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Doc#: 0510433201  
Eugene "Gene" Moore Fee: \$64.00  
Cook County Recorder of Deeds  
Date: 04/14/2005 01:03 PM Pg: 1 of 21

8250 396 PARK

GMAC COMMERCIAL MORTGAGE CORPORATION, LANDESBANK HESSEN-  
THÜRINGEN GIROZENTRALE, AND ANGLO IRISH BANK CORPORATION PLC  
(Senior Lender)

-and-

LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE  
(Subordinate Lender)

SUBORDINATION AND INTERCREDITOR AGREEMENT

**Effective Date: March 18, 2005**

**Address:** 111 South Wacker  
Chicago, IL 60606

**Property Identification Number:** 17-16-208-001, 17-16-208-002,  
17-16-208-003, 17-16-208-018

**PREPARED BY AND RECORDING REQUESTED BY  
AND UPON RECORDATION RETURN TO:**

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, Pennsylvania 19103-2793  
Attention: Jay Zagoren, Esq.

2/8

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## SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("*Agreement*") made as of the 18th day of March, 2005 by and between LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, as Swap Counterparty (in such capacity as Swap Counterparty, hereinafter referred to as the "*Subordinate Lienholder*"), and GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation, as administrative agent for the Senior Lender (as defined below) (in such capacity as administrative agent, the "*Administrative Agent*"), GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation, as Lender (in such capacity as Lender, together with its successors and assigns, "*GMAC*"), LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, a German national banking corporation, as Lender ("*Helaba*"), and ANGLO IRISH BANK CORPORATION PLC, a banking corporation organized under the laws of the Republic of Ireland, as Lender ("*Anglo Irish*") (GMAC, Helaba, Anglo Irish and each other lender who may become a lender pursuant to Section 19 of the Loan Agreement (as defined below), individually and collectively, as the context may require, the "*Senior Lender*").

### BACKGROUND

A. 111 SOUTH WACKER VENTURE LLC, a Delaware limited liability company (the "*Borrower*"), Administrative Agent and Senior Lender entered into a certain Loan Agreement of even date herewith (the "*Loan Agreement*") pursuant to which Senior Lender made a loan (the "*Senior Loan*") to Borrower in the maximum principal amount of up to \$270,000,000.00. In connection therewith, the Senior Lender is the owner and holder of that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of the date hereof, executed by Borrower in favor of Senior Lender (said Mortgage, and any extensions, modifications, substitutions and consolidations thereof, being hereinafter referred to as the "*Senior Security Instrument*"), covering the fee simple estate of Borrower in certain property located in the City of Chicago, County of Cook and State of Illinois, as more particularly described on Exhibit A attached hereto and made a part hereof, together with all improvements located thereon (collectively, the "*Property*"), and the Promissory Notes collectively in the principal amount of \$270,000,000.00 secured thereby (said notes, and any extensions, modifications or substitutions thereof, being hereinafter collectively referred to as the "*Senior Note*"); and

B. The Borrower is about to execute and deliver to the Subordinate Lienholder the Fee and Leasehold Subordinate Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (said Subordinate Mortgage and any extensions, modifications, substitutions and consolidations thereof, being hereinafter referred to as the "*Subordinate Security Instrument*") securing its obligations related to that certain Interest Rate Swap Confirmation dated on or about the date hereof, entered into between Borrower and Subordinate Lienholder (collectively, the "*Subordinate Obligations*"); and

C. The Subordinate Security Instrument is intended to be recorded prior to this Agreement in the recorder's office of Cook County, State of Illinois; and

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D. The Senior Lender is unwilling to allow the Borrower to further encumber the Property with the Subordinate Security Instrument unless the Subordinate Security Instrument is subordinated to the Senior Security Instrument in the manner hereinafter set forth.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Subordinate Lienholder and the Senior Lender hereby agree as follows:

1. (a) The Subordinate Security Instrument, any other document evidencing, securing or guaranteeing the indebtedness and obligations secured by the Subordinate Security Instrument or otherwise executed in connection with the Subordinate Security Instrument (collectively, together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the “**Subordinate Obligations Documents**”) and all advances made thereunder are hereby, and shall continue to be, subject and subordinate in lien and in payment to the lien and payment of the Senior Security Instrument and any other document evidencing, securing or guaranteeing the indebtedness secured by the Senior Security Instrument or otherwise executed in connection with the Senior Security Instrument (collectively, together with any extensions, modifications, substitutions and consolidations thereof, being hereinafter collectively referred to as the “**Senior Loan Documents**”) and all advances made thereunder without regard to the application of such proceeds, together with all interest, prepayment premiums and all other sums due under the Senior Security Instrument, and the Senior Note secured thereby. All of the terms, covenants and conditions of the Subordinate Security Instrument and the Subordinate Obligations Documents are hereby, and shall continue to be, subordinate to all of the terms, covenants and conditions of the Senior Security Instrument and the Senior Loan Documents. The foregoing shall apply, notwithstanding the availability of other collateral to the Senior Security Instrument or the actual date and time of execution, delivery, recordation, filing or perfection of the Senior Security Instrument or the Subordinate Security Instrument, or the lien or priority of payment thereof, and notwithstanding the fact that the Senior Loan or any claim for the Senior Loan is subordinated, avoided or disallowed, in whole or in part, under Title 11 of the United States Code (the “**Bankruptcy Code**”) or other applicable federal or state law. In the event of a proceeding, whether voluntary or involuntary, for insolvency, liquidation, reorganization, dissolution, bankruptcy or other similar proceeding pursuant to the Bankruptcy Code or other applicable federal or state law, the Senior Loan shall include all interest accrued on the Senior Loan, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of any of such proceedings, even if the claim for such interest is not allowed pursuant to applicable law.

(b) Notwithstanding any other provision in this Agreement to the contrary, provided no “**Event of Default**” (as defined in the Loan Agreement) shall have occurred pursuant to the Loan Agreement, (i) Borrower may pay regularly scheduled payments under the Subordinate Obligations Documents as and when due under the Subordinate Obligations Documents, and (ii) prior to receipt by the Subordinate Lienholder of written notice of such an Event of Default from Administrative Agent (such notice, the “**Default Notice**”), the Subordinate Lienholder may receive and retain regularly scheduled payments under the Subordinate

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Obligations Documents. Following the occurrence of an Event of Default, (i) Borrower shall not make a payment on the Subordinate Obligations, and (ii) upon and after receipt by the Subordinate Lienholders of a Default Notice, Subordinate Lienholder shall not be entitled to receive and retain any payments which would otherwise have been due and payable were it not for the occurrence of the Event of Default and the delivery of the Default Notice until such time as (x) the date on which all such Events of Default specified in the Default Notice shall have been waived in writing, or (y) payment in full in cash of all sums payable, and performance of all obligations, under the Loan Documents.

2. In addition, without limiting the foregoing, the Subordinate Lienholder agrees that all rights of the Subordinate Lienholder under the Subordinate Security Instrument or under the Subordinate Obligations Documents in and to the Property and the proceeds thereof (including, by way of example only, to the extent applicable, assignments of leases and rents, issues and profits and the rights with respect to insurance proceeds and condemnation awards) shall be expressly subject and subordinate:

(a) to the rights of the Senior Lender in and to the Property and the proceeds thereof (including, by way of example only, assignments of leases and rents, issues and profits and rights with respect to insurance proceeds and condemnation awards) on the terms set forth in the Senior Security Instrument and the Senior Loan Documents; and

(b) to any and all advances made and other expenses incurred under, and as permitted in, the Senior Security Instrument and the Senior Loan Documents.

3. The Subordinate Lienholder hereby represents and warrants that (a) it is now the owner and holder of the Subordinate Security Instrument; (b) the Subordinate Security Instrument is now in full force and effect; (c) the Subordinate Security Instrument has not been modified or amended; (d) the Borrower is not in default in the observance and/or performance of any of the obligations thereunder required to be observed and performed by the Borrower; (e) no event has occurred, which, with the passing of time or the giving of notice or both would constitute an Event of Default as defined in the Subordinate Security Instrument; (f) all payments due thereon to and including the date hereof, have been paid in full; (g) the Subordinate Obligations are non-recourse with respect to the observance and performance by Borrower of all of its obligations thereunder and the Property is the only collateral securing the Subordinate Obligations; (h) any rights of the Subordinate Lienholder in and to the lien, estate or other interest in the Property are not subject to the rights of any third parties by way of subrogation, indemnification or otherwise; (i) the Subordinate Obligations do not provide for any equity kickers, shared appreciation or any kind of equity participation by the Subordinate Lienholder.

4. The Subordinate Lienholder hereby agrees that so long as any sum shall remain outstanding on the Senior Security Instrument:

(a) The Subordinate Lienholder shall simultaneously send to the Senior Lender due notice of all defaults under the Subordinate Security Instrument as well as copies of all notices required to be delivered to the Borrower under the Subordinate Security Instrument. Notice under the Subordinate Security Instrument shall not be deemed effective until such notice has been received by the Senior Lender. The Senior Lender shall have the right, but shall not

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have any obligation whatsoever, to cure any such default within ten (10) days after the expiration of the applicable grace period permitted to the Borrower under the Subordinate Obligations Documents.

(b) Subject to paragraph 4(a) herein, the Subordinate Lienholder shall not, without the prior written consent of the Senior Lender, exercise any right of setoff it may have pursuant to the Subordinate Obligations Documents, declare a default under the Subordinate Security Instrument with respect to the Property or accelerate the indebtedness secured by the Subordinate Security Instrument against the Property or commence any action to foreclose the Subordinate Security Instrument against the Property or take any other "**Enforcement Action**" (as hereinafter defined). Enforcement Action shall mean, with respect to the Subordinate Obligations, the accruing of any penalty fees or acceleration of payments due with respect to all or any part of the Subordinate Obligations, any foreclosure proceeding, the exercise of any power of sale, the acceptance by the Subordinate Lienholder of a deed or assignment in lieu of foreclosure, the obtaining of a receiver, the seeking of default interest, the taking of possession or control of, the suing on the Subordinate Obligations or any guaranty in favor of the Subordinate Lienholder, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against the Property;

(c) In the event (i) the Senior Loan becomes due or is declared due and payable prior to its stated maturity, (ii) the Subordinate Lienholder receives any payment, in part or in whole, under the Subordinate Security Instrument contrary to the terms of the Subordinate Obligations Documents or Borrower is in default under the Senior Loan Documents, or (iii) any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the property, assets or business of the Borrower or the proceeds thereof, in whatever form, to any creditor or creditors of the Borrower or to any holder of indebtedness of the Borrower by reason of any liquidation, dissolution or other winding up of the Borrower or its business, or of any receivership or custodianship for the Borrower of all or substantially all of its property, or of any insolvency or bankruptcy proceedings or assignment for the benefit of creditors or any proceeding by or against the Borrower or for any relief under any bankruptcy, reorganization or insolvency law or laws, federal or state, or any law, federal or state, relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension, then, and in any such event, any payment or distribution of any kind or character, whether in cash, property or securities which shall be payable or deliverable with respect to any or all of the Subordinate Obligations or which has been received by the Subordinate Lienholder shall be held in trust by the Subordinate Lienholder for the benefit of the Senior Lender and shall forthwith be paid or delivered directly to the Senior Lender for application to the payment of the Senior Loan to the extent necessary to make payment in full of all sums due under the Senior Loan remaining unpaid after giving effect to any concurrent payment or distribution to the Senior Lender. In any such event, the Senior Lender may, but shall not be obligated to, demand, claim and collect any such payment or distribution that would, but for these subordination provisions, be payable or deliverable with respect to the Subordinate Loan. In the event of the occurrence of (i), (ii) or (iii) above and until the Senior Loan shall have been fully paid and satisfied and all of the obligations of the Borrower to the Senior Lender have been performed in full, no payment shall be made to or accepted by the Subordinate Lienholder in respect of the Subordinate Obligations;

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(d) No tenant under any lease of any portion of the Property will be made a party defendant in any foreclosure of the Subordinate Security Instrument nor will any Enforcement Action or any other action be taken that would terminate any leases or other rights held by or granted to or by third parties with respect to the Property;

(e) (i) If any action or proceeding shall be brought to foreclose the Subordinate Security Instrument or commence any other Enforcement Action, no portion of the rents, issues and profits of the Property shall be collected except through a receiver appointed by the court in which such foreclosure action or proceeding is brought, after due notice of the application for the appointment of such receiver shall have been given to the Senior Lender and the rents, issues and profits so collected by such receiver shall be applied first to the payment of maintenance of taxes and insurance on the Property, and then to the payment of principal and interest due and owing on the Senior Security Instrument prior to the payment, if any, of any payment due and owing on the Subordinate Security Instrument; (ii) if during the pendency of any such foreclosure action or proceeding, an action or proceeding shall be brought by the Senior Lender for the foreclosure of the Senior Security Instrument and an application is made by the Senior Lender for an extension of such receivership for the benefit of the Senior Lender, all such rents, issues and profits held by such receiver as of the date of such application shall be applied by the receiver solely for the benefit of the Senior Lender, and the Subordinate Lienholder shall not be entitled to any portion thereof until all sums due and owing pursuant to the Senior Security Instrument have been paid in full and applied as aforesaid; (iii) notice of the commencement of any foreclosure of the Subordinate Security Instrument shall be given to the Senior Lender and true copies of all notices thereof and papers served or entered in such action shall be delivered to the Senior Lender, and (iv) to the extent applicable, the Subordinate Lienholder shall waive its rights under New York's Real Property Actions and Proceedings Law, section 1351(3), to request that a final judgment in a foreclosure of the Senior Security Instrument direct payment of all or any part of the indebtedness secured by the Subordinate Security Instrument from the proceeds of the foreclosure sale of the Senior Security Instrument;

(f) In the event the Senior Lender shall release, for the purposes of restoration of all or any part of the improvements on or within the Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, the Subordinate Lienholder shall release for such purpose all of its right, title and interest, if any, in and to all such insurance proceeds, awards or compensation and the Subordinate Lienholder agrees that the balance of such proceeds remaining may be applied, at the option of Senior Lender, to the reduction of principal under the Senior Security Instrument and if the Senior Lender holds such proceeds, awards or compensation and/or monitors the disbursement thereof, the Subordinate Lienholder agrees that the Senior Lender shall also hold and monitor the disbursement of such proceeds, awards and compensation to which the Subordinate Lienholder is entitled. Nothing contained in this Agreement shall be deemed to require the Senior Lender, in any way whatsoever, to act for or on behalf of the Subordinate Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of the Subordinate Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of the Senior Lender;

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(g) If the Subordinate Lienholder shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the Senior Security Instrument as provided herein, and the Subordinate Lienholder hereby waives any and all rights it may acquire by subrogation or otherwise to the lien of the Senior Security Instrument or any portion thereof;

(h) The Subordinate Lienholder shall not pledge, assign, hypothecate, transfer, convey or sell the Subordinate Security Instrument or any interest in the Subordinate Security Instrument other than to an Institutional Mortgagee (as hereinafter defined) or modify, waive or amend any of the terms or provisions of the Subordinate Security Instrument, without the prior written consent of the Senior Lender. The term "*Institutional Mortgagee*" shall mean any of the following entities holding the Subordinate Security Instrument for its own account, and not for the account of any other entity: (i) a federal or state chartered commercial bank or trust company or federal or state chartered savings bank or savings and loan association or insurance company organized and existing under the laws of the United States, or any state thereof, (ii) a foreign bank or a branch office of a foreign bank, (iii) a foreign pension fund not subject to ERISA, (iv) a foundation, college or university, or (v) a nationally recognized commercial credit corporation. Any such entity described in the preceding sentence shall: (W) have a net worth in excess of \$200,000,000.00, (X) not be a parent, subsidiary or affiliate of or an entity owned or controlled, in whole or in part, directly or indirectly, by the Borrower, and (Y) agree in writing to be subject to all of the terms, conditions and obligations under the Subordinate Obligations Documents;

(i) At the request of Senior Lender or Borrower, the Subordinate Lienholder shall also enter into recognition and non-disturbance agreements with any tenants of any leases entered into by Borrower with respect to the Property to whom the Senior Lender has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Lender;

(j) The Subordinate Lienholder hereby expressly consents to and authorizes, at the option of the Senior Lender, the release of all or any portion of the Property from the lien of the Senior Security Instrument, and hereby waives any equitable right in respect of marshalling it might have, in connection with any release of all or any portion of the Property by the Senior Lender under the Senior Security Instrument, to require the separate sales of any portion of the Property or to require the Senior Lender to exhaust its remedies against any portion of the Property, or any combination of the portions of the Property or any other collateral, or to require the Senior Lender to proceed against any portion of the Property or combination of the portions of the Property or any other collateral, before proceeding against any other portion of the Property or combination of the portions of the Property, and further, in the event of any foreclosure, the Subordinate Lienholder hereby expressly consents to and authorizes, at the option of the Senior Lender, the sale, either separately or together, of all or any portion of the Property;

(k) [Intentionally Omitted]

(l) After request by the Senior Lender, the Subordinate Lienholder shall within ten (10) days furnish the Senior Lender with a statement, duly acknowledged and certified setting forth the terms of the Subordinate Obligations and that there exists no defaults or Event of Default under the Subordinate Security Instrument or any of the Subordinate Obligations Documents;

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(l) In any case commenced by or against the Borrower or member of Borrower under Chapter 11 of the Bankruptcy Code or any similar provision thereof or any similar federal or state statute (a "**Reorganization Proceeding**"), the Senior Lender shall have the exclusive right to exercise any voting rights in respect of the Senior Security Instrument and the other Senior Loan Documents, and the Subordinate Lienholder shall have the exclusive right to exercise any voting rights in respect of its claims against the Borrower or the general partners of the Borrower, except that without the consent of the Senior Lender, the Subordinate Lienholder shall not have the right to vote affirmatively in favor of any plan of reorganization unless the Senior Lender grants its permission thereto or the Senior Lender votes to accept such plan;

(m) In any Reorganization Proceeding with respect to the Borrower or any member of the Borrower, (i) the Subordinate Lienholder shall file a proof of claim in respect of its claims against the Borrower or any member of the Borrower and shall send to the Senior Lender a copy thereof together with evidence of the filing with the appropriate court or other authority, (ii) if the Subordinate Lienholder should fail to file such proof of claim by the tenth (10th) business day before the last day for filing of proofs of claim, or if the Senior Lender reasonably believes that the proof of claim so filed is less than the proper amount thereof, then the Senior Lender may file such proof of claim, or corrected proof of claim, on behalf of the Subordinate Lienholder, and (iii) if objection is made to the allowance of any claim of the Subordinate Lienholder, the Senior Lender shall have the right to intervene and fully participate in such proceedings and if such rights are denied and the Subordinate Lienholder fails to defend such claim, then the Senior Lender may defend such claim in the name of the Subordinate Lienholder; and

(n) To the extent any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Loan or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

(o) The Senior Lender hereby consents to the placing of the Subordinate Security Instrument on the Property subject to the terms of this Agreement. This consent is limited to the Subordinate Security Instrument described above and shall not be deemed to (i) be a consent to any future encumbrances or to any modification, renewal, extension or increase of the Subordinate Security Instrument, (ii) be a waiver of the limitation on further encumbrances contained in the Senior Security Instrument, (iii) be a consent to or waiver of any other term or condition of the Senior Security Instrument, or (iv) prejudice any right or rights which the Senior Lender may now or in the future have under or in connection with the Senior Security Instrument.

5. The Senior Lender and the Subordinate Lienholder shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.



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6. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. Each party hereto acknowledges that to the extent that no adequate remedy at law exists for breach of its obligations under this Agreement, in the event either party fails to comply with its obligations hereunder, the other party shall have the right to obtain specific performance of the obligations of such defaulting party, injunctive relief or such other equitable relief as may be available.

8. Any notice to be given under this Agreement shall be in writing and shall be deemed to be given when received by the party to whom it is addressed. Notices shall be in writing and sent by registered mail, hand delivery or by any nationally recognized, reputable overnight courier (in each case, return receipt requested). Notices shall be sent to the address set forth below or such other address or addressees as shall be designated by any party in a written notice to the other parties.

Address for Administrative Agent and  
GMAC:

GMAC Commercial Mortgage Corporation  
200 Witmer Road  
Horsham, PA 19044  
Attn: Servicing Accounting - Manager  
Fax: 215-328-3478

With a required copy to:

GMAC Commercial Mortgage Corporation  
200 Witmer Road  
Horsham, PA 19044  
Attn: PLG Asset Manager  
Fax: 215-328-1190

GMAC Commercial Mortgage Corporation  
48 Wall Street, 17<sup>th</sup> Fl.  
New York, NY 10005  
Attn: Richard Spinelli, Senior Vice President  
Fax: 215-363-7448

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attn: Jay Zagoren, Esq.  
Fax: 215-655-2644

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Address for Helaba  
and Subordinate Lienholder:

Landesbank Hessen-Thüringen Girozentrale  
420 Fifth Avenue  
New York, NY 10018-2729  
Attn: Chris Godlewski  
Fax: (215) 703-5296

With a required copy to:

Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Attn: Gary A. Goodman, Esq.  
Fax: (212) 768-6800

Address for Anglo Irish:

Anglo Irish Bank Corporation plc  
265 Franklin Street, 19<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attn: Gavin Corcoran  
Fax: (617) 720-6099

and

Anglo Irish Bank Corporation plc  
330 Madison Avenue, 9<sup>th</sup> Floor  
New York, NY 10017  
Attn: Garrett Thelander  
Fax: (646) 495-5231

With a required copy to:

Buchanan Ingersoll PC  
One Chase Manhattan Plaza, 35<sup>th</sup> Floor  
New York, NY 10005  
Attn: Mitchell Fenton, Esq.  
Fax: (212) 440-4401

9. In the event of any conflict between the provisions of this Agreement and the provisions of the Subordinate Security Instrument or the Subordinate Obligations Documents the provisions of this Agreement shall prevail.

10. No person, including, without limitation, Borrower, other than the parties hereto and their successors and assigns as holders of the Senior Security Instrument and the Subordinate Security Instrument shall have any rights under this Agreement.

11. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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12. No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party against whom the enforcement of such amendment, supplement, modification, waiver or termination would be asserted, unless such amendment, supplement, modification, waiver or termination was made in a writing signed by such party.

13. In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

14. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

15. This Agreement shall bind and inure to the benefit of the Senior Lender and the Subordinate Lienholder and their respective successors, permitted transferees and assigns.

Property of Cook County Clerk's Office

A large, stylized handwritten signature in black ink, consisting of several loops and flourishes, is written over the diagonal watermark text.


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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**SENIOR LENDER:**

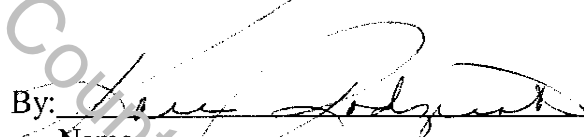
**ADMINISTRATIVE AGENT:**

GMAC COMMERCIAL MORTGAGE CORPORATION

By:   
Name: **Karen Rodzinak**  
Title: **Vice President**

**GMAC:**

GMAC COMMERCIAL MORTGAGE CORPORATION

By:   
Name: **Karen Rodzinak**  
Title: **Vice President**

**HELABA:**

LANDESBANK HESSEN-THÜRINGEN  
GIROZENTRALE

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[Signature page to Subordination and Intercreditor Agreement]

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**SENIOR LENDER:**

**ADMINISTRATIVE AGENT:**

**GMAC COMMERCIAL MORTGAGE CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**GMAC:**

**GMAC COMMERCIAL MORTGAGE CORPORATION**

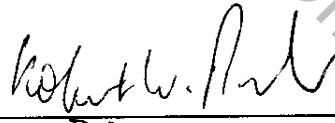
By: \_\_\_\_\_

Name:

Title:

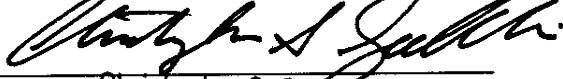
**HELABA:**

**LANDESBANK HESSEN-THÜRINGEN  
GIROZENTRALE**

By: 

Name: Robert W. Becker

Title: Senior Vice President  
Real Estate Finance

By: 

Name: Christopher S. Godlewski

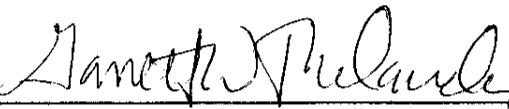
Title: Vice President  
Real Estate Finance

[Signature page to Subordination and Intercreditor Agreement]

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**ANGLO IRISH:**

ANGLO IRISH BANK CORPORATION PLC

By: 

Name:

Title:

[Signatures continued on the following page.]

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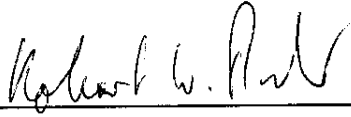
[Signature page to Subordination and Intercreditor Agreement]

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**SUBORDINATE LIENHOLDER:**

**HELABA:**

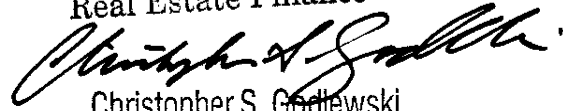
**LANDESBANK HESSEN-THÜRINGEN  
GIROZENTRALE**

By: 

Name:

Title:

Robert W. Becker  
Senior Vice President  
Real Estate Finance



Christopher S. Godlewski  
Vice President  
Real Estate Finance

Property of Cook County Clerks Office



[Signature page to Subordination and Intercreditor Agreement]

# UNOFFICIAL COPY

STATE OF PA

COUNTY OF Montgomery

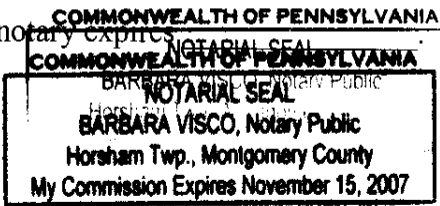
On this 21<sup>st</sup> day of MARCH, 2005, before me BARBARA Visco, the undersigned, a Notary Public in and for said state, personally appeared KAREN Rodzivalc, the VP of GMAC Commercial Mortgage Corporation, a California corporation, personally known to me to be the person who executed the within instrument, in behalf of said partnership and acknowledged to me that he/she is the VP and that said instrument was signed on behalf of said corporation for the purposes stated therein.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

(Seal)

Barbara Visco

My notary expires



[Signature page to Subordination and Intercreditor Agreement]



# UNOFFICIAL COPY

STATE OF PA

COUNTY OF Montgomery

On this 21<sup>st</sup> day of March, 2005, before me Barbara Visco, the undersigned, a Notary Public in and for said state, personally appeared Karen Rodziank, the VP of GMAC Commercial Mortgage Corporation, a California corporation, personally known to me to be the person who executed the within instrument, in behalf of said partnership and acknowledged to me that he/she is the VP and that said instrument was signed on behalf of said corporation for the purposes stated therein.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

(Seal)

Barbara Visco

My notary expires NOTARIAL SEAL

**COMMONWEALTH OF PENNSYLVANIA**  
BARBARA VISCO, Notary Public  
Horsham Twp., Montgomery County  
My Commission Expires November 15, 2007

*SSS*  
Clerk's Office

[Signature page to Subordination and Intercreditor Agreement]

# UNOFFICIAL COPY

STATE OF New York

COUNTY OF New York

On this 21<sup>st</sup> day of March, 2005, before me Gisela F. Baum, the undersigned, a Notary Public in and for said state, personally appeared Robert W. Becker / Christopher S. Godlewski, the SVP / VP of Landesbank Hessen-Thüringen Girozentrale, personally known to me to be the person~~s~~<sup>they are</sup> who executed the within instrument, in behalf of said partnership and acknowledged to me that ~~he/she~~<sup>they are</sup> is the authorized and that said instrument was signed on behalf of said corporation for the purposes stated therein.

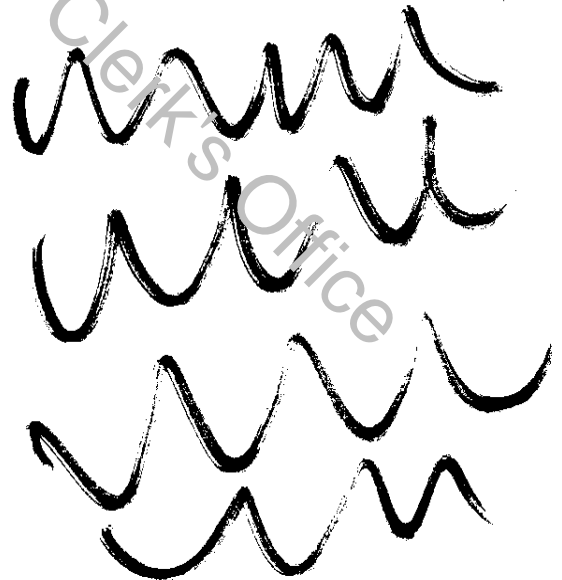
In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

(Seal)

Gisela F. Baum

My notary expires

**GISELA F. BAUM**  
Notary Public, State of New York  
No. 01BA6051421  
Qualified in New York County  
Commission Expires November 27, 2005



[Signature page to Subordination and Intercreditor Agreement]

# UNOFFICIAL COPY

STATE OF New York

COUNTY OF New York

On this 21<sup>st</sup> day of March, 2005, before me Gisela F. Baum, the undersigned, a Notary Public in and for said state, personally appeared Robert W. Becker / Christopher S. Godlewski, the SVP / VP of Landesbank Hessen-Thüringen Girozentrale, personally known to me to be the person who executed the within instrument, in behalf of said partnership and acknowledged to me that ~~he/she is the~~ they are ~~authorized~~ and that said instrument was signed on behalf of said corporation for the purposes stated therein.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

(Seal)

Gisela F. Baum

My notary expires \_\_\_\_\_  
GISELA F. BAUM  
Notary Public, State of New York  
No. 01BA6051421  
Qualified in New York County  
Commission Expires November 27, 2006

[Signature page to Subordination and Intercreditor Agreement]

# UNOFFICIAL COPY

STATE OF New York  
COUNTY OF New York

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:  
SUBSCRIBED AND SWORN TO  
BEFORE ME THIS  
7<sup>th</sup> DAY OF April 2005

On this 7<sup>th</sup> day of April, 2005, before me Lourdes S. Crespo, the undersigned, a Notary Public in and for said state, personally appeared Garrett W. Thelander, the Vice President of Anglo Irish Bank Corporation PLC, personally known to me to be the person who executed the within instrument, in behalf of said partnership and acknowledged to me that he/she is the Vice President and that said instrument was signed on behalf of said corporation for the purposes stated therein.

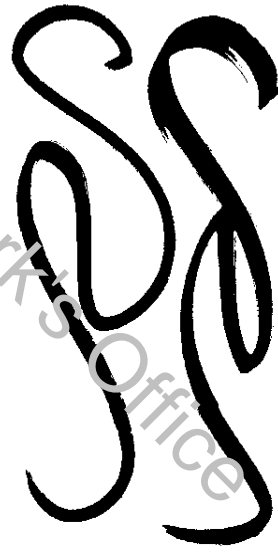
In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

(Seal)

NOTARY PUBLIC, State of New York  
No. 01CR6037936  
Qualified in New York County  
Commission Expires Feb. 28, 2006

Lourdes S. Crespo

My notary expires 2/28/06.



[Signature page to Subordination and Intercreditor Agreement]

# UNOFFICIAL COPY

## EXHIBIT A

(Description of Property)

### PARCEL 1:

LOTS 1, 2 AND 5 (EXCEPT THE NORTH 1 FOOT OF LOT 5) IN OGDEN'S SUBDIVISION OF LOT 1 IN BLOCK 82 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOTS A AND B IN I.V. FARWELL JR. RESUBDIVISION OF LOTS 3, 4 AND 6 AND THE NORTH 1 FOOT OF LOT 5, TOGETHER WITH THE VACATE ALLEY BETWEEN SAID LOTS 4 AND 6 AND EAST OF SAID LOTS 3 AND 6 IN OGDEN'S SUBDIVISION OF LOT 1 IN BLOCK 82 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

### PARCEL 3:

LOT 2 (EXCEPT THE EAST 18 FEET THEREOF) IN BLOCK 82 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

### PARCEL 4:

THE SOUTH ½ OF MONROE STREET NORTH OF AND ADJACENT TO THE FOLLOWING DESCRIBED PROPERTY: LOT 1 IN OGDEN'S SUBDIVISION OF LOT 1 OF BLOCK 82 IN SCHOOL SECTION ADDITION TO CHICAGO, AND LOT 2 (EXCEPT THE EAST 18 FEET THEREOF) IN BLOCK 82 IN SCHOOL SECTION ADDITION TO CHICAGO ALL IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

Permanent Index Numbers: 17-16-208-001, 17-16-208-002, 17-16-208-003, 17-16-208-018

Common Address: 111 South Wacker Drive  
Chicago, Illinois 60606