore
Managing Member

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THIRD MORTGAGE LENDER:

LEHMAN BROTHERS HOLDINGS INC.,
a Delaware corporation

By: _____
Name: Yon Cho
Title: Authorized Signatory

Property of Cook County Clerk's Office

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BORROWER JOINDER

Borrower hereby joins in this Agreement for the purposes of acknowledging and consenting to the provisions of Paragraph 5(c) of this Agreement and hereby consents to the foregoing Agreement and acknowledges and agrees that it is not a third party beneficiary of the foregoing Agreement. Borrower hereby also irrevocably authorizes and directs Senior Lender to disburse all or such portion of the Subsequent Advances (as defined above) as Borrower may qualify for and as may be necessary to fully prepay the Second Mortgage Loan, to Second Mortgage Lender, each as prepayments of the Second Mortgage Loan.

BORROWER:

LASALLE BANK NATIONAL ASSOCIATION not personally,
but as Trustee under Trust Agreement dated June 6, 2001
and known as Trust No. 127726

ROOSEVELT/CLARK DEVELOPMENT, L.P.,
a Delaware limited partnership

By: LB RIVERSIDE PARK LLC,
a Delaware limited liability company,
its Managing General Partner

By: PAMI LLC,
a Delaware limited liability company,
its Sole Member

By: _____
Yon K. Cho
Authorized Signatory

By: ROOSEVELT/CLARK DEVELOPERS, L.L.C.,
an Illinois limited liability company,
its Operating General Partner

By: _____
Daniel S. Mahru
Managing Director

By: _____
Antoin S. Rezko
Managing Director

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BORROWER JOINDER

Borrower hereby joins in this Agreement for the purposes of acknowledging and consenting to the provisions of Paragraph 5(c) of this Agreement and hereby consents to the foregoing Agreement and acknowledges and agrees that it is not a third party beneficiary of the foregoing Agreement. Borrower hereby also irrevocably authorizes and directs Senior Lender to disburse all or such portion of the Subsequent Advances (as defined above) as Borrower may qualify for and as may be necessary to fully prepay the Second Mortgage Loan, to Second Mortgage Lender, each as prepayments of the Second Mortgage Loan.

BORROWER:

LASALLE BANK NATIONAL ASSOCIATION not personally,
but as Trustee under Trust Agreement dated June 6, 2001
and known as Trust No. 127726

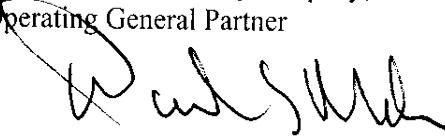
ROOSEVELT/CLARK DEVELOPMENT, L.P.,
a Delaware limited partnership

By: LB RIVERSIDE PARK LLC,
a Delaware limited liability company,
its Managing General Partner

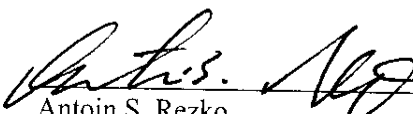
By: PAMI LLC,
a Delaware limited liability company,
its Sole Member

By: _____
Yon K. Cho
Authorized Signatory

By: ROOSEVELT/CLARK DEVELOPERS, L.L.C.,
an Illinois limited liability company,
its Operating General Partner

By: 

Daniel S. Mahru
Managing Director

By: 

Antoin S. Rezko
Managing Director

Property of Cook County Clerk's Office

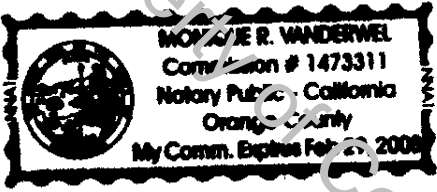
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Orange } ss.
 On October 7, 2004 before me, Monique R Vanderwel,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Grant Hill
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal
Monique R Vanderwel
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amended & Restated Intercreditor Agreement

Document Date: _____ Number of Pages: _____

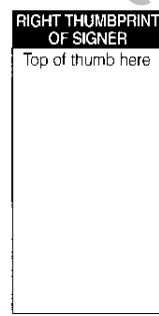
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **ROBERT J. WALTER**, personally known to me to be the President of Fremont Investment & Loan, a California industrial bank, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2004.

Notary Public

My Commission Expires: _____

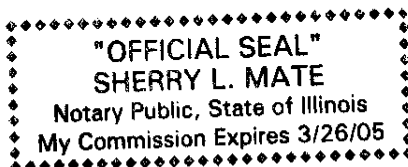
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **ROBERT A. WISLOW**, personally known to me to be the President of U.S. Equities Land Holdings, Inc., a corporation, the general partner of South Loop Limited Partnership, a limited partnership, the general partner of Burnham Park Associates, a limited partnership, a joint venturer of Roosevelt River Partners, A Joint Venture, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such corporation and such limited partnership and such limited partnership and such joint venture for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6th day of October, 2004.

Sherry L. Mate
Notary Public

My Commission Expires: 3/26/05



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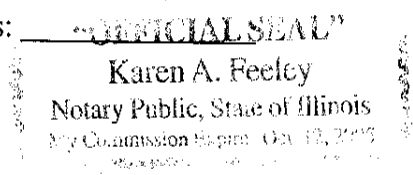
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **VICTOR J. CACCIATORE**, personally known to me to be the Managing Member of Hunter Land Investment Company L.L.C., a limited liability company, the general partner of Hunter River Front Properties, a limited partnership, the general partner of Hunter-Burnham Limited Partnership, a limited partnership, a joint venturer of Roosevelt River Partners, A Joint Venture, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership and such limited partnership and such joint venture for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 7th day of October, 2004.

Karen A. Feeley
Notary Public

My Commission Expires: _____



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of LaSalle Bank National Association, a corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2004.

Notary Public

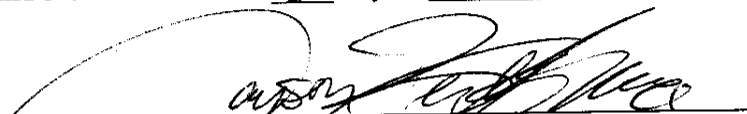
My Commission Expires: _____

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STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **YON K. CHO**, personally known to me to be the Authorized Signatory of Lehman Brothers Holdings, Inc., a Delaware corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership and such limited partnership and such joint venture for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 10th day of October, 2004.



Notary Public

My Commission Expires: _____

JAYSON BERKSHIRE
Notary Public, State of New York
No. 01BE6086709
Qualified in New York County
Commission Expires January 27, 2007

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **DANIEL MAHRU**, personally known to me to be the Managing Director of Roosevelt/Clark Developers, LLC, a limited liability company, the operating general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ___ day of _____, 2004.

Notary Public

My Commission Expires: _____

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **VICTOR J. CACCIATORE**, personally known to me to be the Managing Member of Hunter Land Investment Company L.L.C., a limited liability company, the general partner of Hunter River Front Properties, a limited partnership, the general partner of Hunter-Burnham Limited Partnership, a limited partnership, a joint venturer of Roosevelt River Partners, A Joint Venture, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership and such limited partnership and such joint venture for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2004.

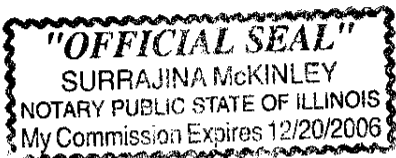
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **KATHLEEN E. SHIELDS**, personally known to me to be the Trust Officer of LaSalle Bank National Association, a corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6th day of October, 2004.



Surrajina McKinley
Notary Public

My Commission Expires: 12/20/2006

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **ANTOIN S. REZKO**, personally known to me to be the Managing Director of Roosevelt/Clark Developers, LLC, a limited liability company, the operating general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

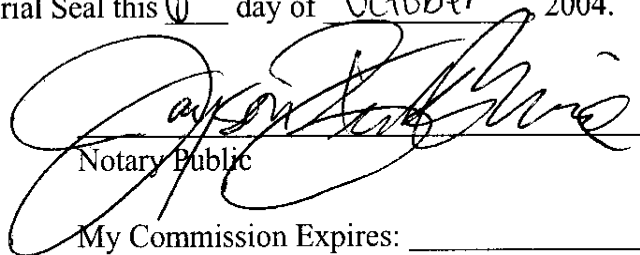
Given under my hand and Notarial Seal this ____ day of _____, 2004.

Notary Public
My Commission Expires: _____

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **YON K. CHO**, personally known to me to be a manager of FAMI LLC, a Delaware limited liability company, the sole member of LB Riverside Park, a Delaware limited liability company, the managing general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6th day of October, 2004.



Notary Public
My Commission Expires: _____

JAYSON BERKSHIRE
Notary Public, State of New York
No. 01BE6086709
Qualified in New York County
Commission Expires January 27, 2007

UNOFFICIAL COPY

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **YON K. CHO**, personally known to me to be the _____ of Lehman Brothers Holdings, Inc., a Delaware corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership and such limited partnership and such joint venture for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2004.

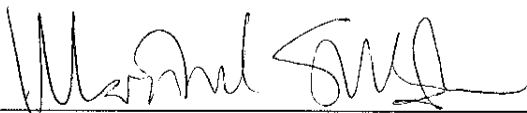
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

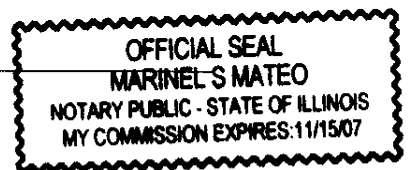
I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **DANIEL MAHRU**, personally known to me to be the Managing Director of Roosevelt/Clark Developers, LLC, a limited liability company, the operating general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 5th day of October, 2004.



Notary Public

My Commission Expires: _____

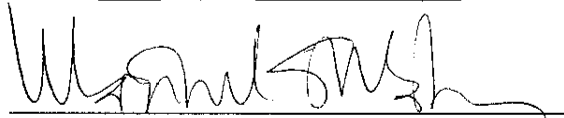


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

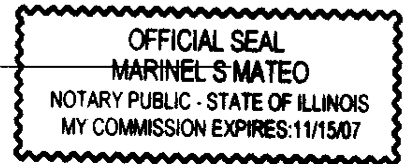
I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **ANTOIN S. REZKO**, personally known to me to be the Managing Director of Roosevelt/Clark Developers, LLC, a limited liability company, the operating general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 9th day of October, 2004.



Notary Public

My Commission Expires:



STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **YON K. CHO**, personally known to me to be a manager of PAMI LLC, a Delaware limited liability company, the sole member of LB Riverside Park, a Delaware limited liability company, the managing general partner of Roosevelt Clark Development, L.P., a Delaware limited partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument as his free and voluntary act and the free and voluntary act of such limited liability company and such limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2004.

Notary Public

My Commission Expires: _____

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EXHIBIT A

Legal Description of Property

PARCEL 1:

THAT PART OF THE EAST FRACTION AND THE WEST FRACTION OF THE NORTHEAST $\frac{1}{4}$ AND THE SOUTH EAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE SOUTH BRANCH OF THE CHICAGO RIVER (NOW FILLED AND ABANDONED) AS IT EXISTED ON OR PRIOR TO JULY 8, 1926, ALL TAKEN AS A TRACT, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD (SAID ORIGINAL SOUTH LINE BEING PARALLEL WITH AND 33.00 FEET SOUTH OF THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21) WITH A STRAIGHT LINE HEREIN REFERRED TO AS "LINE A" (SAID "LINE A" BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 45 FEET, MEASURED AT RIGHT ANGLES, NORTH OF THE NORTH LINE AND 447.89 FEET, MEASURED PARALLEL WITH THE NORTH LINE OF WEST ROOSEVELT ROAD, EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED PRODUCED NORTHERLY; THENCE SOUTHEASTERLY TO A POINT 760 FEET EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED AND 860 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID SOUTH LINE AS WIDENED, BEING 85 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21); THENCE SOUTH 17 DEGREES 04 MINUTES 50 SECONDS EAST ALONG SAID "LINE A" 92.37 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING 36.27 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTHERLY 89.81 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 10 DEGREES 27 MINUTES 24 SECONDS WEST TO A POINT ON THE AFORESAID ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 723.93 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846, BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN THE ASSESSOR'S SECOND DIVISION OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE NORTHERLY 7.09 FEET ALONG THE NORTHERLY EXTENSION OF THE AFORESAID ARC, CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 9 DEGREES 00 MINUTES 13 SECONDS WEST TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 328.85 FEET; THENCE SOUTH 6 DEGREES 43 MINUTES 03 SECONDS EAST 46.61 FEET; THENCE NORTH 83 DEGREES 16 MINUTES

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58 SECONDS EAST 2.50 FEET; THENCE NORTH 6 DEGREES 43 MINUTES 03 SECONDS WEST 10.62 FEET TO A POINT ON THE SOUTH LINE OF LOT 9 IN BLANCHARD'S SUBDIVISION OF PART OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID SOUTH LINE OF LOT 9, A DISTANCE OF 29.50 FEET TO THE SOUTHEAST CORNER OF SAID LOT 9; THENCE NORTH 0 DEGREES 01 MINUTES 02 SECONDS WEST 35.44 FEET ALONG THE EAST LINE OF SAID LOT 9 TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH OF AND PARALLEL WITH THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 360.05 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN FROM A POINT IN THE NORTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF BLOCK 107 IN SCHOOL SECTION ADDITION TO CHICAGO IN THE SOUTH EAST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP AND RANGE AFORESAID TO A POINT IN THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN BLOCK 2 IN THE AFORESAID ASSESSOR'S SECOND DIVISION; THENCE SOUTH 0 DEGREES 01 MINUTES 52 SECONDS WEST ALONG THE LAST DESCRIBED LINE 59.00 FEET TO THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE SOUTH 0 DEGREES 01 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF SOUTH CLARK STREET (AND ITS SOUTHERLY EXTENSION) BEING THE EAST LINE OF BLOCKS 2, 3, 13, 14, 15, AND 17 IN THE AFORESAID ASSESSOR'S SECOND DIVISION, AND ALONG THE EAST LINE OF LOTS 49 TO 56, BOTH INCLUSIVE, IN WALKER GREER AND OTHER'S SUBDIVISION OF THE UHLICH TRACT IN THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21 AND ALONG THE EAST LINE OF BLOCKS 27, 27-1/2, 28, 29, 34, AND 35, A DISTANCE OF 2608.68 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF 16TH STREET, SAID SOUTH LINE BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST 77.70 FEET ALONG SAID LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21 TO THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 IN CANAL TRUSTEES' NEW SUBDIVISION OF BLOCKS IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE NORTH 00 DEGREES 01 MINUTES 02 SECONDS WEST ALONG THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 AFORESAID 33.0 FEET TO THE SOUTH LINE OF THE EAST FRACTION OF THE FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST ALONG SAID SOUTH LINE OF THE EAST FRACTION OF FRACTIONAL NORTHEAST $\frac{1}{4}$ AFORESAID 843.42 FEET TO THE CENTER THREAD OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON OR PRIOR TO JULY 8, 1926; THENCE NORTH 31 DEGREES 15 MINUTES 32 SECONDS EAST 6.01 FEET ALONG SAID CENTER THREAD TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE WEST FRACTION OF SAID NORTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE SOUTH 89 DEGREES 59 MINUTES 58 SECONDS WEST 90.03 FEET ALONG SAID LINE TO THE INTERSECTION WITH THE

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EAST LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS ESTABLISHED IN ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 8, 1926; THENCE NORTH 0 DEGREES 17 MINUTES 30 SECONDS WEST ALONG SAID EAST LINE 315.00 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 58 SECONDS EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE WEST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21, A DISTANCE OF 230.02 FEET TO THE INTERSECTION WITH THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 20 DEGREES 26 MINUTES 28 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE WHICH FORMS AN ANGLE OF 69 DEGREES 33 MINUTES 30 SECONDS TO THE LEFT OF THE EASTERLY EXTENSION OF THE LAST DESCRIBED COURSE 21.47 FEET; THENCE NORTH 54 DEGREES 58 MINUTES 58 SECONDS EAST ALONG A LINE WHICH FORMS AN ANGLE OF 34 DEGREES 32 MINUTES 30 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED NORTHEASTERLY 141.64 FEET TO A POINT ON THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 44 DEGREES 50 MINUTES 10 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE 92.45 FEET TO A POINT WHICH IS 619.10 FEET EAST OF THE WEST LINE OF THE AFORESAID NEW CHANNEL AND 2088.56 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED (SAID SOUTH LINE BEING 85.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFORESAID NORTHEAST $\frac{1}{4}$ OF SECTION 21); THENCE NORTHEASTERLY 373.88 FEET ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST HAVING A RADIUS OF 478.34 FEET TO A POINT WHICH IS 760.00 FEET EAST OF THE CENTER LINE OF DODGE STREET, NOW VACATED, PRODUCED SOUTH AND 1751.17 FEET SOUTH OF THE AFORESAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTH 0 DEGREES 07 MINUTES 44 SECONDS WEST 428.22 FEET ALONG A LINE 760.00 FEET EAST OF AND PARALLEL WITH THE SOUTHERLY EXTENSION OF THE CENTER LINE OF VACATED DODGE STREET TO A POINT 1322.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING ALSO 453.99 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET; THENCE NORTHWESTERLY 274.21 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 1273.57 FEET AND WHOSE CHORD BEARS NORTH 6 DEGREES 18 MINUTES 54 SECONDS WEST TO A POINT 1050.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 483.86 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET; THENCE NORTH 12 DEGREES 27 MINUTES 09 SECONDS WEST 1020.09 FEET TO A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 703.52 FEET WEST OF THE WEST LINE OF THE AFORESAID SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846; THENCE NORTHWESTERLY 19.22 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE WEST, HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 12 DEGREES 27 MINUTES 42 SECONDS WEST TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXCEPTING FROM PARCEL 1 THE PROPERTY DESCRIBED AS FOLLOWS:
(EXCEPTION PARCEL 1)

ALL THAT PART OF LOT 3, IN BLOCK 34, IN THE ASSESSOR'S SECOND DIVISION OF THE EAST FRACTIONAL NORTH EAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTH LINE OF LOT 3, DISTANT 335.00 FEET WEST OF THE WEST LINE OF CLARK STREET, MEASURED ALONG THE SOUTH LINE OF SAID LOT 3; THENCE NORTHWESTERLY AT AN ANGLE OF 6 DEGREES 18 MINUTES WITH THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 164.45 FEET TO A POINT 18.07 FEET NORTH FROM THE SOUTH LINE OF SAID LOT 3 MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY A DISTANCE OF 25.16 FEET TO A POINT 26.8 FEET NORTH OF THE SOUTH LINE OF SAID LOT 3 MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY AT AN ANGLE OF 26 DEGREES 36 MINUTES WITH THE LAST DESCRIBED COURSE A DISTANCE OF 31.91 FEET TO A POINT ON THE EASTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHWESTERLY ALONG SAID DOCK LINE, A DISTANCE OF 73.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 3; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 3; A DISTANCE OF 262.35 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPTING FROM PARCEL 1:
(EXCEPTION PARCEL 2)

THAT PART OF BLOCK 35 IN ASSESSOR'S SECOND DIVISION DESCRIBED AS FOLLOWS:

BEGINNING IN THE WEST LINE OF CLARK STREET 81 FEET NORTH OF THE NORTH LINE OF 16TH STREET; THENCE NORTH ALONG THE WEST LINE OF CLARK STREET 35 FEET; THENCE NORTHWESTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT HAVING A RADIUS OF 375 FEET A DISTANCE OF 135.2 FEET; THENCE NORTHWESTERLY ON A STRAIGHT LINE TANGENT FROM SAID CURVED LINE 101 FEET TO A POINT 30 FEET SOUTH AT RIGHT ANGLES FROM THE NORTH LINE OF SAID BLOCK 35 AND 227.6 FEET WEST OF THE WEST LINE OF CLARK STREET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 35 AND 30 FEET SOUTH AT RIGHT ANGLES THEREFROM 141.6 FEET; THENCE SOUTHEASTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT WITH A RADIUS OF 375 FEET A DISTANCE OF 108.2 FEET TO A POINT DISTANT 52 FEET SOUTH AT RIGHT ANGLES FROM THE LINE OF SAID LOT 35; THENCE SOUTHEASTERLY ON A STRAIGHT LINE PARALLEL WITH THE THIRD ABOVE DESCRIBED LINE AND 32.4 FEET DISTANT SOUTHWESTERLY AT RIGHT ANGLES THEREFROM 136.9 FEET; THENCE SOUTHEASTERLY ON A CURVED LINE WITH A RADIUS OF 391 FEET A DISTANCE OF 138 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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ALSO EXCEPTING FROM PARCEL 1:
(EXCEPTION PARCEL 3)

THE NORTH 30 FEET OF BLOCK 35 IN ASSESSOR'S SECOND DIVISION AFORESAID,
EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST LINE OF CLARK STREET 205.3 FEET NORTH OF THE
NORTH LINE OF 16TH STREET AND IN THE NORTH LINE OF BLOCK 35 AFORESAID;
THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK 335 FEET; THENCE
SOUTHEASTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT WITH A
RADIUS OF 407.8 FEET A DISTANCE OF 86 FEET TO A POINT 21 FEET SOUTH AT
RIGHT ANGLES FROM THE NORTH LINE OF SAID LOT 35; THENCE
SOUTHEASTERLY 26 FEET TO A POINT DISTANT 30 FEET SOUTH AT RIGHT
ANGLES FROM THE NORTH LINE OF SAID LOT 35; THENCE EAST ON A LINE
PARALLEL WITH SAID NORTH LINE AND 30 FEET SOUTH AT RIGHT ANGLES
THEREFROM 227.6 FEET TO THE WEST LINE OF CLARK STREET; THENCE NORTH
ON THE WEST LINE OF CLARK STREET 30 FEET TO THE POINT OF BEGINNING, IN
COOK COUNTY, ILLINOIS

PARCEL 2:

A TRACT OF LAND, LYING EASTERLY OF AND ADJOINING THE EASTERLY
BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE
CHICAGO RIVER, SAID TRACT OF LAND COMPRISED OF PART OF THE ORIGINAL
BED OF SAID SOUTH BRANCH OF THE CHICAGO RIVER (ABANDONED), TOGETHER
WITH SUNDRY LOTS, BLOCKS AND VACATED STREETS AND ALLEYS ADJOINING
SAID LOTS AND BLOCKS, IN CANAL ADDITION, A SUBDIVISION OF THE WEST
FRACTION OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH,
RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED
AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 21 AT A
POINT OF INTERSECTION OF SAID LINE WITH EASTERLY BOUNDARY LINE OF THE
NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID POINT
BEING 1016.47 FEET WEST OF THE NORTHWARD EXTENSION OF THE WEST LINE
OF SOUTH CLARK STREET, AND RUNNING; THENCE NORTH 89 DEGREES 55
MINUTES 29 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 287.476
FEET TO AN INTERSECTION WITH ARC OF A CIRCLE, CONVEX TO THE
SOUTHWEST WITH A RADIUS OF 1910.08 FEET, THE SOUTHERLY TERMINUS OF
SAID ARC BEING A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF
WEST ROOSEVELT ROAD, AS WIDENED, AND 703.52 FEET WEST OF THE WEST
LINE OF SAID SOUTH CLARK STREET; THENCE SOUTHEASTWARDLY ALONG SAID
ARC, A DISTANCE OF 142.415 FEET TO THE AFOREMENTIONED SOUTHERLY
TERMINUS OF SAID ARC; THENCE SOUTH 12 DEGREES 35 MINUTES 58 SECONDS
EAST ALONG A STRAIGHT LINE, TANGENT TO THE LAST DESCRIBED ARC OF A
CIRCLE, (THE SOUTHERLY TERMINUS OF SAID STRAIGHT LINE BEING A POINT
WHICH IS 1185.34 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD,

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AS WIDENED, AND 560 FEET EAST OF SAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER), A DISTANCE OF 1020.25 FEET, TO A POINT OF CURVE; THENCE SOUTHWARDLY ALONG THE ARC OF A CIRCLE CONVEX TO THE EAST, TANGENT TO THE LAST DESCRIBED STRAIGHT LINE AND HAVING A RADIUS OF 1273.57 FEET, A DISTANCE OF 274.145 FEET TO A POINT WHICH IS 1322.95 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 560.00 FEET EAST OF SAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 00 DEGREES 15 MINUTES 58 SECONDS EAST ALONG A STRAIGHT LINE WHICH IS PARALLEL WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, A DISTANCE OF 428.214 FEET, TO A POINT OF CURVE; THENCE SOUTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, TANGENT TO LAST DESCRIBED STRAIGHT LINE AND HAVING A RADIUS OF 478.34 FEET, A DISTANCE OF 373.878 FEET TO A POINT WHICH IS 2088.58 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 419.08 FEET EAST OF THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 44 DEGREES 31 MINUTES 02 SECONDS WEST ALONG A STRAIGHT LINE, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 92.474 FEET; THENCE SOUTH 54 DEGREES 49 MINUTES 32 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 141.64 FEET; THENCE SOUTH 20 DEGREES 17 MINUTES 02 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 21.393 FEET TO AN INTERSECTION WITH A LINE WHICH IS 315 FEET NORTH FROM AND PARALLEL WITH THE EASTERLY EXTENSION OF THE CENTERLINE OF WEST 16TH STREET; THENCE SOUTH 89 DEGREES 50 MINUTES 55 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 229.778 FEET TO AN INTERSECTION WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE NORTH 00 DEGREES 26 MINUTES 02 SECONDS WEST ALONG SAID EASTERLY BOUNDARY LINE, A DISTANCE OF 883.948 FEET TO AN ANGLE POINT IN SAID LINE, AND THENCE NORTH 00 DEGREES 15 MINUTES 58 SECONDS WEST CONTINUING ALONG SAID EASTERLY BOUNDARY LINE, A DISTANCE OF 1457.308 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY MEMORANDUM OF DECLARATION OF EASEMENT DATED NOVEMBER 24, 1999, AND RECORDED DECEMBER 2, 1999 AS DOCUMENT NUMBER 09127751, AND MODIFIED BY FIRST AMENDMENT TO DECLARATION OF EASEMENT DATED FEBRUARY 28, 2001 AND RECORDED MARCH 14, 2001 AS DOCUMENT NUMBER 0010200264 AND RERECORDED MARCH 21, 2001 AS DOCUMENT NUMBER 0010224736, DESCRIBED AS FOLLOWS:

THE EAST 35 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

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A TRACT OF LAND LYING EASTERLY OF AND ADJOINING THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID TRACT OF LAND COMPRISED OF PART OF THE ORIGINAL BED OF SAID SOUTH BRANCH OF THE CHICAGO RIVER (ABANDONED), TOGETHER WITH SUNDRY LOTS AND BLOCKS IN SCHOOL SECTION ADDITION TO CHICAGO, BEING A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 16, AT THE POINT OF INTERSECTION OF SAID LINE WITH THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID POINT BEING 1,016.47 FEET WEST OF THE NORTHWARD EXTENSION OF THE WEST LINE OF SOUTH CLARK STREET, AND RUNNING THENCE NORTH 89 DEGREES 55 MINUTES 29 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 287.476 FEET TO AN INTERSECTION WITH AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 1,910.08 FEET, THE SOUTHERLY TERMINUS OF SAID ARC BEING A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 703.52 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET, THENCE NORTHWESTWARDLY ALONG SAID ARC, A DISTANCE OF 90.946 FEET TO A POINT WHICH IS 57.28 FEET, NORTH OF THE NORTH LINE OF SAID WEST ROOSEVELT ROAD, AND 739.73 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTH 5 DEGREES 34 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE A DISTANCE OF 508.47 FEET TO A POINT WHICH IS 280.80 FEET SOUTH OF THE SOUTH LINE OF WEST TAYLOR STREET AND 787.91 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTHWARDLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE WEST WITH A RADIUS OF 1,910.08 FEET, A DISTANCE OF 180.16 FEET TO A POINT WHICH IS 100.90 FEET SOUTH OF SAID SOUTH LINE OF WEST TAYLOR STREET AND 796.52 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTH 00 DEGREES, 11 MINUTES 05 SECONDS, WEST ALONG A STRAIGHT LINE, SAID DISTANCE OF 100.90 FEET TO SAID SOUTH LINE OF WEST TAYLOR STREET; THENCE SOUTH 89 DEGREES 68 MINUTES 30 SECONDS WEST ALONG SAID SOUTH LINE OF WEST TAYLOR STREET, A DISTANCE OF 299.47 FEET TO AN INTERSECTION WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 05 DEGREES 35 MINUTES 30 SECONDS EAST ALONG SAID EASTERLY BOUNDARY LINE A DISTANCE OF 837.84 FEET TO A POINT WHICH IS 9.96 FEET NORTH OF THE NORTH LINE OF SAID WEST ROOSEVELT ROAD AND THENCE SOUTH 00 DEGREES 15 MINUTES 58 SECONDS EAST, CONTINUING ALONG SAID EASTERLY BOUNDARY LINE A DISTANCE OF 42.96 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

A NON-EXCLUSIVE, IRREVOCABLE, TEMPORARY EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY EASEMENT AGREEMENT DATED MARCH 20, 2001 AND RECORDED APRIL 17, 2001 AS DOCUMENT 0010311632 FOR THE PURPOSE

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OF STAGING, STORAGE AND CONSTRUCTION OF THE WELLS STREET EXTENSION OVER THE FOLLOWING DESCRIBED LAND:

A PARCEL OF LAND 10 FEET WIDE, RUNNING THE FULL LENGTH, NORTH TO SOUTH, OF THE FOLLOWING DESCRIBED PROPERTY AND ADJOINING THE WESTERN BOUNDARY OF THE FOLLOWING DESCRIBED PROPERTY;

A PARCEL OF LAND COMPRISED OF A PART OF BLOCKS 105 AND 106 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND ALSO A PART OF LOTS 12 AND 13 IN STOWELL'S SUBDIVISION OF BLOCKS 106 AND 107 IN SAID SCHOOL SECTION ADDITION TO CHICAGO, WHICH PARCEL OF LAND IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID BLOCK 105 (SAID NORTH LINE BEING ALSO THE SOUTH LINE OF W. TAYLOR STREET) SAID POINT BEING 5.00 FEET, AS MEASURED ALONG SAID NORTH LINE, EAST OF THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHWARD EXTENSION OF THE WEST LINE OF BLOCK 104 IN SAID SCHOOL SECTION ADDITION (SAID WEST LINE BEING ALSO THE EAST LINE OF S. WELLS STREET, 60 FEET WIDE) AND RUNNING THENCE WESTWARDLY ALONG SAID NORTH LINE OF BLOCK 105, A DISTANCE OF 65.0 FEET TO THE POINT OF BEGINNING, OF THE HEREINAFTER DESCRIBED PARCEL; THENCE SOUTHWARDLY ALONG A LINE PARALLEL WITH SAID WEST LINE OF BLOCK 104, A DISTANCE OF 100.90 FEET; THENCE SOUTHWARDLY ALONG A CURVED LINE TANGENTIAL TO THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 1910.08 FEET, AN ARC DISTANCE OF 180.16 FEET TO THE POINT OF TANGENCY, SAID POINT BEING 250.98 FEET SOUTH FROM SAID SOUTH LINE OF TAYLOR STREET, PRODUCED EAST, MEASURED PARALLEL WITH THE WEST LINE OF SOUTH CLARK STREET, AND 787.91 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET, AS NOW ESTABLISHED, MEASURED PARALLEL WITH THE SOUTH LINE OF TAYLOR STREET; THENCE SOUTHWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 508.47 FEET TO A POINT OF CURVE, SAID POINT OF CURVE BEING 57.28 FEET NORTH FROM THE NORTH LINE OF WEST ROOSEVELT ROAD, AS NOW WIDENED, MEASURED PARALLEL TO THE WEST LINE OF CLARK STREET AND 739.73 FEET WEST FROM THE WEST LINE OF CLARK STREET, AS NOW ESTABLISHED, MEASURED PARALLEL WITH THE NORTH LINE OF WEST ROOSEVELT ROAD; THENCE SOUTHWARDLY ALONG A CURVED LINE TANGENTIAL TO THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 1910.08 FEET, A DISTANCE OF 57.64 FEET TO A POINT ON THE NORTH LINE OF WEST ROOSEVELT ROAD, AS NOW WIDENED, SAID POINT BEING 733.41 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET, AS NOW ESTABLISHED, AS MEASURED ALONG THE NORTH LINE OF WEST ROOSEVELT ROAD AS NOW WIDENED; THENCE WESTWARDLY ALONG SAID NORTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, A DISTANCE OF 67.59 FEET TO AN INTERSECTION WITH A LINE WHICH IS 65.00 FEET WESTERLY OF AND PARALLEL WITH THE SOUTHWARD EXTENSION OF THE WEST LINE OF BLOCK 104 IN SAID

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SCHOOL SECTION ADDITION; THENCE NORTHWARDLY ALONG SAID PARALLEL LINE A DISTANCE OF 843.83 FEET TO AN INTERSECTION WITH SAID NORTH LINE OF BLOCK 105; THENCE EAST ALONG SAID NORTH LINE OF BLOCK 105, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

AND;

A PARCEL WITHIN THE SOUTHERLY EXTENDED EAST AND WEST LINES OF CACCIATORE WELLS STREET PARCEL FROM THE NORTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, TO THE NORTHERLY LINE OF THE VENTURE PROPEKTY.

PARCEL 5:

THAT PART OF VACATED WEST 16TH STREET IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF LOT 1 IN BLOCK 4 IN CANAL TRUSTEES NEW SUBDIVISION OF BLOCKS IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST ALONG THE NORTH LINE OF LOT 1 BEING THE SOUTH LINE OF VACATED 16TH STREET FOR A DISTANCE OF 110.70 FEET TO THE CENTER LINE OF VACATED SOUTH LASALLE STREET; THENCE NORTH 00 DEGREES 01 MINUTES 02 SECONDS WEST ALONG THE NORTHERLY EXTENSION THEREOF 33.0 FEET TO THE SOUTH LINE OF EAST FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21 AFORESAID; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS EAST ALONG THE LAST DESCRIBED 110.70 FEET TO THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 AFORESAID; THENCE SOUTH 00 DEGREES 01 MINUTES 02 SECONDS EAST ALONG THE LAST DESCRIBED LINE 33.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:


17-21-202-001-0000	17-21-203-004-0000	17-21-203-005-0000
17-21-203-006-0000	17-21-203-007-0000	17-21-204-001-0000
17-21-206-001-0000	17-21-207-001-0000	17-21-208-004-0000
17-21-208-005-0000	17-21-209-006-0000	17-21-209-007-0000
17-21-210-002-0000	17-21-210-003-0000	17-21-210-004-0000
17-21-210-005-0000	17-21-210-006-0000	17-21-210-007-0000
17-21-210-062-0000	17-21-210-064-0000	17-21-210-086-0000
17-21-210-090-0000	17-21-210-092-0000	17-21-210-095-0000
17-21-210-098-0000	17-21-502-001-0000	17-21-503-003-0000

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COMMON ADDRESS:

A PORTION OF THE PROPERTY IN THE AREA BOUNDED ON THE EAST BY SOUTH CLARK STREET, ON THE SOUTH BY WEST 16TH STREET, ON THE WEST BY THE SOUTH BRANCH OF THE CHICAGO RIVER AND ON THE NORTH BY WEST ROOSEVELT ROAD, CHICAGO, ILLINOIS.

Property of Cook County Clerk's Office

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EXHIBIT B

Partial Release Provisions

3.20 Releases. (a) Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any indemnity or guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

(b) Partial Release.

(1) Definitions: When used in this Section the following terms shall have the respective meanings set forth after each term:

(aa) Contract for the Purchase of Real Estate. The Contract for the Purchase of Real Estate, dated _____, 2000 by and between the Lender, as seller, and the Borrower, as purchaser.

(bb) Development Plan: The Borrower's development plan for the Premises, as amended by Borrower, from time to time, which delineates Release Parcels, Public Infrastructure Parcels, and Non-Developable Parcels. The initial Development Plan has been hand delivered to Lender. Any material changes to the Development Plan shall be delivered to Lender, promptly. The minimum square footage of the Premises designated on Borrower's Development Plan as Release Parcels shall not be less than one million eight hundred thousand (1,800,000) square feet.

(cc) First Mortgage: A mortgage or mortgages securing a note or notes evidencing a loan to Borrower by a financial institution ("**First Lender**"), which has a first lien on all or a portion of the Premises. Except as provided herein, the indebtedness secured thereby, including the aggregate of the principal, all accrued and unpaid interest, funded or unfunded interest reserves on the note or notes secured by such mortgage or mortgages, and all other sums due hereunder, shall not exceed Twenty Eight Million Five Hundred Thousand dollars (\$28,500,000). The balance shall be reduced, from time to time, by the payments made from the Net Release Price to the First Lender on the first of such note or notes and on any notes evidencing refinancing thereof in connection with the release of Release Parcels, and such reduced balances may not be increased.

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(dd) Net Release Price: The net release price, in cash, for each Release Parcel in connection with a Release Parcel Transaction shall be an amount which is the greater of (x) the Full Consideration, as hereinafter defined, to be paid or if deemed to be paid to Borrower, determined pursuant to **Subparagraph 3.20(b)(1)(jj)(i)** hereof, reduced by the actual out of pocket expenses of the Release Parcel Transaction such as arms-length brokerage fees payable to (i) brokers that are not directly or indirectly affiliated with the Borrower and (ii) brokers that are directly or indirectly affiliated with the Borrower, provided such brokers are acting pursuant to a valid marketing plan for the Premises, title fees and transfer taxes, reasonable legal fees, escrow fees, the total of which shall not exceed five percent (5%) of the full or deemed consideration, and (y) the minimum amount ("**Minimum Release Price**") of Forty and XX/100 Dollars (\$40.00) per square foot for any portion of the Premises lying south of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Premises and the minimum amount of Fifty and XX/100 Dollars (\$50.00) per square foot for any portion of the Premises lying north of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Premises.

(ee) Non-Developable Parcels: Those portions of the Premises, as delineated on the Borrower's Development Plan for the Premises, which are not Public Infrastructure Parcels or Release Parcels and which Borrower does not currently or in the near future intend to develop due to railroad or other easements or other impediments.

(ff) Private Infrastructure Parcels: Those Release Parcels upon which Borrower, prior to seeking a release of such Release Parcel from the lien of the Purchase Money Mortgage, desires to commence and complete the construction of private infrastructure, such as storm drainage systems, water and sewer lines, other utilities and similar items of infrastructure.

(gg) Public Infrastructure Parcels: Those portions of the Premises delineated on the Development Plan as areas to be developed for public uses, such as roadways and parks and intended to thereafter be dedicated.

(hh) Purchase Money Mortgage: This Mortgage.

(ii) Release Parcel: The various portions of the Premises delineated by Borrower on its Development Plan for the Premises as developable, excluding only Public Infrastructure Parcels and Non-Developable Parcels, for which the Borrower seeks a release of the Purchase Money Mortgage and which satisfies the following conditions:

(i) the Release Parcel can be developed pursuant to the planned development ordinance, passed by the City Council of the City of Chicago for the entire Premises ("**PD**"), and would permit the development of the remainder of the Premises in accordance with the Development Plan;

(ii) the proposed development of the Release Parcel does not violate the Declaration hereinafter defined in **Paragraph 3.29** hereof; and

(iii) each of the Release Parcels remaining after the release of such Release Parcel adjoins a publicly dedicated street or a proposed street which is to be publicly dedicated pursuant to the Development Plan and the PD.

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(jj) **Release Parcel Transaction:** A transaction hereinafter described which would permit the Borrower, in connection with the sale, grant, lease, or any other grant of the right to the beneficial use of a Release Parcel or the Borrower's contribution of a Release Parcel to an entity (such sale, lease, grant or contribution hereinafter collectively referred to as the "**Transfer**"), to seek the release of such Release Parcel from the lien of the First Mortgage and the Purchase Money Mortgage, other than in connection with the payment in full of the notes secured by the First Mortgage and the Purchase Money Mortgage. The Borrower and the Lender contemplate that there will be two (2) possible types of transactions, as follows:

(i) The Borrower seeks the release of a Release Parcel in connection with the development of such Release Parcel by the Borrower, or a Transfer to an entity formed by the Borrower and 100% owned and controlled by the Borrower, or a transfer to an entity which is either wholly owned or partially owned by an entity which is a partial owner or an affiliate, directly or indirectly, of a partial owner of the ownership interests of the Borrower. In such event, the Full Consideration, as hereinafter defined, pursuant to **Subparagraph 3.20(b)(1)(dd)(x)**, to be paid to Borrower shall be deemed to be the fair market value of such Release Parcel as mutually agreed by Borrower, First Lender and Lender, and failing such agreement within thirty (30) days of Borrower's request for approval of such release, then the Minimum Release Price pursuant to **Subparagraph 3.20(b)(1)(dd)(y)** above will be Forty Eight Dollars (\$48.00) per square foot for any portion of the Premises lying south of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Premises, and Sixty Dollars (\$60.00) per square foot for any portion of the Premises lying north of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Premises.

(ii) The Borrower seeks the release of a Release Parcel in connection with its Transfer to an entity which is not (i) the Borrower, or (ii) an entity which is either wholly owned or partially owned by an entity which is a partial owner or an affiliate, directly or indirectly, of a partial owner of the ownership interests of the Borrower, i.e. an arms length third party. In such event, the full consideration ("**Full Consideration**") to be paid to Borrower shall be the purchase price for the Transfer of such Release Parcel.

Notwithstanding anything to the contrary contained herein, the application of the provisions of this **Subparagraph 3.20(b)(1)(ii)** shall not be stifled by a so-called "flip" transaction whereby the Transfer requested by Borrower is merely the first step in (x) a transaction where the Borrower obtains a release under **Subparagraph 3.20(b)(1)(jj)(i)** above for the Minimum Release Price specified therein and then transfers the Release Parcel to an arms length purchaser for an amount greater than the Minimum Release Price or (y) a transaction whereby a release is issued in connection with a third party purchase at or in excess of the Minimum Release Price pursuant to **Subparagraph 3.20(b)(1)(jj)(ii)** and then a transfer of the Release Parcel is made to Borrower or a related entity at a price less than the Full Consideration.

(kk) **Release Price:** An amount equal to twenty percent (20%) of the Net Release Price until such time as the note or notes secured by the First Mortgage has been paid in full, and thereafter an amount equal to ninety five percent (95%) of the Net Release Price.

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(2) (aa) Provided the Borrower is not in Default under the note or notes secured by the Purchase Money Mortgage, Lender shall permit the Borrower to proceed with the development of all or any portion of the public infrastructure improvements on a Public Infrastructure Parcel shown on, or required to develop, on such Public Infrastructure Parcel in the manner depicted on the Development Plan, and release its Purchase Money Mortgage on such Public Infrastructure Parcel after it is developed, dedicated and such dedication has been accepted by the City of Chicago. Except as hereinafter provided, there shall be no release price required to be paid to Lender in connection with the release of the Purchase Money Mortgage on a Public Infrastructure Parcel that has been dedicated to public use and such dedication is accepted by the City of Chicago in accordance with the Development Plan and no consideration is paid to Borrower for such portion of the Property, provided, however, that Borrower shall reimburse Lender for the costs provided for in **Subparagraph 3.20(b)(5)**. An amount equal to any cash consideration paid or to be paid to Borrower by the City, when actually paid to Borrower, reduced by the costs incurred by Borrower in improving the Public Infrastructure Parcel in connection with any such dedication, shall be deemed to be Net Release Price and Borrower covenants to pay same to the First Lender and Lender, in accordance with the provisions of **Subparagraph 3.20(b)(3)**, contemporaneous with the release of the First Mortgage and the Purchase Money Mortgage on such Public Infrastructure Parcel or, should Borrower receive cash consideration, in excess of costs funded by the Borrower, after such release, then Borrower covenants to pay same to the First Lender and Lender, in accordance with the provisions of **Subparagraph 3.20(b)(3)** any time thereafter until the Purchase Money Note is paid in full. In the event the Borrower has increased the loan secured by the First Mortgage or has obtained another mortgage, pursuant to **Paragraph 3.07**, to pay for the South Wells Street Public Infrastructure Improvements or other public infrastructure improvements as described in such **Paragraph 3.07**, the amount of any cash consideration paid to the Borrower to reduce costs incurred by the Borrower for such South Wells Street Public Infrastructure Improvement and other public infrastructure improvements, up to the balance on that portion of the loan secured by the First Mortgage or such other permitted mortgage as described in **Paragraph 3.07**, which was advanced to pay for (a) the hard and soft costs of the Borrower in making the South Wells Street Public Infrastructure Improvements and (b) the amount borrowed by Borrower pursuant to clause (b) of **Paragraph 3.07** for such public infrastructure improvements, shall be applied to the reduction of the loan secured by the First Mortgage or such other permitted mortgage as described in **Paragraph 3.07** hereof.

(bb) Provided the Borrower is not in Default under the Note and provided Lender agrees that the fair market value (“**Acceptable Post Improvement Fair Market Value**”) of the remaining portion of the Premises encumbered with the Purchase Money Mortgage, after construction of private infrastructure improvements, will equal or exceed the aggregate of (x) the fair market value of the remaining portion of the Premises encumbered with the Purchase Money Mortgage prior to making such private infrastructure improvements, and (y) the maximum amount of the loan, including principal and accrued and unpaid interest, secured by the mortgage to which Lender is to subordinate this Purchase Money Mortgage pursuant to **Paragraph 3.07**, Lender shall permit the Borrower to proceed with the development of the private infrastructure improvements, shown on the Development Plan, on the remaining portion of the Premises encumbered with the Purchase Money Mortgage. In the event the Lender believes that the fair market value of the remaining portion of the Premises encumbered with the Purchase Money Mortgage after the private infrastructure improvements is less than the Acceptable Post

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Improvement Fair Market Value, such determination shall be made by appraisal in accordance with the appraisal provisions in Exhibit B attached hereto. Notwithstanding anything to the contrary contained herein, Borrower shall not commence construction of private infrastructure improvements unless Borrower provides Lender with adequate security, including but not limited to a bond, or such other security acceptable to Lender, in its sole discretion, securing the completion of such infrastructure improvements, in amounts and upon such terms as are reasonably acceptable to Lender.

(3) Except as set forth in **Subparagraph 3.20(b)(6)**, and provided the Borrower is not in Default under the Note or Purchase Money Mortgage, Lender shall, within fourteen (14) days of receipt of all of the deliveries, other than the payment of the Net Release Price, required pursuant to this Mortgage for the release of the liens of the First Mortgage and this Mortgage on a Release Parcel, execute and deliver from time to time when requested in writing by Borrower a release of the lien of the Purchase Money Mortgage on a Release Parcel, upon the following terms and conditions:

(aa) Prior to the payment in full of the First Mortgage.

(i) Delivery to First Lender of an amount, in cash, equal to Seventy Five percent (75%) of the Net Release Price.

(ii) Delivery to Lender of an amount, in cash, equal to Twenty percent (20%), of the Net Release Price plus the costs provided for in **Subparagraph 3.20(b)(5)**.

(bb) After payment in full of the First Mortgage, upon delivery to Lender of Ninety Five percent (95%) of the Net Release Price plus the costs provided for in **Subparagraph 3.20(b)(5)**.

(cc) In the event the Mortgaged Property or any portion thereof is encumbered with a lien of a mortgage securing a loan for private infrastructure improvements pursuant to **Paragraph 3.07** and **Subparagraph 3.20(b)(2)(bb)**, and all or any portion of such private infrastructure improvements are located on a Release Parcel for which Borrower seeks a release of the lien of this Mortgage, the proceeds of the Net Release Price shall be first applied to reduce the loan made pursuant to **Paragraph 3.07** to pay for the hard and soft costs of that portion of the private infrastructure improvements located on such Release Parcel, and the remaining balance of such Net Release Price and the remaining balance shall be distributed pursuant to (aa) and (bb) immediately above.

(4) Contemporaneous with Lender's release of the lien of the Purchase Money Mortgage on a Release Parcel, the Lender provided (x) such Release Parcel is adjacent to a Non-Developable Parcel, shall also, without additional payment, release the lien of the Purchase Money Mortgage on such portion of the Non-Developable Parcel as is included in an area created by extending each boundary line of such Release Parcel to the property lines of the Premises, and (y) such portion of the Non-Developable Parcel requested to be conveyed is to be conveyed to the purchaser of such adjacent Release Parcel without any consideration over and above the Net Release Price for such Release Parcel.

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(5) All costs, including reasonable attorney's fees and costs, incurred from time to time, by Lender in connection with the release of the lien of the Purchase Money Mortgage on a Release Parcel or the release of the lien of the Purchase Money Mortgage on any Public Infrastructure Parcel which has been dedicated to public use and such dedication has been accepted by the City of Chicago shall be reimbursed to Lender by Borrower within ten (10) days after notice from Lender to Borrower.

(6) Should (a) a dispute exist between Lender and Borrower based upon a claim by Borrower against Lender other than a dispute related to the amount of the Net Release Price, and Borrower has filed a lawsuit to resolve any such claim, during the pendency of such lawsuit and until a final non-appealable judgment in favor of Borrower and against Lender, Borrower desires to obtain the release of this Purchase Money Mortgage from a Release Parcel then, provided the Lender has not filed a proceeding to foreclose the lien of this Purchase Money Mortgage, upon delivery to Lender of the Release Price determined pursuant to this **Paragraph 3.20**, Lender will release its lien under the First Mortgage therefrom; provided, however, that if the ad damnum made in good faith by Borrower in such lawsuit exceeds an amount equal to the indebtedness secured by this Purchase Money Mortgage, determined as of the date of the request for such release, reduced by the amount of the Net Release Price, such Net Release Price, up to such excess, shall be deposited in a joint deposit escrow to be established with Chicago Title and Trust Company and the balance of the Net Release Price shall be paid to the Lender, or (b) a dispute exists between the Lender and the Borrower relating to the amount of the Net Release Price for a Release Parcel, Borrower may obtain a release of the such Release Parcel by paying the Lender the Release Price for such Release Parcel based upon the greater of (a) the Minimum Net Release Price for such Release Parcel, and (b) the Release Price for such Release Parcel which Borrower, in good faith, believes is the Release Price for such Release Parcel, and contemporaneously depositing in a joint deposit escrow to be established with Chicago Title and Trust Company an amount equal to the difference between the Net Release Price asserted by the Lender and the sum paid to Lender pursuant to this **Subparagraph 3.20(b)(6)** to be invested at the discretion of the Borrower, to guarantee payment to the Lender of its Release Price for such Release Parcel. Interest shall accrue and be payable as provided in the Note on the unpaid principal balance under the Note notwithstanding the deposit of funds into any escrow established pursuant to this **Subparagraph 3.20(b)(6)**. Any such escrow shall be disbursed upon the agreement of the parties or final adjudication of such claim by a court of competent jurisdiction. Interest earned upon any deposit shall be paid to Borrower, except in the case of default by Borrower.

(7) Should a Default as described in **Subparagraphs 4.01(a), 4.01(b), 4.01(c), 4.01(d), (i) or (j)** have occurred and provided Lender shall not have filed a suit to foreclose the lien of this Mortgage by judicial proceedings, then upon delivery to Lender of the Release Price for a Release Parcel determined pursuant to this **Paragraph 3.20**, Lender shall release its lien under this Mortgage therefrom.

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EXHIBIT C

First Mortgage Instruments

1. Loan and Security Agreement, dated as of May 4, 2004, executed by and between Borrower and First Mortgage Lender;
2. Secured Promissory Note, dated as of May 4, 2004, executed by Borrower to the order of First Mortgage Lender, in the amount of \$60,000,000;
3. Mortgage and Fixture Filing, dated as of May 4, 2004, executed by Borrower in favor of First Mortgage Lender;
4. Assignment of Rents (and Leases) , dated as of May 4, 2004, executed by Borrower in favor of First Mortgage Lender;
5. Environmental Indemnity, dated as of May 4, 2004, executed by Guarantor in favor of First Mortgage Lender;
6. UCC-1 Financing Statements
7. Guaranty, dated as of May 4, 2004, executed by Borrower in favor of First Mortgage Lender;
8. Assignment of Project Agreements, dated as of May 4, 2004, executed by Borrower in favor of First Mortgage Lender;
9. Formation Documents Certificate, dated as of May 4, 2004, executed by Borrower and Roosevelt/Clark Developers, L.L.C. in favor of First Mortgage Lender;
10. Collateral Assignment of Beneficial Interest and Security Agreement, dated as of May 4, 2004, executed by Roosevelt/Clark Development, L.P. in favor of First Mortgage Lender;
11. Assignment of Development Manager Agreement and Development Manager's Consent, dated of even date herewith, executed by Roosevelt/Clark Development, L.P. and Rezmar Corporation in favor of First Mortgage Lender; and
12. Letter from First Mortgage Lender to Roosevelt/Clark Development, L.P. accepted and agreed to by Roosevelt/Clark Development, L.P. and Guarantor regarding consent to Third Mortgage Loan.

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EXHIBIT D

Second Mortgage Instruments

1. Mortgage Note, dated March 15, 2002, executed by Borrower, payable to the order of Second Mortgage Lender, in the amount of \$22,500,000;
2. Junior Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, dated March 15, 2002, executed by Borrower in favor of Second Mortgage Lender;
3. Environmental Indemnification Agreement, dated March 15, 2002, executed by Borrower, Guarantor and Rezmar Corporation for the benefit of Second Mortgage Lender;
4. Junior and Subordinate Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust, dated March 15, 2003, executed by Roosevelt/Clark Development, L.P. and accepted by Second Mortgage Lender;
5. Junior Security Agreement and Assignment of Contractual Agreements Affecting Real Estate, dated March 15, 2002, executed by Borrower, as assignor, and Second Mortgage Lender, as assignee;
6. Junior Assignment of Sales Contracts and Security Agreement, dated March 15, 2002, executed by Borrower, as assignor, and Second Mortgage Lender, as assignee;
7. First Amendment to Loan Documents and Assignment and Assumption Agreement and Other Agreements, dated May 3, 2004, executed by and between Borrower and Second Mortgage Lender; and
8. Letter agreement, dated May 3, 2004, executed by and between Borrower and Second Mortgage Lender.

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EXHIBIT E

Third Mortgage Instruments

1. Loan Agreement, dated of even date herewith, executed by and between Borrower and Third Mortgage Lender;
2. Secured Promissory Note, dated of even date herewith, executed by Borrower to the order of Third Mortgage Lender, in the amount of \$13,500,000;
3. Third Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, dated of even date herewith, executed by Borrower in favor of Third Mortgage Lender;
4. Junior and Subordinate Security Agreement and Collateral Assignment of Beneficial Interest in Land Trust, dated of even date herewith, executed by Roosevelt/Clark Development, L.P. in favor of Third Mortgage Lender;
5. Environmental Indemnity Agreement, dated of even date herewith, executed by Roosevelt/Clark Development, L.P. and Guarantor in favor of Third Mortgage Lender;
6. Guaranty of Recourse Obligations, dated of even date herewith, executed by Guarantor in favor of Lender;
7. Assignment of Development Management Agreement, and Development Manager's Consent, dated of even date herewith, executed by Roosevelt/Clark Development, L.P. and Rezmar Corporation in favor of Third Mortgage Lender;
8. UCC-1 Financing Statement, naming Roosevelt/Clark Development, L.P., as debtor, and Third Mortgage Lender as secured party, filed with the Delaware Secretary of State;
9. UCC-1 Financing Statement, naming the Trust, as debtor, and Third Mortgage Lender as secured party, filed with the Illinois Secretary of State;
10. Fixture Filing, naming Roosevelt/Clark Development, L.P., as debtor, and Third Mortgage Lender as secured party, recorded with in the official real estate records; and
11. Fixture Filing, naming the Trust as debtor, and Third Mortgage Lender as secured party, recorded with in the official real estate records.

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EXHIBIT F

Pre-Approved Third-Party Professionals

Project Managers

CB Richard Ellis
Cushman and Wakefield
U.S. Equities Realty
Grubb & Ellis
NAI Hiffman

Retail Leasing Brokers

Northern Realty Group
Mid-America Real Estate Corporation
CB Richard Ellis
Cushman and Wakefield
U.S. Equities Realty
Stone Real Estate

Residential Sales Brokers

Draper and Kramer
Arthur Rubloff
Rockwood Realty Associates
Jones Lang
Lehman Realty

Retail Sales Brokers

CB Richard Ellis
Cushman and Wakefield
Eastdil Realty
Secured Capital
Rockwood Realty Associates
Jones Lang
Lehman Realty

Construction Managers

Construction Management and Development
O'Brien Kreitzberg

General Contractors

Turner Construction Company
Bovis Lend Lease