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This Document Prepared by  
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## INTERCREDITOR AGREEMENT

by and between

**LaSalle Bank National Association,**  
in its capacity as Senior Lender

and

**LaSalle Bank National Association,**  
in its capacity as Mezzanine Lender

Dated as of June 1, 2006

**Near North National Title**  
222 N. LaSalle  
Chicago, IL 60601

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## INTERCREDITOR AGREEMENT

**THIS INTERCREDITOR AGREEMENT** (this "**Agreement**"), dated as of June 1 2,006, by and between **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, having an office at 135 South LaSalle Street, Chicago, Illinois 60603, in its capacity as Senior Lender ("**Senior Lender**"), and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, having an office at 135 South LaSalle Street, Chicago, Illinois 60603, in its capacity as Mezzanine Lender ("**Mezzanine Lender**").

### RECITALS:

**WHEREAS**, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of June 1, 2006, by and between **351 MORTGAGE LOAN BORROWER LLC**, a Delaware limited liability company ("**Borrower**"), and Senior Lender (the "**Senior Loan Agreement**"). Senior Lender is making a loan to Borrower in the original principal amount of \$19,695,000 (the "**Senior Loan**"), which Senior Loan is evidenced by a certain Promissory Note, dated as of June 1, 2006, made by Borrower to Senior Lender in the amount of the Senior Loan (the "**Senior Note**"), and secured by, among other things, a Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of June 1, 2006, made by Borrower in favor of Senior Lender (the "**Senior Mortgage**"), which Senior Mortgage encumbers the real property described on **Exhibit A** attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the "**Premises**"); and

**WHEREAS**, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement, dated as of June 1, 2006, between **351 MORTGAGE LOAN BORROWER LLC**, a Delaware limited liability company ("**Mezzanine Borrower**"), and Mezzanine Lender (the "**Mezzanine Loan Agreement**"), Mezzanine Lender is the owner and holder of a loan to Mezzanine Borrower in the original principal amount of \$3,030,000 (the "**Mezzanine Loan**"), which Mezzanine Loan is evidenced by a certain Promissory Note (Mezzanine) dated as of June 1, 2006, made by Mezzanine Borrower in favor of Mezzanine Lender in the amount of the Mezzanine Loan (the "**Mezzanine Note**"), and secured by, among other things, (i) a Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of June 1, 2006, made by Borrower in favor of Mezzanine Lender (the "**Junior Mortgage**"), which Junior Mortgage encumbers the Premises, and (ii) Pledges of Membership Interests (Security Agreement), each dated as of June 1, 2006, made by direct and indirect members in Mezzanine Borrower (collectively, "**Pledgors**") in favor of Mezzanine Lender pursuant to which Mezzanine Lender is granted a first priority security interest in all of such members' direct and indirect ownership interests in Mezzanine Borrower (collectively, the "**Pledge Agreement**"); and

**WHEREAS**, Senior Lender and Mezzanine Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents (as such term is hereinafter

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defined) and the Mezzanine Loan Documents (as such term is hereinafter defined) on the terms and conditions hereinbelow set forth, and to evidence certain agreements with respect to the relationship between the Mezzanine Loan and the Mezzanine Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

**NOW, THEREFORE**, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Mezzanine Lender hereby agree as follows:

1. **Certain Definitions; Rules of Construction.**

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

“**Affiliate**” means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, controlling, Controlled by or under common control with the Person or Persons in question.

“**Agreement**” means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof

“**Award**” has the meaning provided in Section 8(d) hereof.

“**Borrower**” has the meaning provided in the Recitals hereto.

“**Borrower/Common Guarantor Group**” has the meaning provided in Section 9(c) hereof.

“**Business Day**” means a day on which both Senior Lender and Mezzanine Lender are open for business.

“**Common Guarantor**” means any party that has executed a guaranty in connection with both the Senior Loan and the Mezzanine Loan, including the Initial Common Guarantors.

“**Continuing Senior Loan Event of Default**” means an Event of Default under the Senior Loan for which (i) Senior Lender has provided notice of such Event of Default to Mezzanine Lender in accordance with Section 10(a) of this Agreement, and (ii) the cure period provided to Mezzanine Lender in Section 10(a) of this Agreement has expired.

“**Control**” means the ownership, directly or indirectly, in the aggregate of more than 50% of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “Controlled by,” “controlling” and

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“under common control with” shall have the respective correlative meaning thereto.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$650,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity in excess of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

“**Enforcement Action**” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises, Borrower or any Common Guarantor, including, without limitation, the taking of possession or control of any portion of the Premises; (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts), or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower, the Premises or any Common Guarantor.

“**Equity Collateral**” means the collateral in Mezzanine Borrower pledged by Pledgors pursuant to the Pledge Agreement.

“**Equity Collateral Enforcement Action**” means any action or proceeding or other exercise of Mezzanine Lender’s rights and remedies commenced by Mezzanine Lender, in law or in equity, or otherwise, in order to realize upon the Equity Collateral.

“**Event of Default**” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Borrower or by Mezzanine Lender in accordance with the terms of this Agreement), and (ii) with respect to the Mezzanine Loan and the Mezzanine Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Mezzanine Borrower).

“**Initial Common Guarantors**” means Mesirow Financial Real Estate Brokerage, Inc., an Illinois corporation, and Friedman Properties, Ltd., an Illinois corporation.

“**Junior Mortgage**” has the meaning provided in the Recitals hereto.

“**Loan Purchase Price**” has the meaning provided in Section 12(a) hereof

“**Mezzanine Borrower**” has the meaning provided in the Recitals hereto.

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“**Mezzanine Lender**” has the meaning provided in the first paragraph of this Agreement.

“**Mezzanine Loan**” has the meaning provided in the Recitals hereto.

“**Mezzanine Loan Agreement**” has the meaning provided in the Recitals hereto.

“**Mezzanine Loan Documents**” means the Mezzanine Loan Agreement, the Mezzanine Note, the Junior Mortgage and the Pledge Agreement, together with all documents and instruments set forth on **Exhibit C** hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“**Mezzanine Loan Modification**” has the meaning provided in Section 6(b) hereof

“**Mezzanine Note**” has the meaning provided in the Recitals hereto.

“**Monetary Cure Period**” has the meaning provided in Section 10(a) hereof

“**Permitted Fund Manager**” means any Person that on the date of determination is (i) a nationally recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least \$650,000,000, and (iii) not subject to a Proceeding.

“**Person**” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

“**Pledge Agreement**” has the meaning provided in the Recitals hereto.

“**Pledgors**” has the meaning provided in the Recitals hereto.

“**Premises**” has the meaning provided in the Recitals hereto.

“**Proceeding**” has the meaning provided in Section 9(c) hereof.

“**Property Manager**” means any property manager of the Premises.

“**Protective Advances**” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate

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taxes), maintenance costs, insurance premiums, condominium common assessments, or other items (including capital items) reasonably necessary to protect the Premises or the Separate Collateral, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Mezzanine Loan, amounts advanced by Mezzanine Lender pursuant to Section 10(a) hereof.

**“Qualified Manager”** shall mean a property manager of the Premises which (i) is a reputable management company having at least five years’ experience in the management of commercial properties with similar uses as the Premises and in the jurisdiction in which the Premises are located, (ii) has, for at least five years prior to its engagement as property manager, managed at least five properties of the same property type as the Premises, (iii) at the time of its engagement as property manager has leasable square footage of the same property type as the Premises equal to the lesser of (A) 1,000,000 leasable square feet and (B) five times the leasable square feet of the Premises and (iv) is not the subject of a bankruptcy or similar insolvency proceeding.

**“Qualified Transferee”** means (i) Mezzanine Lender, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (ii)(A) or (ii)(B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by any of the entities described in clause (i) or clauses (ii)(A) or (ii)(C) above; or

(E) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (ii)(A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such



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investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition.

“**Senior Lender**” has the meaning provided in the first paragraph of this Agreement.

“**Senior Loan**” has the meaning provided in the Recitals hereto.

“**Senior Loan Agreement**” has the meaning provided in the Recitals hereto.

“**Senior Loan Default Notice**” has the meaning provided in Section 10(a) hereof.

“**Senior Loan Documents**” means the Senior Loan Agreement, the Senior Note and the Senior Mortgage, together with the instruments and documents set forth on **Exhibit B** hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“**Senior Loan Liabilities**” shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Senior Loan Documents and all amounts due or to become due pursuant to the Senior Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“**Senior Loan Modification**” has the meaning provided in Section 6(a) hereof.

“**Senior Loan Satisfaction**” means that, and occurs when, all of the following conditions have been satisfied:

(i) Senior Lender has no obligation under the Senior Loan Documents to disburse any additional proceeds of the Senior Loan ; and

(ii) All of the principal of and interest on the Senior Loan have been indefeasibly paid in full and all other obligations of Borrower and the other parties to the Senior Loan Documents to Senior Lender under the Senior Loan Documents have been indefeasibly paid in full.

“**Senior Mortgage**” has the meaning provided in the Recitals hereto.

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“**Senior Note**” has the meaning provided in the Recitals hereto.

“**Separate Collateral**” means (i) the Equity Collateral, and (ii) any other collateral given as security for the Mezzanine Loan pursuant to the Mezzanine Loan Documents by a party other than Borrower or a Common Guarantor, in each case not directly constituting security for the Senior Loan.

“**Transfer**” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, or other disposition, either directly or indirectly, by operation of law or otherwise.

(b) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) terms not otherwise defined herein shall have the meaning assigned to them in the Senior Loan Agreement;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(v) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

(vi) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(vii) the words “to Mezzanine Lender’s knowledge” or “to the knowledge of Mezzanine Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Mezzanine Lender with direct oversight responsibility for the Mezzanine Loan without independent investigation or inquiry and without any imputation whatsoever; and



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(viii) the words “to Senior Lender’s knowledge” or “to the knowledge of Senior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever.

## 2. Approval of Loans and Loan Documents.

(a) Mezzanine Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Senior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents, (ii) the execution, delivery and performance of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine Loan Documents, (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds, and (iv) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Mezzanine Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Mezzanine Loan Documents, (ii) the execution, delivery and performance of the Mezzanine Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Mezzanine Lender is under no obligation or duty to, nor has Mezzanine Lender represented that it will, see to the application of the proceeds of the Mezzanine Loan by Mezzanine Borrower or any other Person to whom Mezzanine Lender disburses such proceeds and (iv) any application or use of the proceeds of the Mezzanine Loan for purposes other than those provided in the Mezzanine Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Mezzanine Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender’s consent to mezzanine financing as set forth in the Senior Loan Documents or any other agreements with Borrower, as they apply to the Mezzanine Loan Documents or the making of the Mezzanine Loan, have been either satisfied or waived.

(c) Subject to Sections 7 and 8 and the other provisions of this Agreement, any possession by Senior Lender of any Tenant Letters of Credit, shall be on behalf of and for the benefit of Senior Lender, and on behalf of and for the benefit of Mezzanine Lender as collateral agent for Mezzanine Lender, in order to effect the perfection of Senior Lender’s first priority security interest in the proceeds of any Tenant Letters of Credit, and Mezzanine Lender’s second priority security interest in the proceeds of any

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Tenant Letters of Credit. Upon the occurrence of Senior Loan Satisfaction, Senior Lender shall promptly deliver to Mezzanine Lender (i) all Tenant Letters of Credit then held by Senior Lender, and (ii) in the case of any such Tenant Letter of Credit the proceeds of which have been assigned by Borrower to Senior Lender, an executed release by Senior Lender in the form provided for in such assignment by Borrower, if any, and otherwise in a form acceptable to Senior Lender. Senior Lender shall in no event have any fiduciary duties to Mezzanine Lender with respect to the Tenant Letters of Credit or the possession thereof, and, except as expressly provided above, shall have no liability or responsibility to Mezzanine Lender with respect to the Tenant Letters of Credit or the possession thereof. After delivery of such Tenant Letters of Credit to Mezzanine Lender, Senior Lender shall, at the cost and expense of Mezzanine Lender, provide reasonable cooperation to Mezzanine Lender in connection with any assignment to it of the right to receive the proceeds of drawings on the Tenant Letters of Credit. If after Senior Loan Satisfaction has occurred any proceeds of drawings on any Tenant Letter of Credit are paid to Senior Lender by the issuer of such a letter of credit, Senior Lender shall promptly remit same to Mezzanine Lender.

### 3. Representations and Warranties.

(a) Mezzanine 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 Mezzanine Loan Documents as of the date hereof. To Mezzanine 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 Mezzanine Loan Documents.

(ii) With the exception of participations to Qualified Transferees, Mezzanine Lender is the legal and beneficial owner of the entire Mezzanine Loan free and clear of any lien, security interest, option or other charge or encumbrance.

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

(iv) The Mezzanine Loan is not cross-defaulted with any loan or credit facility other than the Senior Loan and hedging transactions entered into by Mezzanine Lender in connection with the Mezzanine Loan. The Premises secure only the Mezzanine Note and do not secure any other loan or credit facility from Mezzanine Lender to Mezzanine Borrower or any Affiliate of Borrower other than hedging transactions entered into by Mezzanine Lender in connection with the Mezzanine Loan.

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(b) Senior Lender hereby represents and warrants as follows:

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents as of the date hereof. To Senior 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 Senior Loan Documents.

(ii) With the exception of participations (as opposed to assignments), Senior Lender is the legal and beneficial owner of the Senior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

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

(iv) The Senior Loan is not cross-defaulted with any loan or credit facility other than the Mezzanine Loan and hedging transactions entered into by Senior Lender in connection with the Senior Loan. The Premises secure only the Senior Note and do not secure any other loan or credit facility from Senior Lender to Borrower or any Affiliate of Borrower other than hedging transactions entered into by Senior Lender in connection with the Senior Loan

#### 4. Transfer of Mezzanine Loan or Senior Loan.

(a) Mezzanine Lender shall not transfer more than 49% of its beneficial interest in the Mezzanine Loan unless such transfer is to a Qualified Transferee. Any such transferee must assume in writing the obligations of Mezzanine Lender hereunder and agree to be bound by the terms and provisions hereof. Such proposed transferee shall also remake each of the representations and warranties contained herein for the benefit of Senior Lender.

(b) At least five days prior to a transfer to a Qualified Transferee, Mezzanine Lender shall provide to Senior Lender a certification that such transfer will be made in accordance with this Section, such certification to include the name and contact information of the Qualified Transferee.

(c) Senior Lender may, from time to time, in its sole discretion, transfer all or any of the Senior Loan or any interest therein to any Person, and notwithstanding any such transfer or subsequent transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Mezzanine Loan and the Mezzanine Loan Documents in accordance with the terms and provisions of this Agreement.

#### 5. Foreclosure of Separate Collateral.

(a) Notwithstanding any provision of the Senior Loan Documents to the contrary, the acquisition of any or all of the Separate Collateral, including any Equity

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Collateral, by Mezzanine Lender or any other Qualified Transferee shall not constitute an Event of Default under the Senior Loan Documents, and Mezzanine Lender or a Qualified Transferee may, without the payment of any assumption fee to Senior Lender or satisfaction of any other condition except for compliance with the terms of the Senior Loan Documents, succeed to the interests of the members in Mezzanine Borrower to the Equity Collateral.

(b) To the extent that any Qualified Transferee acquires the Equity Collateral in accordance with the provisions and conditions of this Agreement, such Qualified Transferee shall acquire the same subject to the Senior Loan and the terms, conditions and provisions of the Senior Loan Documents for the balance of the term thereof. In such event, the Senior Loan shall remain in full force and effect and shall not be accelerated by Senior Lender (i) solely due to such acquisition, provided that such Qualified Transferee shall have caused Borrower to reaffirm in writing, subject to such exculpatory provisions as shall be set forth in the Senior Loan Documents, all of the terms, conditions and provisions of the Senior Loan Documents on Borrower's part to be performed, or (ii) otherwise provided that all Events of Default under the Senior Loan, and all defaults which with the passage of time or the giving of notice, or both, would become such an Event of Default, which remain uncured as of the date of such acquisition have been cured by such Qualified Transferee or waived by Senior Lender, except for Events of Default and such defaults that are not susceptible of being cured by such Qualified Transferee, provided that such Events of Default and defaults which are not susceptible of being cured do not materially impair the value, use or operation of the Premises. Such Qualified Transferee shall have no obligation to provide any substitute guarantor, indemnitor or other obligor under the Senior Loan Documents, including without limitation any guaranty (of non-recourse carve-outs or otherwise) or indemnities (environmental or otherwise).

(c) Following acquisition of the Equity Collateral by Mezzanine Lender or any other Qualified Transferee as described above in this Section, provided that no Event of Default under the Senior Loan Documents, and no default which with the passage of time or the giving of notice, or both, would become such an Event of Default, has occurred and is continuing, Senior Lender shall not withhold its consent to a transfer of title to the Premises out of the Borrower entity and into a Qualified Transferee entity, provided that such Qualified Transferee shall have provided Senior Lender with customary organizational documentation and documentation reasonably requested by Senior Lender confirming that such Qualified Transferee agrees to hold title to the Premises subject to the terms and conditions of the Senior Loan Documents, but such Qualified Transferee shall have no obligation to provide any substitute guarantor, indemnitor or other obligor under the Senior Loan Documents, including without limitation any guaranty (of non-recourse carve-outs or otherwise) or indemnities (environmental or otherwise).

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## 6. Modifications, Amendments, Etc.

(a) Senior Lender shall have the right without the consent of Mezzanine Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "**Senior Loan Modification**") of the Senior Loan or the Senior Loan Documents, provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in Borrower or the Premises, (vi) cross default the Senior Loan with any loan or credit facility other than as described in Section 3(b) hereof, or create a lien on the Premises as security for any other loan or credit facility other than as described in Section 3(b) hereof, (vii) obtain any contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises, (or other similar equity participation), (viii) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge, or (ix) modify Unit release prices; provided, however, that in no event shall Senior Lender be obligated to obtain Mezzanine Lender's consent to a Senior Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or indulgence relating to the Senior Loan during the existence of a Continuing Senior Loan Event of Default, except that under no conditions shall action described in clause (i) (with respect to increase in principal amount only), or clauses (viii) or (ix) be taken without the written consent of Mezzanine Lender. In addition and notwithstanding the foregoing provisions of this paragraph, any amounts funded by Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by Senior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this paragraph. Any Senior Loan Amendment that is not permitted by the foregoing provisions of this paragraph may be entered into with the written consent of Mezzanine Lender.

(b) Mezzanine Lender shall have the right without the consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "**Mezzanine Loan Modification**") of the Mezzanine Loan or the Mezzanine Loan Documents, provided that no such Mezzanine Loan Modification shall (i) increase the interest rate or principal amount of the Mezzanine Loan, (ii) increase in any other material respect any monetary obligations of Mezzanine Borrower under the Mezzanine Loan Documents, (iii) extend or shorten the scheduled maturity date of the Mezzanine Loan (except that Mezzanine Lender may permit Mezzanine Borrower to exercise any



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extension options in accordance with the terms and provisions of the Mezzanine Loan Documents), (iv) convert or exchange the Mezzanine Loan into or for any other indebtedness or subordinate any of the Mezzanine Loan to any indebtedness of Mezzanine Borrower, (v) provide for any additional contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises, (vi) cross default the Mezzanine Loan with any loan or credit facility other than as described in Section 3(a) hereof, or create a lien on the Premises as security for any other loan or credit facility other than as described in Section 3(a) hereof, or (vii) provide for any security for the Mezzanine Loan from Borrower or any Common Guarantor other than as described in the Mezzanine Loan Documents as in effect on the date of this Agreement. Notwithstanding anything to the contrary contained herein, if an Event of Default exists under the Mezzanine Loan Documents, Mezzanine Lender shall be permitted to modify or amend the Mezzanine Loan Documents in connection with a work-out or other surrender, compromise, release, renewal or modification of the Mezzanine Loan except that under no conditions shall action described in clause (i), with respect to increases in principal amounts only, clause (ii), clause (iii) (with respect to shortening the maturity only), clause (iv) or clause (v) be taken by Mezzanine Lender without the written consent of Senior Lender. In addition and notwithstanding the foregoing provisions of this paragraph, any amounts funded by Mezzanine Lender under the Mezzanine Loan Documents as a result of (A) the making of any Protective Advances or other advances by Mezzanine Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this paragraph. Any Mezzanine Loan Amendment that is not permitted by the foregoing provisions of this paragraph may be entered into with the written consent of Senior Lender.

(c) Senior Lender shall deliver to Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender) within a reasonable time after any of such applicable instruments have been executed by Senior Lender.

(d) Mezzanine Lender shall deliver to Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mezzanine Lender) within a reasonable time after any of such applicable instruments have been executed by Mezzanine Lender.

## **7. Subordination of Mezzanine Loan and Mezzanine Loan Documents.**

(a) Except as provided in paragraph (d) of this Section, Mezzanine Lender hereby subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security



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interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this paragraph. Without limitation on the generality of the foregoing provisions of this paragraph, the liens and security interests on contracts for the sale of Units and proceeds of the sale of Units under the Mezzanine Loan Documents are subordinate and junior to the liens and security interests thereon created under the Senior Loan Documents.

(b) Every document and instrument included within the Mezzanine Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

(c) Until such time as Senior Loan Satisfaction has occurred, Mezzanine Lender shall not in any way, manner or respect seek to foreclose or otherwise enforce or realize on the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby against the Premises or any of the other collateral that secures the Senior Loan, including, without limitation, any foreclosure of the Junior Mortgage against the Premises.

(d) This Agreement shall not be construed as subordinating and shall not subordinate or impair Mezzanine Lender's first lien priority right, estate and interest in and to the Separate Collateral and Senior Lender hereby acknowledges and agrees that Senior Lender does not have and shall not hereafter acquire, any lien on, or any other interest whatsoever in, the Separate Collateral, or any part thereof, and that the exercise of remedies and realization upon the Separate Collateral by Mezzanine Lender in accordance with the terms and provisions of this Agreement shall not in and of itself constitute a default or an event of default under the Senior Loan Documents.

(e) Notwithstanding any other provision of this Agreement, Senior Lender hereby agrees that the proceeds of any collateral that secures Hedging Transactions and Hedging Agreements (each as defined in the Senior Loan Agreement) to which Senior Lender is a party and that also secures the Mezzanine Loan, shall be applied first to pay all amounts due to Mezzanine Lender under the Mezzanine Loan Documents (not including interest rate hedging agreements) before any proceeds of such collateral are applied to obligations of Borrower under or in connection with any such Hedging Transaction or Hedging Agreement.

## 8. **Payment Subordination.**

(a) Except (i) as otherwise expressly provided in this Agreement and (ii) in connection with the exercise by Mezzanine Lender of its rights and remedies in accordance with the terms of this Agreement, all of Mezzanine Lender's rights to payment of the Mezzanine Loan and the obligations evidenced by the Mezzanine Loan

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Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower and each Common Guarantor of the Senior Loan and the obligations secured by the Senior Loan Documents, and Mezzanine Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower, the Premises or any Common Guarantor prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents are paid. If a Proceeding shall have occurred or a Continuing Senior Loan Event of Default shall have occurred and be continuing, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender before Mezzanine Lender is entitled to receive any payment on account of the Mezzanine Loan. All payments or distributions upon or with respect to the Mezzanine Loan which are received by Mezzanine Lender contrary to the provisions of this Agreement shall be received and held in trust by Mezzanine Lender for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents. Nothing contained herein shall prohibit Mezzanine Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Mezzanine Loan) notwithstanding the existence of a default under the Senior Loan at such time.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, paragraph (a) of this Section, provided that no Event of Default shall then exist under the Senior Loan Documents, Mezzanine Lender may accept payments of any amounts due and payable from time to time which Mezzanine Borrower is obligated to pay Mezzanine Lender in accordance with the terms and conditions of the Mezzanine Loan Documents and Mezzanine Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Mezzanine Lender may take any Enforcement Action or Equity Collateral Enforcement Action which is permitted under Section 5 hereof; provided, however, that (i) Mezzanine Lender shall, prior to commencing any Equity Collateral Enforcement Action, give Senior Lender written notice of the default which would permit Mezzanine Lender to commence such Equity Collateral Enforcement Action and (ii) Mezzanine Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Equity Collateral Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "**Award**"). If the amount of the Award is in excess of all amounts owed to Senior Lender under the Senior Loan Documents, however, and either

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the Senior Loan has been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Mezzanine Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Mezzanine Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to Borrower and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to Borrower for the repair or restoration of the Premises shall not be subject to attachment by Mezzanine Lender.

(e) Notwithstanding any other provision of this Agreement, Senior Lender hereby agrees that the subordination of payment provided for in this Section shall not apply with respect to amounts due from Borrower under Hedging Transactions and Hedging Agreements (each as defined in the Senior Loan Agreement) to which Senior Lender is a party.

## 9. **Rights of Subrogation; Bankruptcy.**

(a) Each of Mezzanine Lender and Senior Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Mezzanine Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Mezzanine Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, Mezzanine Borrower, each Common Guarantor, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Mezzanine Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Mezzanine Lender agrees that Senior Lender owes no fiduciary duty to Mezzanine Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Mezzanine Lender agrees not to assert any such claim. Senior Lender agrees that Mezzanine Lender owes no fiduciary duty to Senior Lender in connection with the administration of the Mezzanine Loan and the Mezzanine Loan Documents and Senior Lender agrees not to assert any such claim.

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Mezzanine Lender shall entitle Mezzanine

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Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, or result in the creation of any lien in favor of Mezzanine Lender on the Premises or any other collateral for the Senior Loan that is either prior to or on a parity with the lien of Senior Lender on the Premises and the other collateral for the Senior Loan.

(c) Subject to Section 27 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower or any Common Guarantor under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a "**Proceeding**"). For as long as the Senior Loan shall remain outstanding, Mezzanine Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower or any entity which controls Borrower, or any Common Guarantor or any entity which controls any Common Guarantor (the "**Borrower/Common Guarantor Group**") to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower or any Common Guarantor adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower or any Common Guarantor; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower or any Common Guarantor; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, any Common Guarantor, the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower or any Common Guarantor; (vii) seek to consolidate the Premises or any other assets of Borrower or any Common Guarantor with the assets of any member of the Borrower/Common Guarantor Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

(d) If Mezzanine Lender is deemed to be a creditor of Borrower in any Proceeding (i) Mezzanine Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against Borrower or any Common Guarantor without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Mezzanine Lender's interest in the Equity Collateral; (ii) Senior Lender may vote in any such Proceeding any and all claims of Mezzanine Lender, and Mezzanine Lender hereby appoints Senior Lender as its agent, and grants to Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to Mezzanine Lender in connection with any case by or against Borrower or any Common Guarantor in any Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Mezzanine Lender only if the proposed plan would



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result in Senior Lender being “impaired” (as such term is defined in the United States Bankruptcy Code) and (iii) Mezzanine Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender’s enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

## 10. Rights of Cure.

(a) Prior to Senior Lender commencing any Enforcement Action under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit Senior Lender to commence such Enforcement Action to Mezzanine Lender whether or not Senior Lender is obligated to give notice thereof to Borrower or any Common Guarantor (each, a “**Senior Loan Default Notice**”) and shall permit Mezzanine Lender an opportunity to cure such default in accordance with the provisions of this Section. If the default is a monetary default relating to a liquidated sum of money, Mezzanine Lender shall have until five Business Days after the later of (i) the giving by Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower’s cure provision, if any (a “**Monetary Cure Period**”) to cure such monetary default; provided, however, in the event Mezzanine Lender elects to cure any such monetary default, Mezzanine Lender shall (x) defend and hold harmless Senior Lender for all cost, expenses, losses, liabilities, obligations, damages, penalties, costs, and disbursements imposed on, incurred by or asserted against Senior Lender due to or arising from such Monetary Cure Period and (y) without duplication of the foregoing, reimburse Senior Lender for interest on the Senior Loan and/or on any Protective Advances. Mezzanine Lender shall not be required, in order to effect a cure hereunder (other than the cure by Mezzanine Lender of a default in the payment of the Senior Loan in full on the maturity date thereof or the reimbursement of interest on advances for monthly payment of principal and/or interest and/or on any Protective Advances, as aforesaid), to pay any interest calculated at the default rate under the Senior Loan Documents to the extent the same is in excess of the rate of interest which would have been payable by Borrower in the absence of such default (and irrespective of any cure of such default by Mezzanine Lender pursuant to the provisions of this Agreement), and no interest shall accrue at the default rate as against Mezzanine Lender for such period. Mezzanine Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than four consecutive months unless Mezzanine Lender has commenced and is continuing to diligently pursue its rights against the Separate Collateral. If the default is of a non-monetary nature, Mezzanine Lender shall have the same period of time as Borrower under the Senior Loan Documents to cure such non-monetary default; provided, however if such non-monetary default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Mezzanine Lender, Mezzanine Lender shall be given an additional period of time as is reasonably necessary for Mezzanine Lender in the exercise of due diligence to cure such nonmonetary default for so long as (i) Mezzanine Lender makes or causes to be made timely payment of

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Borrower's regularly scheduled monthly principal and/or interest payments under the Senior Loan and any other amounts due under the Senior Loan Documents, (ii) such additional period of time does not exceed 30 days, unless such non-monetary default is of a nature that cannot be cured within such 30 days, in which case, Mezzanine Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower and (iv) during such non-monetary cure period, there is no material impairment to the value, use or operation of the Premises. Any additional cure period granted to Mezzanine Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of Borrower.

(b) Notwithstanding any other provision of this Agreement, Senior Lender shall not commence any Enforcement Action under the Senior Loan Documents with respect to an Event of Default under the Senior Loan Documents which results solely from the occurrence and continuance of an Event of Default under the Mezzanine Loan Documents, if (i) Mezzanine Lender notifies Senior Lender within five days after receipt of a Senior Loan Default Notice pertaining to such Event of Default under the Mezzanine Loan Documents that Mezzanine Lender intends to pursue an Equity Collateral Enforcement Action, and (ii) Mezzanine Lender promptly commences, and diligently pursues, such Equity Collateral Enforcement Action to completion.

11. **Property Management.** If applicable, Senior Lender consents to Mezzanine Lender's right, pursuant to the Mezzanine Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event both Mezzanine Lender and Senior Lender shall have such rights at any time, and Senior Lender shall fail to exercise such rights, Mezzanine Lender may exercise such rights, provided, however, that such exercise may be superseded by any subsequent exercise of such rights by Senior Lender pursuant to the Senior Loan Documents. Upon the occurrence of any event which would entitle Mezzanine Lender to cause the termination of the Property Manager pursuant to the Mezzanine Loan Documents, Mezzanine Lender shall have the right to select, or cause the selection, of a replacement property manager (including any asset manager) or leasing agent for the Premises, which replacement manager, asset manager and/or leasing agent shall either (a) be subject to Senior Lender's reasonable approval or (b) be a Qualified Manager. Notwithstanding anything in this Section to the contrary, if an Event of Default under the Senior Loan then exists or any other event shall have occurred pursuant to which Senior Lender has the right to select any replacement manager, asset manager and/or leasing agent pursuant to the Senior Loan Documents, Senior Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Mezzanine Lender.

12. **Right to Purchase Senior Loan.**

(a) If the Senior Loan has been accelerated or any Enforcement Action has been commenced and is continuing under the Senior Loan Documents a "**Purchase Option Event**"), upon 10 Business Days' prior written notice to Senior Lender, Mezzanine Lender shall have the right to purchase, in whole but not in part, the Senior Loan for a price equal to the outstanding principal balance thereof, together with all



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accrued interest and other amounts due thereon (including, without limitation, any late charges, default interest, exit fees, prepayment premiums advances and post-petition interest), any Protective Advances made by Senior Lender and any interest charged by Senior Lender on any advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances), including all costs and expenses (including legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Senior Loan Documents (the "**Loan Purchase Price**"). Concurrently with payment to Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered Mezzanine Lender all Senior Loan Documents held by or on behalf of Senior Lender and will execute in favor of Mezzanine Lender or its designee assignment documentation, in form and substance reasonably acceptable to Mezzanine Lender, at the sole cost and expense of Mezzanine Lender, to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan and as to Senior Lender's not having assigned or encumbered its rights in the Loan). The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate (i) upon a transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or (ii) if a Purchase Option Event ceases to exist.

(b) Mezzanine Lender covenants not to enter any agreement with Borrower or any Affiliate thereof to purchase the Senior Loan pursuant to paragraph (a) above or in connection with any refinancing of the Senior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents which require the payment of a prepayment fee or yield maintenance charge in connection with a prepayment of the Senior Loan by Borrower.

13. **Additional Understandings.** For as long as the Mezzanine Loan remains outstanding:

(a) **Notices of Transfer; Consent.** Senior Lender promptly shall notify Mezzanine Lender if Borrower seeks or requests a release of the lien of the Senior Loan or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by Borrower for Senior Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender shall, if Senior Lender has the right to consent, obtain the prior written consent of Mezzanine Lender prior to Senior Lender's granting of its consent or agreement thereto. The foregoing provisions of this paragraph shall not apply to sales of Units and releases of Units from the lien of the Senior Loan Documents that are at the release prices provided for in this Agreement.

(b) **Annual Budget.** This paragraph shall apply only if Mezzanine Lender has the right to approve the annual operating budget of Borrower under the terms of the Mezzanine Loan Documents. In the event Mezzanine Lender objects to any such

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proposed budget, Mezzanine Lender shall advise Senior Lender of such objections, along with its suggestions for changes, within 10 days after its receipt of such budget in accordance with the Mezzanine Loan Documents. Senior Lender agrees to consult with Mezzanine Lender with respect to such objections and suggestions but such consultation shall not be binding on Senior Lender. Mezzanine Lender shall consent to any changes in the budget reasonably requested by Senior Lender.

## 14. Obligations Hereunder Not Affected.

(a) All rights, interests, agreements and obligations of Senior Lender and Mezzanine Lender under this Agreement shall remain in full force and effect irrespective of --

(i) any lack of validity or enforceability of the Senior Loan Documents or the Mezzanine Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Mezzanine Loan;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Mezzanine Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Mezzanine Loan or any other assets of Borrower or Mezzanine Borrower or any Affiliates of Borrower;

(iv) any change, restructuring or termination of the structure or existence of Borrower, Mezzanine Borrower, any Common Guarantor or any Affiliates of Borrower, Mezzanine Borrower or any Common Guarantor; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Mezzanine Borrower, any Common Guarantor or a subordinated creditor or a senior lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Mezzanine Lender upon the insolvency, bankruptcy or reorganization of Borrower or any Common Guarantor or otherwise, all as though such payment had not been made.

15. Notices. All notices and other communications provided for in this Agreement ("Notices") shall be in writing. The "Notice Addresses" of the parties for purposes of this Agreement are as follows:

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Senior Lender: LaSalle Bank National Association  
 135 South LaSalle Street, Suite 1225  
 Chicago, Illinois 60603  
 Attention: Commercial Real Estate Division

With a copy to: Through August 31, 2006:  
 Seyfarth Shaw LLP  
 55 East Monroe Street  
 Suite 4200  
 Chicago, Illinois 60603

Attention: Alvin L. Kruse, Esq.

After August 31, 2006:  
 Seyfarth Shaw LLP  
 131 South Dearborn Street  
 Suite 2400  
 Chicago, Illinois 60603

Mezzanine Lender: Attention: Alvin L. Kruse, Esq.  
 LaSalle Bank National Association  
 135 South LaSalle Street  
 Chicago, Illinois 60603  
 Attention: Real Estate Mezzanine Finance  
 Division

With a copy to: Through August 31, 2006:  
 Seyfarth Shaw LLP  
 55 East Monroe Street  
 Suite 4200  
 Chicago, Illinois 60603

Attention: Alvin L. Kruse, Esq.

After August 31, 2006:  
 Seyfarth Shaw LLP  
 131 South Dearborn Street  
 Suite 2400  
 Chicago, Illinois 60603

Attention: Alvin L. Kruse, Esq.

or such other address as a party may designate by notice duly given in accordance with this Section to the other parties. A Notice to a party shall be effective when delivered to such party's Notice Address by any means, including, without limitation, personal delivery by the party

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giving the Notice, delivery by United States regular, certified or registered mail, or delivery by a commercial courier or delivery service. If the Notice Address of a party includes a facsimile number or electronic mail address, Notice given by facsimile or electronic mail shall be effective when delivered at such facsimile number or email address. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

16. **Estoppel Certificate.**

(a) Mezzanine Lender shall, within 10 days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Mezzanine Loan, the aggregate accrued and unpaid interest under the Mezzanine Loan, and stating whether to Mezzanine Lender's knowledge any default or event of default exists under the Mezzanine Loan.

(b) Senior Lender shall, within 10 days following a request from Mezzanine Lender, provide Mezzanine Lender with a written statement setting forth the then current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or event of default exists under the Senior Loan.

17. **Further Assurances.** So long as all or any portion of the Senior Loan and the Mezzanine Loan remains unpaid and the Senior Mortgage encumbers any portion of the Premises, Mezzanine Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

18. **No Third Party Beneficiaries; No Modification.** The parties hereto do not intend the benefits of this Agreement to inure to Borrower, Mezzanine Borrower, any Common Guarantor or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought. Without limiting the foregoing, if the Junior Mortgage shall be satisfied, released or otherwise relinquished by Mezzanine Lender, the provisions herein related to the Junior Mortgage shall not be affected.

19. **Successors and Assigns.** This Agreement shall bind all successors and permitted assigns of Mezzanine Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Mezzanine Lender.

20. **Counterpart Originals.** This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

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21. **Legal Construction.** In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Illinois applicable to agreements intended to be wholly performed within the State of Illinois.

22. **No Waiver; Remedies.** No failure on the part of Senior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

23. **No Joint Venture.** Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

24. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

25. **Conflicts.** In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Mezzanine Loan Documents, the terms and conditions of this Agreement shall control.

26. **No Release.** Nothing herein contained shall operate to release Borrower or any Common Guarantor from (a) its or his obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower or any Common Guarantor under the Senior Loan Documents or to release Mezzanine Borrower or any Common Guarantor from (x) its or his obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Mezzanine Loan Documents or (y) any liability of Mezzanine Borrower or any Common Guarantor under the Mezzanine Loan Documents.

27. **Continuing Agreement.** This Agreement is a continuing agreement and shall remain in full force and effect until the earliest of (a) payment in full of the Senior Loan, (b) transfer of the Premises by foreclosure of the Senior Mortgage or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, (c) transfer of title to Mezzanine Lender of the Separate Collateral or (d) payment in full of the Mezzanine Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

28. **Entire Agreement; No Reliance.** This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are set forth herein. The parties acknowledge that they are executing



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this Agreement without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

29. **Severability.** In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

30. **Expenses.**

(a) To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is realized by Senior Lender, Mezzanine Lender agrees upon demand to pay to Senior Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Senior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Senior Lender against Mezzanine Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Mezzanine Lender to perform or observe any of the provisions hereof.

(b) To the extent not paid by Mezzanine Borrower or out of or from any collateral securing the Mezzanine Loan which is realized by Mezzanine Lender, Senior Lender agrees upon demand to pay to Mezzanine Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Mezzanine Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Mezzanine Lender against Senior Lender hereunder to the extent that Mezzanine Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Senior Lender to perform or observe any of the provisions hereof.

31. **Injunction.** Senior Lender and Mezzanine Lender each acknowledge (and waive any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by either Senior Lender or Mezzanine Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Mezzanine Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such nonbreaching party.

32. **Mutual Disclaimer.**

(a) Each of Senior Lender and Mezzanine Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Mezzanine Loan is based upon their own independent expert evaluation of the



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terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Mezzanine Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Mezzanine Lender deem relevant. Each of Senior Lender and Mezzanine Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Mezzanine Loan or the Mezzanine Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of Senior Lender and Mezzanine Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Mezzanine Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Mezzanine Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Mezzanine Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Mezzanine Loan).

(b) Each of Senior Lender and Mezzanine Lender acknowledges that the Senior Loan and the Mezzanine Loan Documents are distinct, separate transactions and loans, separate and apart from each other.

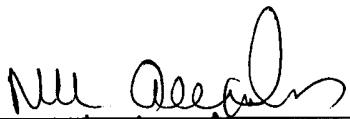
**[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]**

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IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

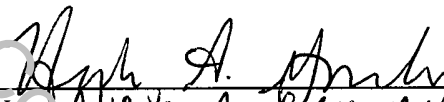
SENIOR LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By:   
 Name: MARIA K ALEXAKIS  
 Title: FP

MEZZANINE LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By:   
 Name: Nicole A. Blumhagen  
 Title: FP

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## JOINDER OF BORROWER AND COMMON GUARANTORS

The undersigned **351 MORTGAGE LOAN BORROWER LLC**, a Delaware limited liability company (being the Borrower and Mezzanine Borrower as defined in the foregoing Agreement), and **MESIROW FINANCIAL REAL ESTATE BROKERAGE, INC.**, an Illinois corporation, and **FRIEDMAN PROPERTIES, LTD.**, an Illinois corporation. (being the Initial Common Guarantors as defined in the foregoing Agreement), hereby join in the foregoing Agreement, consent to the provisions thereof, agree not to make any payment, or cause or permit any act to occur, that is inconsistent with the provisions of said Agreement, agree that until such time as the Mezzanine Loan has been fully paid and performed, as between the undersigned and Senior Lender, in the event of any conflict between said Agreement and the Senior Loan Documents, said Agreement shall control, and agree that until such time as Senior Loan Satisfaction has occurred, as between the undersigned and Mezzanine Lender, in the event of any conflict between said Agreement and the Mezzanine Loan Documents, said Agreement shall control.

Borrower hereby irrevocably authorizes and directs Senior Lender, (i) to deliver to Mezzanine Lender, at such time as Senior Loan Satisfaction has occurred, any Tenant Letters of Credit then held by Senior Lender, and (ii) to remit to Mezzanine Lender any proceeds of Tenant Letters of Credit that are paid to Senior Lender after Senior Loan Satisfaction has occurred.

**[JOINDER SIGNATURE PAGE FOLLOWS THIS PAGE]**

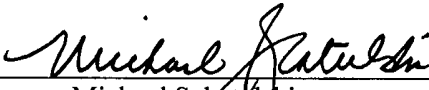
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## 351 MORTGAGE LOAN BORROWER LLC

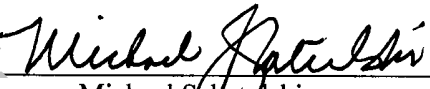
By South Parcel Development, LLC, Sole Manager

By SMIH South Parcel, LLC, Authorized Member

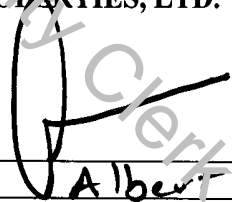
By Mesirow Financial Real Estate, Inc., Manager

By   
Michael Szkatulski  
Senior Managing Director

## MESIROW FINANCIAL REAL ESTATE BROKERAGE, INC.

By   
Michael Szkatulski  
Senior Managing Director

## FRIEDMAN PROPERTIES, LTD.

By   
Printed Name: Albert M. Friedman  
Title: President

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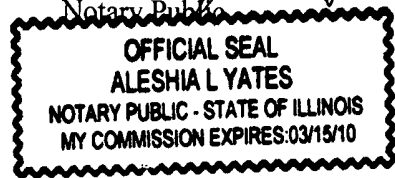


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STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 2006, by Michael Szkatulski, Senior Managing Director of Mesirow Financial Real Estate, Inc., an Illinois corporation, the Manager of SMIH South Parcel LLC, an Illinois limited liability company, a Member of South Parcel Development, LLC, an Illinois limited liability company, the Sole Manager of 351 Mortgage Loan Borrower LLC, a Delaware limited liability company, on behalf of said corporation and companies.

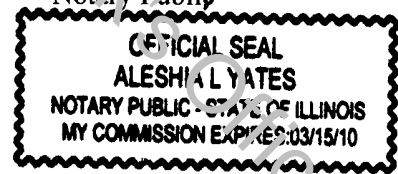
*Aleshia L Yates*  
\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 2006, by Michael Szkatulski, Senior Managing Director of Mesirow Financial Real Estate Brokerage, Inc., an Illinois corporation, on behalf of the corporation.

*Aleshia L Yates*  
\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2006, by Albert M. Friedman, President of Friedman Properties, Ltd., an Illinois corporation, on behalf of the corporation.



*Kevin A Sterling*  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### Legal Description

#### Parcel 1:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the intersection of the East line of North Clark Street (also being the West line of Lot 5 in said Block 2) and the South line of West Kinzie Street (also being the North line of Lots 5 thru 8, both inclusive, in said Block 2); thence East along the South line of said West Kinzie Street a distance of 321.47 feet to the West line of North Dearborn Street; thence South along the West line of said North Dearborn Street (also being the East line of Lot 8 in said Block 2) a distance of 178.60 feet to a point 311.60 feet North (as measured along said West line of North Dearborn Street) of the Chicago River, as occupied; thence West at right angles to the last described line a distance of 321.47 feet to a point on the East line of said North Clark Street 300.43 feet North (as measured along said East line of North Clark Street) of said Chicago River, as occupied; thence North along the East line of said North Clark Street a distance of 177.86 feet to the point of beginning, in Cook County, Illinois.

#### Parcel 2:

Non-Exclusive Easement for the benefit of Parcel 1, as created by First Amendment to Easement and Operating Agreement dated August 23, 1988 and recorded August 24, 1988 as document number 88384561 for pedestrian and vehicular ingress and egress on, over, through and across the "Hotel Road Easement Area" and the "Project Road Easement Area" described as follows:

#### Hotel Road Easement Area:

Part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows: Commencing at the point of intersection of the South line of West Kinzie Street (also being the North line of Lots 5, 6, 7 and 8 in said Block 2) and the East line of North Clark Street (also being the East line of Lots 4 and 5 in said Block 2); thence South 0 degrees West along said East line of North Clark Street a distance of 177.86 feet to an intersection with the North line of Tracts I and II in said Block 2; thence South 90 degrees East along said North line of Tracts I and II a distance of 134.10 feet to an intersection with the line between Parcels 1 (below +50.00 feet Chicago City Datum) of said Tracts I and II and the point of beginning, thence continuing South 90 degrees East along said North line of Tracts I and II a distance of 187.57 feet to a point in the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) said point being 178.60 feet South of said South line of West Kinzie Street as measured along the West line of North Dearborn Street; thence South 0 degrees West along said West line of North Dearborn Street a distance of 26.32 feet to the back of a curb of an elevated driveway; thence South 89 degrees 59 minutes 22 seconds West along said back of curb a distance of 68.78 feet; thence North 89 degrees 34 minutes 27 seconds West a distance of 47.20 feet; thence South 89 degrees 59

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minutes 22 seconds West a distance of 29.31 feet; thence North 75 degrees 07 minutes 03 seconds West a distance of 43.45 feet to a point where the said line between Parcels 1 intersects the back of curb of said elevated driveway; thence North 0 degrees East along said line between Parcels 1 a distance of 14.83 feet to the point of beginning.

## Project Road Easement Area:

Part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows: Commencing at the point of intersection of the South line of West Kinzie Street (also being the North line of Lots 5, 6, 7 and 8 in said Block 2) and the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2); thence South 0 degrees West along the East line of North Clark Street a distance of 177.86 feet to an intersection with the North line of Tracts I and II in said Block 2 and the point of beginning; thence South 90 degrees East along said North line of Tracts I and II a distance of 134.10 feet to an intersection with the line between Parcels 1 (below +50.00 feet Chicago City Datum) of said Tract I and II; thence South 0 degrees West along said line between Parcels 1 a distance of 14.83 feet to a point of intersection, not tangent with a curved line, said curved line being the back of a curb of an elevated driveway; thence Westerly along the back of curb of said driveway being the arc of a circle convex Northerly and having a radius of 15.00 feet a distance of 5.08 feet to a point of tangency; thence South 89 degrees 59 minutes 39 seconds West along the back of curb of said driveway and tangent to the last described curved line a distance of 129.11 feet to said East line of North Clark Street; thence North 0 degrees East along said East line of North Clark Street a distance of 13.99 feet to the point of beginning.

17-09-408-009, 17-09-408-010  
61 WEST KINZIE, CHICAGO, ILL

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## EXHIBIT B

### Senior Loan Documents

1. Loan Agreement
2. Promissory Note
3. Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing
4. Assignment of Rents and Leases
5. Environmental Indemnity Agreement
6. Guaranty of Payment
7. Uniform Commercial Code Financing Statement for filing with Delaware Secretary of State

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## EXHIBIT C

### Mezzanine Loan Documents

1. Mezzanine Loan Agreement
2. Promissory Note (Mezzanine)
3. Junior Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing
4. Junior Assignment of Rents and Leases
5. Five Separate Pledges of Membership Interests (Security Agreement)
6. Environmental Indemnity Agreement
7. Guaranty of Payment
8. Uniform Commercial Code Financing Statements:
  - A. Borrower, State of Delaware
  - B. Pledgors, States of Organization

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