



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

Doc#: 0631326209 Fee: \$90.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 11/09/2006 03:54 PM Pg: 1 of 13

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated as of November 8, 2006 (the "Agreement"), is executed by and among MESIROW FINANCIAL HOLDINGS, INC., a Delaware corporation (the "Tenant"), and HYPO REAL ESTATE CAPITAL CORPORATION, as agent (the "Lender"), and 351 MORTGAGE LOAN BORROWER LLC, a Delaware limited liability company (the "Landlord").

RECITALS:

A. The Lender is the mortgagee under that certain Mortgage and Security Agreement dated as of the date hereof to be recorded concurrently herewith (collectively, the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined).

B. The Tenant has entered into that certain lease agreement dated June 30, 2006 with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 345,925 rentable square feet of space in the building ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

AGREEMENTS:

1. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications, increases, renewals and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees, subject to the terms and conditions of Sections 12 and 13 of the Lease, that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

2. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt of a notice of a default by

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the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Landlord hereby consents to the Tenant following any such direction from the Lender.

3. The Lender agrees that so long as the Tenant is not in default (after the expiration of all applicable notice and cure periods) under the Lease:

a. The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

b. The possession by the Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

4. Prior to seeking damages from Landlord or exercising a right to terminate the Lease (collectively, the "**Remedies**") as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "**Landlord's Default**"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, and (b) so long as Lender has notified Tenant of its intent to use reasonable efforts to cure such default ("**Notice of Intent to Cure**") promptly after receipt of such notice of Landlord's Default, allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same, provided, however, that, if such Landlord's Default is not reasonably curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure (which additional time shall not exceed ninety (90) days), provided further that the giving of such Notice of Intent to Cure said Landlord Default shall not obligate Lender to cure such default or impose any liability or obligation on Lender if such Landlord Default is not cured. The Tenant shall not pursue any of the Remedies as a result of any Landlord's Default unless the Lender fails to cure the same to Tenant's reasonable satisfaction within the time period specified above.

5. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed or other conveyance given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in Subsection (b) below), and in such event:

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a. The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

b. Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), but subject to the limitations in Section 27 of the Lease; provided, however, that such new owner shall not be:

(1) liable for any act or omission of any prior landlord (including the Landlord), provided that the foregoing shall not relieve such new owner of liability to the extent such act or omission continues under the Lease after such new owner takes possession of the Real Estate; provided, further, however, that nothing in this Agreement shall limit Tenant's ability to assert against the Lender any offsets of rent or other defenses which the Tenant has against any landlord under the Lease (including the Landlord), including pursuant to the terms of Section 17B of the Lease. This Section 5(b)(1) shall in no way be deemed to permit the repetition or continuation of any such act or omission (or the continuation of a condition resulting from a past act or omission) not otherwise permitted by the Lease;

(2) bound by any base rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(3) bound by any amendment or modification of the Lease made without the Lender's consent, or any consensual surrender or termination of the Lease, unless effected unilaterally by Tenant pursuant to the express terms of the Lease;

(4) bound by, or liable for any breach of, any representation or warranty or covenant of any prior landlord contained in Section 26C(i) of the Lease or any other representation with respect to prior Landlord.

c. Nothing in this Agreement shall in any way affect Tenant's rights under the Landlord Guaranty (as defined in the Lease).

6. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

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To the Lender  
Hypo Real Estate Capital Corporation  
622 Third Avenue  
New York, NY 10017  
Attention: Head of Portfolio Management

With a copy to:  
Hypo Real Estate Capital Corporation  
622 Third Avenue  
New York, NY 10017  
Attention: Chief Legal Officer

To the Landlord (prior to the Commencement Date):  
351 Mortgage Borrower, LLC  
Mesirow Financial Holdings, Inc.  
321 North Clark Street  
Chicago, Illinois 60610  
Attention: Chief Financial Officer

With a copy to:  
Mesirow Financial Holdings, Inc.  
321 North Clark Street  
Chicago, Illinois 60610  
Attention: General Counsel

Mesirow Financial Holdings, Inc.  
321 North Clark Street  
Chicago, Illinois 60610  
Attention: Chief Financial Officer

To Landlord (after the Commencement Date):  
As instructed by Landlord

To the Tenant (prior to the Commencement Date):  
Mesirow Financial Holdings, Inc.  
321 North Clark Street  
Chicago, IL 60610  
Attention: Chief Financial Officer

With a copy to:  
Mesirow Financial Holdings, Inc.  
321 North Clark Street  
Chicago, IL 60610  
Attention: General Counsel

To the Tenant (after the Commencement Date):  
Mesirow Financial Holdings, Inc.  
351 North Clark Street  
Chicago, IL 60610  
Attention: Chief Financial Officer

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With a copy to

Mesirow Financial Holdings, Inc.  
351 North Clark Street  
Chicago, IL 60610  
Attention: General Counsel

And to:

Stephen Bell, Esq.  
Goldberg Kohn Bell Black Rosenbloom and  
Moritz, PC  
55 East Monroe Street  
Chicago, IL 60603

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

7. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant.

8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

9. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[Signature Page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

**351 MORTGAGE LOAN BORROWER LLC**, a  
Delaware limited liability company

By: 351 Mezzanine LLC, a Delaware limited liability company, Manager

By: South Parcel Development, LLC, an Illinois limited liability company, Manager

By: SMIH South Parcel, LLC, an Illinois limited liability company, Authorized Member

By: Mesirow Financial Real Estate, Inc., an Illinois corporation, Manager

By: Michael Szkatulski  
Name: Michael Szkatulski  
Title: Senior Managing Director

TENANT:

**MESIROW FINANCIAL HOLDINGS, INC.**, a  
Delaware corporation

By: [Signature]  
Name: Richard S Price  
Title: Vice Chairman

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LENDER:

**HYPO REAL ESTATE CAPITAL  
CORPORATION**, a Delaware corporation, as  
Agent

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

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

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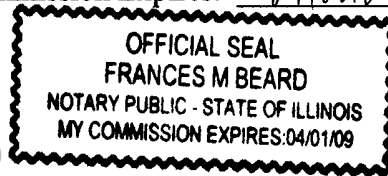
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO  
HEREBY CERTIFY that Michael Szkatulski, the *Senior Managing Director of Mesirow Financial* of **351 MORTGAGE LOAN BORROWER LLC**, a  
*Real Estate, LLC.* Delaware limited liability company, who is personally known to me to be the same person whose  
name is subscribed to the foregoing instrument as such Sr Managing Director, appeared  
before me this day in person and acknowledged that he/she signed and delivered the said  
instrument as his/her own free and voluntary act and as the free and voluntary act of said limited  
liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of October, 2006.

Frances M. Beard  
Notary Public  
My Commission Expires: 04/01/09

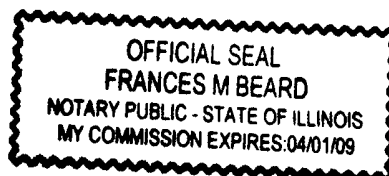


STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO  
HEREBY CERTIFY that Richard S. Frie, the Vice Chairman, of **MESIROW FINANCIAL HOLDINGS, INC.**, a Delaware  
corporation, who is personally known to me to be the same person whose name is subscribed to  
the foregoing instrument as such Vice Chairman, appeared before me this day in  
person and acknowledged that he/she signed and delivered the said instrument as his/her 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 1st day of November, 2006.

Frances M. Beard  
Notary Public  
My Commission Expires: 04/01/09





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STATE OF NEW YORK    )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of **HYPO REAL ESTATE CAPITAL CORPORATION**, a Delaware corporation, as Senior Lender, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_ appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said [corporation / limited partnership / limited liability company], for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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LENDER:

**HYPO REAL ESTATE CAPITAL CORPORATION**, a Delaware corporation, as Agent

By:   
Name: Samuel Kirschner  
Title: Managing Director

By:   
Name: RICHARD CURI  
Title: SENIOR ASSOCIATE

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

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Samuel Kirschnar and Richard Curi, the Managing Director and Senior Associate respectively, of **HYPO REAL ESTATE CAPITAL CORPORATION**, a Delaware corporation, as Senior Lender, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director and Senior Associate appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said [corporation / limited partnership / limited liability company], for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6<sup>th</sup> day of November, 2006.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

JEFFREY A. LEHMAN  
Notary Public, State of New York  
No. 02LE6132199  
Qualified in New York County  
Commission Expires At: 12, 2009

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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

#### 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 minutes 22 seconds West a distance of 29.31 feet; thence North 75 degrees 07

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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.

Common Address: 351 North Clark Street, Chicago, Illinois

PIN: 17-09-408-009 and 17-09-408-010



Prepared by & return to:

Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022

Attention: Warren J. Bernstein, Esq.