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## INTERCREDITOR AND SUBORDINATION AGREEMENT

**THIS INTERCREDITOR AND SUBORDINATION AGREEMENT** (this "Agreement") is made as of this 21<sup>st</sup> day of June, 2006, among THE PRIVATEBANK AND TRUST COMPANY ("Senior Lender"), FREEMAN REALTY ADVISORS, INC., an Illinois corporation ("Subordinated Lender") and 89TH & STATE, LLC, an Illinois limited liability company ("Borrower").

### RECITALS:

A. Pursuant to the terms and conditions of a Loan Agreement of even date herewith (as amended from time to time, "Senior Loan Agreement") between Borrower and Senior Lender, Senior Lender has agreed to make a loan to Borrower in the principal amount of ONE MILLION EIGHT HUNDRED NINETY-EIGHT THOUSAND DOLLARS (\$1,898,000.00) ("Senior Loan").

B. The Senior Loan is evidenced by a certain Note of even date herewith (as amended from time to time, the "Senior Note"), executed by Borrower and payable to the order of Senior Lender, and is secured by, among other things, a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, "Senior Mortgage"), from Borrower in favor of Senior Lender, encumbering the real property and improvements thereon located in Cook County, Illinois, as described on Exhibit A attached hereto, together with the other collateral as described in the Senior Loan Agreement (the real property, improvements thereon and other collateral being collectively referred to as "Property").

C. Subordinated Lender has agreed to make a loan to Borrower in the principal amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) ("Subordinated Loan"). The Subordinated Loan is evidenced by a certain Note of even date herewith (as amended from time to time, the "Subordinated Note"), executed by Borrower and payable to the order of Subordinated Lender, and is secured by a Second Mortgage of an even date herewith (as amended from time to time, "Subordinated Mortgage"), from Borrower in favor of Subordinated Lender and encumbering the Property.

D. Senior Lender and Subordinated Lender desire to evidence the subordination of the Subordinated Mortgage to the Senior Mortgage and the Senior Indebtedness (as herein defined), and Subordinated Lender and Senior Lender desire to establish certain agreements between themselves.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender, Subordinated Lender and Borrower hereby covenant and agree as follows:

A6458205  
06/19/06

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Doc#: 0620040136 Fee: \$126.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/19/2006 12:23 PM Pg: 1 of 22

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1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) **Affiliate** means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of ten percent (10%) or more of the voting securities of a person shall be deemed to be control.

(b) **Bankruptcy Event** means (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to any entity comprising Borrower, or (ii) any liquidation, dissolution or other winding up of any entity comprising Borrower, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any entity comprising Borrower.

(c) **Collateral** means the Property and all other assets of Borrower or any other Person, whether real or personal (including, without limitation, plans, construction contracts, improvements, land, fixtures, equipment and rents), in which Senior Lender holds a Lien.

(d) **Event of Default** means the occurrence and continuance of an Event of Default as defined in the Senior Loan Agreement.

(e) **Guarantors** means Anthony D. DeGrazia and Michael J. Passarelli.

(f) **Lenders** means jointly Subordinated Lender and Senior Lender.

(g) **Lien** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or other and including, without limitation, any attachment, levy, or judgment lien), preference, priority or other right, security agreement or other preferential arrangement whatsoever, including, without limitation, any right of setoff (statutory or otherwise), any conditional sale or other title retention agreement, the interest of a lessor under a lease, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement (other than a financing statement filed by a "true" lessor pursuant to Section 9-408 of the Uniform Commercial Code or other comparable law of any jurisdiction) naming the owner of the asset to which such Lien relates as debtor.

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(h) **Payment Date** means the date on which all obligations and liabilities under the Senior Loan Agreement and secured by the Senior Loan Documents have been paid and satisfied in full.

(i) **Potential Default** means the occurrence of an event or circumstance, which with the giving of notice, the passage of time, or both could constitute an Event of Default.

(j) **Senior Indebtedness** means all indebtedness of Borrower to Senior Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, under the Senior Loan Documents, including without limitation all principal, interest (regular and default), late fees, enforcement expenses, attorneys' fees and expenses, costs of collection, and all other costs and expenses whatsoever arising under the Senior Loan Documents or by applicable law and irrespective of whether such amounts may be collected from, accrued or claimed against Borrower, and all renewals, extensions, and modifications thereof. Senior Indebtedness shall also include any and all interest accruing or costs or expenses incurred after the date of the commencement of any Bankruptcy Event, regardless of whether the claim therefor is allowed or allowable in the case or proceeding related thereto. Senior Indebtedness shall also include any and all advances which may be made by Senior Lender for the purposes of complying with any applicable law, the correction of any environmental condition which affects the Property and any advances to protect and assure the senior priority position of the Senior Loan Documents. Senior Indebtedness shall also include any amounts advanced by Senior Lender for the purpose of enforcing any Senior Loan Document, including this Agreement.

(k) **Senior Loan Documents** means, collectively, the documents (as each may be amended, renewed, replaced, modified, or restated from time to time in accordance with the terms of this Agreement) listed in Section 2.1 of the Senior Loan Agreement, copies of which Subordinated Lender acknowledges receipt.

(l) **Senior Loan Agreement.** See Recitals.

(m) **Subordinated Indebtedness** means all indebtedness of Borrower to Subordinated Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, under the Subordinated Loan Documents including, without limitation, all principal, interest (regular and default), late fees, enforcement expenses, attorneys' fees and expenses, costs of collection, and all other costs and expenses whatsoever arising under the Subordinated Loan Documents or by applicable law and irrespective of whether such amounts may be collected from, accrued or claimed against Borrower, and all renewals, extensions and modifications thereof. Subordinated Indebtedness shall also include any and all interest accruing or costs or expenses incurred after the date of the commencement of any Bankruptcy Event, regardless of whether the claim therefore is allowed or allowable in the case or proceeding related thereto.

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(n) **Subordinated Loan Documents** means, collectively, the Subordinated Note, the Subordinated Mortgage and any other documents evidencing or securing the Subordinated Loan.

All terms not otherwise defined herein shall have the meanings ascribed thereto in the Senior Loan Agreement.

2. **General Subordination.** Any and all of: (a) the Subordinated Loan Documents (and every amendment, modification, renewal and extension thereof); (b) the indebtedness, liabilities and obligations evidenced or created by the Subordinated Loan Documents or associated therewith; and (c) the other indebtedness, liabilities and obligations of any kind whatsoever (whether now existing or hereafter arising) of Borrower or Guarantors to Subordinated Lender are hereby subordinated to: (x) any and all of the Senior Loan Documents and every amendment, modification, renewal and extension thereof; and (y) all indebtedness, liabilities, obligations, liens and security interests evidenced, secured by or created by the Senior Loan Documents or associated therewith, including, without limitation, future advances under and in accordance with the terms and conditions of the Senior Loan Agreement or any of the other Senior Loan Documents in whatever amounts and whenever made; and (z) all other indebtedness, liabilities and obligations of any kind whatsoever (whether now existing or hereafter arising) of Borrower and Guarantors to Senior Lender relating to the Property.

3. **Subordination of Payments.** Except as provided in Section 5 below, the payment of all amounts due and owing or coming due and owing under the Subordinated Loan Documents, specifically including, without limitation (i) payments from Borrower to Subordinated Lender of interest and principal under the Subordinated Note; (ii) payments of insurance proceeds and condemnation, eminent domain or similar awards to be paid to or for the benefit of Subordinated Lender under the terms of any of the Subordinated Loan Documents; and (iii) Subordinated Lender's interest in all rents, issues and profits from the Property shall be postponed and shall be subordinate to the payment in full of the Senior Indebtedness, specifically including, without limitation, payments of interest and principal under the Senior Note, payments of insurance proceeds and condemnation, eminent domain or similar awards to be paid to or for the benefit of Senior Lender under the terms of any of the Senior Loan Documents, Senior Lender's interest in all rents, issues and profits from the Property and payments of any other sums due and owing under the Senior Loan Documents.

4. **Payment Blockage.**

(a) Until the Payment Date, no payment or distribution of any assets of Borrower or Guarantors of any kind or character, including cash or cash equivalents, for any reason whatsoever shall be made by Borrower or any Guarantor on account of the Subordinated Indebtedness.

(b) In the event that Borrower or Guarantors shall make any payment to Subordinated Lender prohibited by Section 4(a), then and in such event such payment shall

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be received and held in trust for Senior Lender, shall not be deemed to have been applied to the Subordinated Indebtedness and shall be paid over and delivered forthwith to Senior Lender. Furthermore, the proceeds from refinancing of the Subordinated Indebtedness in violation of this Agreement shall be received and held in trust for Senior Lender and shall be paid over and delivered forthwith as provided in this subparagraph (b).

5. **Permitted Payments to the Subordinated Lender.** Notwithstanding anything to the contrary or inconsistent contained herein, in the absence of the occurrence of an Event of Default, this Agreement shall not prohibit the payment to Subordinated Lender of the regularly scheduled payments of interest due and owing on the Subordinated Note. Subordinated Lender shall have no obligation to pay over to Senior Lender any regularly scheduled payments of interest due and owing on the Subordinated Note which are received by Subordinated Lender prior to the occurrence of an Event of Default.

6. **Bankruptcy.** So long as any portion of the Senior Indebtedness remains outstanding, Subordinated Lender will not commence or join with any other creditor or creditors of Borrower in commencing any Bankruptcy Event. In the event of a Bankruptcy Event, then and in any such event and from and after such event:

(a) Senior Lender shall be entitled to receive payment in full of all amounts due on or in respect of all Senior Indebtedness in cash or in a manner satisfactory to Senior Lender, before Subordinated Lender is entitled to receive any payment or distribution of any kind or character;

(b) any payment or distribution of assets of Borrower or any of the Guarantors of any kind or character, whether in cash, property or securities, by set-off or otherwise, to which Subordinated Lender would be entitled but for the provisions of this Agreement shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to Senior Lender according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid;

(c) in the event that, notwithstanding the foregoing provisions of this Agreement, Subordinated Lender shall have received any payment or distribution of assets of Borrower or any of the Guarantors of any kind or character, whether in cash, property or securities in respect of the Subordinated Indebtedness before all Senior Indebtedness is paid in full in cash or in a manner satisfactory to Senior Lender, then and in such event such payment or distribution shall be received and held in trust for Senior Lender and shall be paid over or delivered to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of Borrower or any of the Guarantors, unless otherwise required by applicable law. Such amounts shall be delivered for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full in cash; and

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(d) Subordinated Lender will not, without the prior written consent of Senior Lender: (i) propose or vote for a plan in any Bankruptcy Proceedings not supported by Senior Lender; (ii) object to or oppose any motions or petitions for relief by Senior Lender for a cash collateral order on terms proposed by Senior Lender; (iii) seek or move to obtain the appointment of a trustee on behalf of Borrower or any of the Guarantors; or (iv) object to or oppose any motions or petitions for relief by Senior Lender for the lifting of the automatic stay for the purpose of enforcement and the foreclosure of the applicable Senior Loan Documents.

The limitations and assignments contained in this section shall terminate upon the Payment Date. The Subordinated Lender agrees, however, that it will not (i) file any appeal or take any other action claiming that the payment of the Senior Indebtedness was improperly paid; (ii) question the validity of a plan or reorganization which caused the Senior Indebtedness to be paid; or (iii) otherwise object to or appeal the payment of the Senior Loan or any collateral realization actions under the Senior Loan Documents.

## 7. Subordinate Indebtedness.

(a) Borrower and Subordinated Lender warrant and represent to Senior Lender that the Subordinated Indebtedness is evidenced solely by the Subordinated Note and that the Subordinated Indebtedness is secured solely by the liens and interests created by the Subordinated Mortgage.

(b) Subordinated Lender agrees not to transfer, assign, pledge, hypothecate or grant any interest in the Subordinated Indebtedness or the Subordinated Loan Documents without the prior written consent of Senior Lender, which consent shall not be unreasonably withheld.

(c) Borrower and Subordinated Lender agree not to modify or amend the Subordinated Loan Documents or grant or enter into any other instrument in connection therewith, without the prior written consent of Senior Lender.

## 8. Subordinated Loan Documents.

(a) Subordinated Lender shall have no right to take, and agrees to refrain from taking, any enforcement or remedial actions under the Subordinated Loan Documents prior to the Payment Date.

(b) Neither Borrower nor Guarantors shall grant any collateral to Subordinated Lender for the Subordinated Indebtedness prior to the Payment Date which may be in addition to that provided for in the initial Subordinated Loan Documents.

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9. **Actions by Senior Lender.** Senior Lender may, at any time and from time to time, without (i) the consent of Subordinated Lender; (ii) incurring responsibility or liability to Subordinated Lender; or (iii) impairing the obligations hereunder of Subordinated Lender to Senior Lender, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, the Senior Indebtedness or any instrument evidencing the same or any agreement under which the Senior Indebtedness is outstanding; (b) sell, exchange, release or otherwise deal with the Collateral; (c) release any person liable in any manner for the collection of the Senior Indebtedness, including any of the Guarantors; (d) exercise or refrain from exercising any rights or remedies against Borrower, Guarantors and any other person under the Senior Loan Documents or otherwise; (e) modify, amend, restate, or otherwise change the terms and conditions of the Senior Loan Agreement or any of the other Senior Loan Documents; (f) cause or consent to the sale or assignment of any direct or indirect interest in the Senior Loan to any person or entity, which purchaser or assignee shall automatically have the benefits and be bound by this Agreement; (g) require Borrower or any of the Guarantors to grant to Senior Lender such additional Collateral as Senior Lender may deem appropriate; (h) make advances for the purpose of protecting the Collateral; and (i) enter into such agreements which Senior Lender may deem appropriate or desirable, including the sale of the Senior Loan Documents to Subordinated Lender or its designee. All such actions set forth in (a) through (i) above shall be senior in all respects to the Subordinated Indebtedness.

10. **Reinstatement of Agreement.** The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Indebtedness or the Subordinated Indebtedness is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be returned by Senior Lender under any bankruptcy law, state or federal law, common law or equitable cause, all as though such payment had not been made.

11. **Representations and Warranties.**

(a) The Subordinated Lender represents and warrants to Senior Lender that it is the lawful owner of the Subordinated Indebtedness, and no part thereof has been assigned to third parties or subordinated or subjected to any other security interest in favor of anyone other than Senior Lender.

(b) Senior Lender represents and warrants to Subordinated Lender that Senior Lender is the lawful owner of the Senior Indebtedness, and no part thereof has been assigned to third parties or subordinated or subjected to any other security interest in favor of anyone other than the Lender; provided, however, that the foregoing representation and warranty shall not limit or affect the full right of Lender to sell, assign and hypothecate its interest in the Senior Loan.

12. **Enforcement of the Agreement.** Senior Lender is hereby authorized to demand specific performance of this Agreement. The Subordinated Lender hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy

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of specific performance hereof in any action brought therefor by Senior Lender. The Subordinated Lender further waives presentment, notice and protest in connection with all negotiable instruments evidencing their respective indebtedness and notice of the acceptance of this Agreement by the other party.

## 13. No Duties Imposed on Senior Lender and Waivers.

(a) The rights granted to Senior Lender hereunder are solely for its protection and nothing herein contained shall impose on Senior Lender any duties with respect to any property of Borrower or Subordinated Lender received hereunder. All of the Senior Indebtedness shall be deemed to have been made or incurred in reliance upon this Agreement. The Subordinated Lender expressly waives all notice of the acceptance by Senior Lender of the subordination and other provisions of this Agreement and all other notices not specifically required pursuant to the terms of this Agreement. The Subordinated Lender expressly consents to reliance by Senior Lender upon the subordination and other agreements as provided herein.

(b) The Subordinated Lender agrees that:

(i) Senior Lender has not made warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Senior Loan Documents or the collectability of the obligations thereunder; and

(ii) Senior Lender shall be entitled to manage and supervise the Senior Loan without regard to the existence of any rights that Subordinated Lender may now or hereafter have, other than those specifically set forth herein.

(c) Subordinated Lender has received and reviewed and consents to and approves all the provisions of the Senior Loan Documents. The Subordinated Lender hereby acknowledges that the execution, delivery and performance of the Senior Loan Documents will not constitute a default under the Subordinated Loan Documents.

(d) Subordinated Lender agrees that any advance by Senior Lender under and in accordance with the terms and conditions of the Senior Loan Documents and this Agreement shall constitute Senior Indebtedness. Subordinated Lender acknowledges and agrees that Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application to a particular purpose of the proceeds of the Senior Loan by Borrower or any other person or entity to whom Senior Lender disburses proceeds, and any application or use of such proceeds for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the subordination herein in whole or in part. Subordinated Lender hereby waives any rights it may have to require Senior Lender (i) to marshal any portion of the Collateral (or any other property, instruments, documents, agreements or guaranties securing the Senior Indebtedness) (ii) to protect, secure, perfect or insure any security interest or lien on any of the Collateral, or (iii) to seek or exhaust any



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remedies against Borrower or the Guarantors before enforcing its rights against any other portion of the Collateral (or the Collateral as a whole) or its rights herein against Subordinated Lender.

(e) Senior Lender will have no liability to Subordinated Lender for, and Subordinated Lender waives, any claim which it may now or in the future have against Senior Lender arising out of: (i) any and all actions which Senior Lender, in good faith, takes or omits to take with respect to the Senior Loan Documents or the collection of the Senior Indebtedness or the valuation, use, protection or release of any collateral (including, without limitation, actions or inactions of Senior Lender with respect to the creation, perfection or continuation of liens or security interests in its collateral, the occurrence of an Event of Default, the foreclosure on, sale, release of, depreciation of, or failure to realize on, any of its collateral, and the collection of any claim for all or any part of Senior Lender from any account debtor, guarantor or other party), (ii) any consents given or withheld under the terms of the Senior Loan Documents, (iii) Senior Lender's election, in any reorganization proceeding of the application of Section 1111 (b)(2) of the Bankruptcy Code, or (iv) any borrowing or grant of a security interest by Borrower in a reorganization proceeding under Section 364 of the Bankruptcy Code.

(f) If Senior Lender shall seek to exercise any remedy under the Senior Loan Documents, including, without limitation, filing for a foreclosure action with respect to the Property, seeking the appointment of a receiver or seeking the appointment of a mortgagee in possession, Subordinated Lender agrees not to object to, defend against or raise any counterclaims with respect to any such action. Subordinated Lender agrees that: (i) the Senior Loan Documents and the transactions contemplated thereby do not constitute a partnership or joint venture; and (ii) based on the language and intent of Section 1 hereof, there are or would be no circumstance in which the Subordinated Loan could have priority over or parity with the Senior Loan. Without limiting the foregoing, Subordinated Lender agrees not to file any defenses, counterclaims or objections with respect to an action to foreclose the Senior Loan Documents and waives its right to bring all such defenses, counterclaims and objections of any kind or nature in such foreclosure action. Subordinated Lender agrees that Senior Lender is relying on such agreements and waivers in entering into this Agreement and would not have entered into this Agreement without such agreements and waivers.

(g) The Subordinated Lender acknowledges and agrees that Senior Lender shall have no duty, fiduciary or otherwise, to advise Subordinated Lender of information known to Senior Lender regarding the Property, Borrower's or any Guarantor's business, financial or other condition or the risk of non-payment of the Senior Indebtedness or the Subordinated Indebtedness.

(h) The Subordinated Lender agrees that Senior Lender owes no duty, fiduciary or otherwise, to Subordinated Lender in connection with the administration of the Senior

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Loan and the Senior Loan Documents and Subordinated Lender waives any right it may otherwise have to assert any claim therefor.

## 14. Notices of Default.

(a) Subordinated Lender hereby agrees to send to Senior Lender a copy of any default notice sent by Subordinated Lender to Borrower under or in connection with any of the Subordinated Indebtedness or any of the Subordinated Loan Documents concurrently with the delivery of such notice to Borrower. Senior Lender hereby agrees to send to Subordinated Lender a copy of any default notice or notice pursuant to Section 10.9 of the Senior Loan Agreement sent by Senior Lender to Borrower under or in connection with any of the Senior Indebtedness or any of the Senior Loan Documents concurrently with the delivery of such notice to Borrower; provided, however, the failure by Senior Lender or Subordinated Lender to send the other such copies shall not constitute a default hereunder nor be a defense to the exercise by Senior Lender or the Subordinated Lender of any right or remedy hereunder, under the Senior Loan Documents or the Subordinated Loan Documents.

(b) Notwithstanding Section 14(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 the Senior Lender to commence such Enforcement Action to Subordinated Lender, whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "Senior Loan Default Notice") and shall permit Subordinated Lender an opportunity to cure such default in accordance with the provisions of this Section 14(b). The Senior Loan Default Notice may, in Senior Lender's discretion, be the notice given by Senior Lender to Subordinated Lender pursuant to Section 14(a) above. If the default is a monetary default relating to a liquidated sum of money, Subordinated Lender shall have until five (5) 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 it elects to cure any such monetary default, Subordinated Lender shall defend and hold harmless Senior Lender for all costs, 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. If the default is of a non-monetary nature, Subordinated Lender shall have the same period of time, if any, as Borrower under the Senior Loan Documents to cure such non-monetary default.

15. Insurance and Condemnation. Subordinated Lender shall have no right to participate in the adjustment or settlement of insurance losses and/or condemnation claims. Subordinated Lender hereby further agrees, upon the request and at the direction of Senior Lender, to endorse in favor of Senior Lender any and all checks payable to Subordinated Lender which represent insurance or condemnation proceeds paid for claims relating to the Property in any way. Subordinated Lender hereby irrevocably designates, constitutes and appoints Senior Lender (and its designees) as Subordinated Lender's attorney in fact (which appointment is deemed to be coupled

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with an interest), with full power to settle all insurance claims relating to the Property and to receive all payments and endorse all checks with regard thereto, to the full extent of all amounts secured by the Senior Loan Documents. Prior to the Payment Date, the payment, collection and disposition of any insurance and condemnation proceeds shall be governed by the terms of the Senior Loan Documents. The Subordinated Lender agrees that third parties may rely upon this provision in dealing with any insurance or condemnation proceeds which affect the Property including the payment of any proceeds or settlement of any claims under any insurance policies affecting the Property.

16. **Binding on Successors and Assigns.** This Agreement shall be binding upon and enforceable against Borrower, Subordinated Lender, Senior Lender and their respective executors, administrators, other legal representatives, successors and assigns. The Senior Lender may freely assign the Senior Indebtedness or interests therein.

17. **Notices.** All notices, and copies thereof, provided for under this Agreement shall be made in writing and shall be personally delivered or sent by nationally recognized overnight delivery service to the respective party at the address set forth below. Borrower acknowledges and agrees that Borrower's right to receive any notice or a copy of a notice given by Senior Lender to Subordinated Lender or by Subordinated Lender to Senior Lender, and the inclusion of Borrower in this Section is to facilitate giving notice to Borrower, if desired by the party giving notice in its sole discretion. The effective date of all notices hereunder shall be the date of personal delivery or the next business day after depositing in the overnight delivery service in the manner set forth above. The address for notice may be changed in the same manner as set forth above. The address for notice for the parties hereto are as follows:

Senior Lender:                                   The PrivateBank and Trust Company  
 Ten North Dearborn Street, Suite 900  
 Chicago, Illinois 60602-4202  
 Attn: Daniel C. Siadak, Managing Director

With a copy to:                                 Robbins, Salomon & Patt, Ltd.  
 25 East Washington Street  
 Suite 1000  
 Chicago, Illinois 60602  
 Attn: Andrew M. Sachs, Esq.

Subordinated Lender:                         Freeman Realty Advisors, Inc.  
 350 West Erie Street, Suite 150  
 Chicago, Illinois 60610  
 Attn: Andrea C. Riegsecker, Senior Vice President

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Borrower: 89th & State, LLC  
 908 West 31st Street  
 Chicago, Illinois 60608  
 Attn: Michael J. Passarelli

With a copy to: Richard Indyke, Esq.  
 221 North LaSalle Street, Suite 1200  
 Chicago, Illinois 60601

18. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

19. **Time is of the Essence.** Time is of the essence of this Agreement.

20. **Choice of Law.** This instrument shall be governed by and construed in accordance with the laws of the State of Illinois.

21. **Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE BORROWER, THE SUBORDINATED LENDER AND THE SENIOR LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE SENIOR LENDER AND THE SUBORDINATED LENDER TO ENTER THIS AGREEMENT.

22. **Venue.** The parties hereto agree that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement shall be litigated only in courts having a situs within the County of Cook, State of Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division. Each party to this Agreement hereby waives any right it may have to transfer or change the venue of any litigation brought against it by another party in accordance with this section.

23. **Integration.** This Agreement represents the entire agreement of Borrower, Subordinated Lender and Senior Lender with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by Senior Lender, Borrower or Subordinated Lender relative to the subject matter hereof not expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among such parties relating to the subject matter hereof. Accordingly, this Agreement may not be contradicted by evidence of prior,

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contemporaneous, or subsequent oral agreements of the parties. There are no unwritten agreements among the parties.

24. **Interpretation.** The Borrower, Subordinated Lender and Senior Lender and their respective counsel have reviewed and revised, or requested revisions to, this Agreement and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting this Agreement.

25. **Conflicting Provisions.** This instrument shall control over any conflicting provisions of the Senior Loan Documents and the Subordinated Loan Documents.

26. **Further Assurances.** The Senior Lender, Subordinated Lender and Borrower agree to enter into such additional documents and instruments as may reasonably be required by the other party in order to fully effectuate the terms and provisions of this Agreement.

27. **Benefit of Lenders.** The Borrower agrees that this Agreement is for the benefit of Senior Lender and Subordinated Lender and this Agreement shall not relieve Borrower from any of its obligations and liabilities under the Senior Loan Documents or the Subordinated loan Documents.


[Signature Page Follows]

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

**SENIOR LENDER:**

**THE PRIVATEBANK AND TRUST COMPANY**

By:   
Its: MANAGING DIRECTOR

**SUBORDINATED LENDER:**

**FREEMAN REALTY ADVISORS, INC.**, an Illinois corporation

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

**BORROWER:**

**89TH & STATE, LLC**, an Illinois limited liability company

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

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

**SENIOR LENDER:**

**THE PRIVATEBANK AND TRUST COMPANY**

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

Its: \_\_\_\_\_

**SUBORDINATED LENDER:**

**FREEMAN REALTY ADVISORS, INC.**, an Illinois corporation

By: Neil D.F.

Its: PRESIDENT

**BCRROWER:**

**89TH & STATE, LLC**, an Illinois limited liability company

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

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

**SENIOR LENDER:**

**THE PRIVATEBANK AND TRUST COMPANY**

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

**SUBORDINATED LENDER:**

**FREEMAN REALTY ADVISORS, INC.**, an Illinois corporation

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

**BORROWER:**

**89TH & STATE, LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
Its: ~~Member~~ *Manager* *So Debenia Development Company*

Property of Cook County Clerk's Office

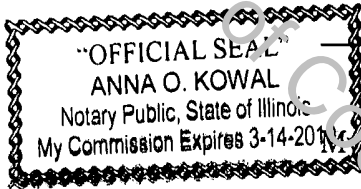


# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS.

I, ANNA O. KOWAL, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that DANIEL C. SIADAK, the MANAGING Director of THE PRIVATE BANK AND TRUST COMPANY, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MANAGING Director, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of June, 2006.



Anna O. Kowal  
Notary Public

Commission Expires:  
3/14, 20 10.

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS.

I, Christina L. Lopez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Neil D. Freeman, the President of FREEMAN REALTY ADVISORS, INC., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of June, 2006.



Christina L. Lopez  
Notary Public

My Commission Expires:

October 30, 2007.

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF COOK )

SS.

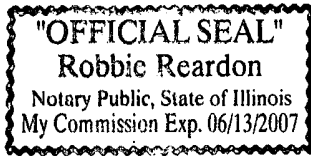
*De Grazia Development Company, LLC*  
manager of

I, Robbie Reardon, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael J. Passavelli, the Vice President of 89TH & STATE, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

*↳ cooperation in its capacity as the manager of said*

GIVEN under my hand and Notarial Seal this 21 day of June, 2006.

Robbie Reardon  
Notary Public



My Commission Expires:

6/13, 2006.

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1, 2, 3, 4, 5, AND 6 IN OWNER'S DIVISION IN STATE MANUFACTURING DISTRICT OF PART OF THE SOUTH WEST 1/4 OF THE NORTH WEST 1/4 OF SECTIONS 3, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED APRIL 17, 1953 AS DOCUMENT NUMBER 15595005, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF STATE STREET, WHICH IS 554.50 FEET SOUTH OF THE NORTH LINE OF THE SOUTH WEST 1/4 OF THE NORTH WEST 1/4 OF SAID SECTION 3; THENCE EAST ON A LINE PARALLEL TO SAID NORTH LINE OF THE SOUTH WEST 1/4 OF THE NORTH WEST 1/4, 185 FEET; THENCE SOUTH ON A LINE PARALLEL TO THE EAST LINE OF STATE STREET 67.05 FEET TO A LINE DRAWN PARALLEL TO AND 621.10 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE WEST ON A PARALLEL LINE TO THE EAST LINE OF STATE STREET, 185 FEET; THENCE NORTH ON THE EAST LINE OF STATE STREET, 67.05 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF INTERSECTION OF A LINE 342 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, AND A LINE 220 FEET EAST OF AND PARALLEL TO THE EAST LINE OF SOUTH STATE STREET AND RUNNING THENCE SOUTH ALONG THE

LAST MENTIONED PARALLEL LINE, A DISTANCE OF 145 FEET TO ITS INTERSECTION WITH A LINE 487 FEET SOUTH OF AND PARALLEL TO SAID NORTH LINE OF THE SOUTH WEST 1/4 OF THE NORTH WEST 1/4 OF SECTION 38 THENCE EAST ALONG THE LAST MENTIONED PARALLEL LINE, A DISTANCE OF 40.37 FEET THENCE SOUTHEASTWARDLY ALONG THE ARC OF A CIRCLE HAVING A RADIUS OF 281.44 FEET CONVEX NORTH EAST AND TANGENT TO THE LAST DESCRIBED COURSE. A DISTANCE OF 70.37 FEET TO ITS INTERSECTION WITH A LINE 330 FEET EAST OF AND PARALLEL TO THE EAST LINE OF SOUTH STATE STREET. THENCE NORTH ALONG THE LAST MENTIONED PARALLEL LINE, A DISTANCE OF 153.77 FEET TO ITS INTERSECTION WITH SAID LINE 342 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTH WEST 1/4 OF THE NORTH WEST 1/4 OF SECTION 3, AND THENCE

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WEST ALONG THE LAST MENTIONED PARALLEL LINE, A DISTANCE OF 110 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

THAT PART OF SOUTH WEST 1/4 OF THE NORTH WEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; BEGINNING ON THE EAST LINE OF SOUTH STATE STREET AT A POINT 342 FEET SOUTH OF THE NORTH LINE OF SAID SOUTH WEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, EXTENDING THENCE SOUTHERLY ALONG THE EAST LINE OF SOUTH STATE STREET, A DISTANCE OF 145 FEET; THENCE EASTERLY, A DISTANCE OF 220 FEET ON A LINE PARALLEL TO AND 487 FEET SOUTH OF THE NORTH LINE OF SAID SOUTH WEST 1/4 OF THE NORTH WEST 1/4, THENCE NORTHERLY A DISTANCE OF 145 FEET ON A LINE PARALLEL AND 220 FEET PARALLEL TO AND 342 FEET SOUTH OF THIS NORTH LINE OF THE SOUTH WEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

EASEMENT FOR PRIVATE ALLEY AS SHOWN ON PLAT OF OWNERS DIVISION IN STATE MANUFACTURING DISTRICT AFORESAID OVER AND UPON A PARCEL OF LAND, BOUNDED AND DESCRIBED AS FOLLOW: BEGINNING AT A POINT 342 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, 380 FEET EAST OF THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION TO A POINT 495.77 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3; THENCE SOUTHEASTERLY ALONG THE ARC OF A CIRCLE HAVING A RADIUS OF 281.44 FEET CONVEX TO THE NORTHEAST TO A POINT THAT IS 497.70 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3, AND 387 FEET EAST OF THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION; THENCE SOUTH PARALLEL TO THE WEST LINE, A DISTANCE OF 83.40 FEET; THENCE EAST 9 FEET; THENCE NORTH ON A LINE 396 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3, TO A POINT 342 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 3; THENCE WEST 16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS, (EXCEPTING THEREFROM THAT PART FALLING IN PRIVATE EAST 89TH STREET).

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**PARCEL 6:**

**LOTS 7, 8 AND 9 IN OWNER'S SUBDIVISION IN STATE MANUFACTURING DISTRICT OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.**

**P.I.N.(s):**                    25-03-115-030  
                                     25-03-115-021  
                                     25-03-115-003  
                                     25-03-115-031  
                                     25-03-115-032  
                                     25-03-115-033

**COMMON ADDRESS:**      55 East 89<sup>th</sup> Place / 8947 South State Street  
   Chicago, Illinois

Property of Cook County Clerk's Office