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This instrument was prepared by and  
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Doc#: 0701115101 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/11/2007 11:01 AM Pg: 1 of 17

Richard Indyke  
221 N. LaSalle St., Suite 1200  
Chicago, Illinois 60601

Permanent Real Estate Tax Index No.:  
See Exhibit A

Address: See Exhibit A

4377771

3073

## INTERCREDITOR AND SUBORDINATION AGREEMENT

This INTERCREDITOR AND SUBORDINATION AGREEMENT ("Agreement"), made this 22<sup>nd</sup> day of December, 2006, is among 51<sup>ST</sup> STREET RESIDENTIAL LLC, an Illinois limited liability company ("Borrower"), NEW WEST REALTY GROUP LLC, an Illinois limited liability company mortgagee, Lessee and holder of an option as more fully described herein (collectively "Subordinate Lender"), and AMCORE BANK N.A, its successors and/or assigns, ("Senior Lender").

### RECITALS

A. Borrower has acquired certain real property legally described in **Exhibit A** attached hereto ("Property"), on which Borrower intends to develop into single family homes, townhomes and residential condominium buildings. The Property, all improvements now or in the future constructed or located on the Property, and all personal property, contract rights and other intangibles related to the Property are collectively referred to as the "Project." The residential single family homes, townhomes and condominium units to be constructed and sold as part of the Project, are called "Units" herein.

B. Senior Lender has made or agreed to make (i) an acquisition loan to Borrower in the original principal amount of Four Million Three Hundred Seventy-Four Thousand Dollars (\$4,374,000.00) and the cumulative aggregate amount of all disbursements of the Loan will not to exceed Four Million Seven Hundred thousand Dollars (\$4,700,000.00) ("Senior Loan"). All or substantially all of the proceeds of the Senior Loan are to be used in connection with ownership, financing, development, and improvement of the Property. The Senior Loan is evidenced by, among other things, a Business Loan Agreement and a Promissory Note of even date herewith, and is secured by, among other things, a Mortgage, Assignment of Rents, Security Agreement ("Senior Mortgage"), made by Borrower in favor of Senior Lender dated of even date herewith and recorded in the Office of the Recorder of Cook County, Illinois concurrently herewith. The Business Loan Agreement, Promissory Note, Senior Mortgage, and other documents evidencing, securing, or otherwise relating to the Senior Loan, are collectively referred to as the "Senior Loan Documents".

C. Subordinate Lender has made a loan to Borrower in the original principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) ("Subordinate Loan"). The Subordinate Loan proceeds were used in connection with the Acquisition of the Property. The Subordinate Loan is evidenced by, among other things, a Loan Agreement and Promissory Note, and is secured by, among other things, a Second Mortgage, Security Agreement and Assignment of Rents ("Subordinate Mortgage"), executed by Borrower in favor of Subordinate Lender and recorded in the Official Records of Cook County, Illinois on December 29, 2005 as document number 0600545133. The Loan Agreement, Promissory Note, Subordinate Mortgage, and other documents evidencing, securing, or otherwise relating to the Subordinate Loan are collectively referred to as the "Subordinate Loan Documents".

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D. Subordinate Lender is also the Lessee and option holder as fully described in the lease with option dated December 29, 2005 and recorded in the Office of the Cook County Recorder of Deed on January 11, 2006 as documents number 061127015.

E. Senior Lender has required Subordinate Lender to enter into this Agreement as a condition to its entering into this Loan Agreement with Borrower.

F. Senior Lender and Subordinate Lender (collectively, "Lenders" or either of them, a "Lender") have entered into this Agreement to set forth the terms of subordination between them, and Borrower has also entered this Agreement to acknowledge its agreement with and approval of such terms.

## AGREEMENTS

### 1. Subordination.

**1.1 Lien Subordination.** Subordinate Lender hereby unconditionally subordinates the lien of the Subordinate Mortgage, any other liens in personal property securing the Subordinate Loan and evidenced by the Subordinate Loan Documents or any UCC financing statement, Lease, Option and all of Subordinate Lender's rights, remedies and privileges thereunder to the lien of the Senior Mortgage, any other liens in personal property securing the Senior Loan and evidenced by the Senior Loan Documents or any UCC financing statement, and all of Senior Lender's rights, remedies, and privileges thereunder, including without limitation, any judgment which may be obtained on any of the obligations or indebtedness described in the Subordinate Loan Documents (and any amendments, modifications, renewals or extensions thereof). Nothing contained in the Subordinate Loan Documents shall operate to defeat, render invalid, or impair the priority and seniority of the liens of Senior Lender under the Senior Mortgage and the other Senior Loan Documents.

**1.2 Payment Subordination.** Subordinate Lender hereby subordinates its right to receive payments from Borrower or derived from the Property of any and all amounts owing under the Subordinate Loan Documents ("Subordinate Indebtedness") to Senior Lender's right to receive payments from Borrower or derived from the Property of any and all amounts owing under the Senior Loan Documents ("Senior Indebtedness"). So long as Senior Lender has not provided written notice to Subordinate Lender of the occurrence of an event of default under the Senior Loan Documents, Subordinate Lender shall have the right to collect and keep the payments it receives from Borrower under the Subordinate Loan Documents, free and clear of any liens or security interests securing the Senior Loan. However, after Senior Lender has provided written notice to Subordinate Lender of the occurrence of an event of default under the Senior Loan Documents, then any payment by Borrower to Subordinate Lender shall be collected, enforced and received by Subordinate Lender as trustee for Senior Lender and promptly paid to Senior Lender in payment of the Senior Indebtedness as Senior Lender may direct, which obligation to remit such payments to the Senior Lender shall continue until any of the following have occurred: (i) such event of default is cured by the Borrower (and not as a result of being deemed cured as a result of (a) insolvency or reorganization proceeding or (b) operation of law), (ii) the Senior Indebtedness has given written notice that it has been paid in full, (iii) the Senior Lender has given written notice that it has released or abandoned all efforts to collect from the Borrower, or (iv) the Senior Lender has authorized Subordinate Lender in writing to proceed with collection of the Subordinate Loan.

**1.3 Document Subordination.** The Subordinate Loan Documents are hereby made and shall hereafter be subject and subordinate in all respects to the Senior Mortgage and the other Senior Loan Documents. All rights of the Subordinate Lender under the Subordinate Loan Documents in and to the Property and the proceeds thereof, including, but not limited to rents, issues and profits, proceeds of sales of the Property or any portion thereof, including any Units (as defined in the Senior Loan Agreement), and proceeds of insurance and condemnation awards and settlements in lieu thereof, are and shall be subject and subordinate to (i) the rights of

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Senior Lender in and to the Property and such proceeds thereof on the terms set forth in the Senior Mortgage and the other Senior Loan Documents; and (ii) subject to the terms of this Agreement, any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage and the other Senior Loan Documents.

## 2. Modifications of Senior Loan.

**2.1 Senior Loan Modifications Requiring Consent of Subordinate Lender.** Subject to the provisions of Section 2.2, the following modifications to the Senior Loan Documents shall constitute "Reviewable Modifications" and as a condition of Subordinate Lender's subordination to such modifications, shall require the Subordinate Lender's consent, which consent shall not be unreasonably withheld, delayed or conditioned:

**2.1.1** lengthening of the maturity date of the Senior Loan beyond January 2, 2008.

**2.1.2** increasing the interest rate charged under the Loan (other than an increase to a default rate and imposition of late charges after default),

**2.1.3** except as provided in the Senior Loan Documents, increasing the "release price" or other amount required under the Senior Loan Documents for reconveyance of the Senior Mortgage as against any Unit in the Project (other than Senior Lender's election to collect and keep all net sales proceeds from Unit sales while an uncured event of default exists under the Senior Loan),

**2.1.4** increasing the total amount of the Senior Loan (i.e., the non-revolving principal amount of a non-revolving loan, or the maximum outstanding balance under a revolving credit line loan) to more than \$4,700,000.00 or amending the loan-to-value, loan-to-cost, or other disbursement controls under the Senior Loan such that the amount per Unit that Senior Lender advances under its loan is increased by more than 5% (but excluding additional advances made by Senior Lender to protect its lien or its security, including without limitation, to complete the Project, pay taxes, insurance premiums or after an event of default has occurred shall not constitute a Reviewable Modification and shall not require Subordinate Lender's approval, as confirmed in Sections 2.2.2 and 2.2.3 below), or

**2.1.5** eliminating or curtailing the terms of any notice or cure period afforded to Borrower under the Senior Loan Documents.

**2.2 Modifications Not Requiring Consent of Subordinate Lender.** Notwithstanding the limitations set forth in Section 2.1, Subordinate Lender's agreement herein to subordinate its payment rights under the Subordinate Loan Documents shall automatically apply to the following additional advances, extensions, amendments, or other modifications of the Senior Loan Documents, without the need for the consent of Subordinate Lender:

**2.2.1** any and all additional advances, extensions, amendments, or other modifications of the Senior Loan Documents or Senior Mortgage that do not constitute or contain any Reviewable Modifications as defined in Section 2.1;

**2.2.2** after an event of default under the Senior Loan and until such default is completely cured, Senior Lender's election to advance funds sufficient to cure such defaults even though such additional advances may result in the aggregate amount advanced by Senior Lender exceeding the original principal amount of the Senior Loan or the amount of increase permitted in Section 2.1.4 above;

**2.2.3** regardless of whether a default has occurred under the Senior Loan Documents, Senior Lender's election to advance additional funds to preserve or protect the Project and its security in the Project,

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including but not limited to advances to prevent waste or destruction, to pay or prevent liens, to pay taxes, insurance premiums, or other assessments or charges against the Project, to defend Borrower's title or Senior Lender's lien priority, to pay collection costs or other expenses under the Senior Loan Documents, or to address any other risks reasonably perceived by Senior Lender as jeopardizing its security, the Project, or the Senior Loan;

**2.2.4** any and all advances, extensions, amendments or other modifications of the Senior Loan Documents for subsequent phases or parcels of the same development as the Project; and/or

**2.2.5** any other modification, amendment, deferral, extensions, renewal, or waiver not expressly provided for in Section 2.1.

**2.2.6** The Senior Lender's election to accelerate upon default.

**2.3 Subordinate Lender Representations and Covenants.** Subordinate Lender hereby represents, warrants and certifies to Senior Lender that, as of the date of this Agreement: (i) the documents described on **Exhibit B** attached hereto are all of the Subordinate Loan Documents, true, correct and complete copies of which have been delivered to Senior Lender, and (ii) the Subordinate Loan Documents have not been modified, amended or terminated. Subordinate Lender hereby covenants that, without the prior written consent of Senior Lender, it shall not modify, waive or amend any of the terms or provisions of the Subordinate Loan Documents; provided, however, Subordinate 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 "Subordinate Loan Modification") of the Subordinate Loan or the Subordinate Loan Documents provided that no such Subordinate Loan Modification shall (i) increase the interest rate or principal amount of the Subordinate Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Subordinate Loan Documents, (iii) extend or shorten the scheduled maturity date of the Subordinate Loan (except that Subordinate Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Subordinate Loan Documents), (iv) convert or exchange the Subordinate Loan into or for any other indebtedness or subordinate any of the Subordinate Loan to any indebtedness of Borrower, (v) provide for any additional contingent interest, additional interest or so-called "kicker" measured on the basis of the sales price of Units, (vi) cross default the Subordinate Loan with any other indebtedness other than the Senior Loan, (vii) 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, (viii) add any events of default under the Subordinate Loan Documents, (ix) shorten any notice and cure periods provided in the Subordinate Loan Documents or (x) accept a grant of any lien on or security interest in any collateral or property of Borrower or any other person not originally granted under the Subordinate Loan Documents or spread the lien and security interest of the Subordinate Loan Documents to encumber additional collateral. At least fifteen (15) days prior to any such Subordinate Loan Modification taking effect, Subordinate Lender shall deliver to Senior Lender copies of all documents evidencing such Subordinate Loan Modification, and shall deliver copies of fully executed documents evidencing such Subordinate Loan Modifications within five (5) days of execution. In addition and notwithstanding the foregoing provisions of this Section 2.3, any amounts funded by the Subordinate Lender under the Subordinate Loan Documents as a result of (A) the making of any Protective Advances (hereinafter defined) or other advances by the Subordinate Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 2. The restrictions in this Section 2 apply to amendments of the Subordinate Loan Documents and not to the exercise of any rights or remedies (e.g. making Protective Advances) or taking effect of any provisions (e.g., imposition of default rates of interest) set forth in the Subordinate Loan Documents. Subordinate Lender hereby specifically acknowledges and agrees that Subordinate Lender's failure to obtain Senior Lender's prior written consent to any modification of the Subordinate Loan Documents, but only to the extent required by this Agreement, will constitute an Event of Default under the Senior Loan Documents and under the terms of this Agreement. As used herein, "Protective Advances" shall mean all sums



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advanced for the purpose of protecting the lien of the Loan Documents, including without limitation, payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Property or the collateral pledged as security for the Subordinate Loan, respectively, from forfeiture, casualty, loss or waste, or as otherwise provided in the Senior Loan Documents.

### 3. Cross-Default or Cross-Collateralization.

3.1 Intentionally Left Blank

3.2 Intentional Left Blank

**3.3 No Cross-Collateralization with Other Projects.** Regardless of the provisions of the Subordinate Loan Documents, Subordinate Lender agrees that so long as the Senior Loan has not been fully repaid, then the Project shall constitute collateral only for Borrower's and Guarantor's performance of its obligations under the Subordinate Loan Documents, and the Property shall not constitute collateral for: (i) any other loan made by Subordinate Lender to Borrower or Borrower's affiliates with respect to properties other than the Project, or (ii) if the Subordinate Loan includes indebtedness or obligations relating to multiple properties, any portion of such indebtedness and obligations that do not relate to the Property.

**3.4 No Cross-Default with Other Projects.** Regardless of the provisions of the Subordinate Loan Documents, Subordinate Lender shall not enforce any cross-default provisions in the Subordinate Loan Documents to exercise any default remedies against the Project as a result of defaults do not stem from the Project or that occur under loans other than the Subordinate Loan or with respect to indebtedness or obligations that relate to properties other than the Project.

### 4. Partial Releases.

**4.1** Until the Senior Indebtedness is paid in full, Subordinate Lender, shall appoint the Senior Lender as its attorney-in-fact, which power of attorney is coupled with an interest, and Senior Lender and the Title Company shall be authorized to execute and deliver, on behalf of the Subordinate Lender, releases of the Subordinate Mortgage and any other liens created under the Subordinate Loan Documents from individual Units or other legal parcels of the Property upon the closing of the sale thereof, provided that Subordinate Lender receives, for paydown of the Subordinate Indebtedness, the net proceeds, if any, from the sale of any such Lot or Unit after payment of all costs and expenses of such sale and payment to Senior Lender of any amount required under the Senior Loan Documents for release and reconveyance of the Senior Mortgage from such Unit, even if the amount of such paydown is less than the amount required under the Subordinate Loan Documents or if Subordinate Lender receives no paydown whatsoever from such sale.

**4.2** Subordinate Lender's obligation to release the Subordinate Mortgage upon the sale of any Unit shall not be affected by any default under the Senior Loan Documents or any default under the Subordinate Loan Documents. Subordinate Lender acknowledges that Senior Lender would not make the Loan to Borrower without this provision, and that this provision shall be specifically enforceable by Senior Lender. Subordinate Lender agrees to execute and deliver such instruments as required by the Title Company or Senior Lender for release of Units from the Subordinate Lien in accordance with the requirements of this Section 4 within five (5) business days after written request from Senior Lender or any escrow agent.

**4.3** Until the Senior Indebtedness is paid in full, the consent of the Subordinate Lender shall not be required for the sale of any portions of the Property (including any Unit).

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## 5.1 Dealings Among Lenders and Borrower; Waivers

**5.1.1** In making disbursements under the Senior Loan, Senior Lender has no obligation or duty to, nor has Senior Lender represented that it will, verify the application of any proceeds by the person or persons to whom Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in the Senior Loan Documents shall not defeat or diminish the subordination provided for herein.

**5.1.2** In making disbursements under the Senior Loan, Senior Lender may waive any and all conditions to a disbursement contained in the Senior Loan Documents. Any such waiver shall not defeat the subordination herein in whole or in part.

**5.1.3** Neither Lender has made any representations to the other Lender about Borrower's creditworthiness or the Project, nor is either Lender relying on the underwriting or due diligence investigation of the other Lender.

**5.1.4** The subordination provided for herein shall not be rendered ineffective by Senior Lender's discharge or release of the Borrower or release, substitution, exchange, or surrender of any collateral for the Senior Loan, nor by any elections made by Senior Lender as to the method and manner in which it may proceed against such collateral.

**5.1.5** Subordinate Lender waives its right to claim priority due to the Senior Lender's failure to perfect or renew or continue perfection of liens. Subordinate Lender also waives its right to challenge a foreclosure of the Senior Loan based on characterization of property as real or personal.

**5.1.6** Subordinate Lender waives any right to be subrogated to the rights of the Senior Lender unless or until Subordinate Lender has paid the entire amount of indebtedness owing under the senior loan.

**5.1.7** Borrower agrees that Subordinate Lender and Senior Lender may communicate directly about any and all matters relating to their respective loans, including, after an event of default under either such loan, communication between the Lenders relating to any default remedies that may be pursued or possible loan restructurings or workout arrangements. Borrower hereby authorizes such communications and waives any and all rights to prior notice of such communications.

## 5.2 Standstill Agreement.

**5.2.1** Notwithstanding Subordinate Lender's rights under applicable law or any provision of the Subordinate Loan Documents, unless and until the Senior Indebtedness shall have been fully paid and all outstanding commitments of the Senior Lender for the incurring of additional Senior Indebtedness shall have been terminated in writing, the Subordinate Lender will not, without the Senior Lender's prior written consent:

(i) Ask, demand, take or receive any security from Borrower, Guarantor (as defined in the Loan Agreement), or any affiliate or any member of Borrower, for any of the Subordinate Indebtedness except for any liens and security interest expressly provided for in the Subordinate Lender Loan Documents which are at all times junior and subordinate to the prior liens and security interests of the Senior Lender therein;

(ii) Commence or join with any other creditor or creditors of Borrower in commencing any bankruptcy, reorganization, receivership, insolvency or similar proceeding against Borrower;

(iii) Take any action against Borrower or Guarantor or any of either of its or their assets, to enforce payment of, or to collect the whole or any part of the Subordinate Indebtedness, take any action to

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foreclose or otherwise enforce its lien on any of Borrower's assets, or exercise any other rights or remedies it may have under the Subordinate Lender Loan Documents or under applicable law with respect to Borrower's assets (each, an "Enforcement Activity") provided, however, that in the event Senior Lender shall commence any action to foreclose upon or otherwise enforce its liens upon Borrower's assets, Senior Lender shall name Subordinate Lender as a party defendant in any such action and Subordinate Lender may, at its own expense, participate in and have its lien rights adjudicated in conjunction with such action; provided further, that in connection with any such action Subordinate Lender will at all times recognize the superior position of Senior Lender's liens. This stay is not intended to prevent Subordinate Lender from taking emergency action to protect the security for the Subordinate Loan (such as the making of Protective Advances and tendering payment to the Senior Lender to cure the Borrower's monetary default), so long as Subordinate Lender makes a reasonable effort to give notice of such Protective Advances to Senior Lender and to allow Senior Lender, rather than Subordinate Lender, the opportunity to make the Protective Advances, it being understood that any action or proposal for action by the Senior Lender shall take precedence over any action or proposal for action by the Subordinate Lender.

(iv) Make any amendments or modifications to any of the Subordinate Lender Loan Documents that would constitute "Reviewable Modifications" under Section 2.1 above.

**5.3.2.** The provisions of this Agreement shall apply with respect to all of the Senior Indebtedness, regardless of whether the Senior Indebtedness has already been incurred or may be incurred in the future by future advances or other financial accommodations made or extended by the Senior Lender to Borrower, subject to Section 2.1 above.

**5.3.3.** If the Subordinate Lender, in violation of this Agreement shall commence, prosecute or participate in any suit, action or proceeding against the Borrower or shall attempt to enforce, foreclose or realize upon its security interest or lien in the Senior Lender Collateral, the Borrower or the Senior Lender may interpose as a defense or plea the making of this Agreement and the Senior Lender may intervene and interpose such defense in its name or in the name of the Borrower, and the Borrower or the Senior Lender may by virtue of this Agreement restrain the enforcement thereof in the name of the Borrower or the Senior Lender.

**5.3.4.** Subordinate Lender hereby acknowledges and agrees that the intent and effect of this Agreement is and shall be to afford Senior Lender, in the event of Default under the Senior Lender Loan Documents, sole discretion and control with regard to the operation and disposition of the Senior Lender Collateral then subject to the Senior Lender Loan Documents. To that end, Subordinate Lender hereby covenants and agrees that upon a Default under the Senior Lender Loan Documents, Subordinate Lender shall have no right to receive any notice, except as expressly required by law and/or set forth herein, and no right to participate in or consent to any negotiations or settlement between Senior Lender and Borrower, and Subordinate Lender shall have no right to interfere with or impede any actions or decisions made, directed or undertaken by Senior Lender with or without the involvement of the Borrower in the workout of the Senior Indebtedness and the Senior Lender Collateral. Without limitation of the generality of the foregoing, Subordinate Lender acknowledges and agrees that if Senior Lender and Borrower agree on the amount of the Senior Indebtedness owing to Senior Lender, such Agreement shall be binding on Subordinate Lender and Subordinate Lender disclaims any right to question or contest or seek an accounting of the amount of the Senior Indebtedness.

## **6. Notices of Default and Cure Rights.**

**6.1** Any rights to notice and a cure period given to Borrower in the Senior Loan Documents shall also benefit the Subordinate Lender (if the Subordinate Lender is capable of curing such default), and any rights to notice and a cure period given to Borrower in the Subordinate Loan shall also benefit the Senior Lender. Accordingly, in the event that either Lender issues any written notice of default under its loan to Borrower, it shall provide a copy of such notice to the other Lender, and the other Lender shall have the same right to cure such

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default as is afforded to Borrower. Failure to provide a copy of such notice or delay in providing such notice shall not invalidate any action or remedy undertaken against Borrower by the Lender issuing such notice of default, but such failure or delay shall operate to extend any cure period or Standstill Period otherwise available to such other Lender under the applicable loan documents.

**6.2** Any notices given to any party hereunder shall be given via overnight courier or messenger service, registered mail, return receipt requested, personal service, or facsimile transmission (followed by telephone confirmation of receipt or any of the other permitted methods of giving notice) to the parties at the following addresses, or to such other address as may be designated by such party:

Senior Lender: Amcore Bank N.A.  
300 TriState International #190  
Lincolnshire, Illinois 60069  
Attention: Aimee Peek, Asst. Vice President

Subordinate Lender: New West Realty Group LLC  
1300 S. Paulina, 3<sup>rd</sup> Floor  
Chicago, Illinois 60608

With a copy to: Brad S Gerber  
Laser, Pokorny, Schwartz, Friedman &  
Economos, P.C.  
6 West Hubbard Street, 8<sup>th</sup> Floor  
Chicago, Illinois 60610

Borrower: 51<sup>st</sup> Street Residential LLC  
908 W. 31<sup>st</sup> Street  
Chicago, Illinois 60608  
Attn: Michael Passaroli

With a copy to: Richard Indyke  
221 N. LaSalle St., Suite 1200  
Chicago, Illinois 60601

## **7. Liquidation or Insolvency.**

**7.1** In the event of any liquidation or dissolution of Borrower, or any receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or similar proceeding relating to Borrower or any portion of its property, all amounts due under the Senior Loan Documents (including without limitation, post-petition interest accrued under the Senior Loan after Borrower's bankruptcy filing) shall first be paid in full before any payment is made upon or in respect of the obligations under the Subordinate Loan Documents (including without limitation, post-petition interest accrued under the Subordinate Loan after Borrower's bankruptcy filing).

**7.2 Voting.** Subordinate Lender agrees to vote for any plan of reorganization or insolvency approved by Senior Lender in respect of Senior Borrower in any bankruptcy proceeding respecting Senior Borrower; provided, however, that Senior Lender agrees not to unreasonably withhold or delay its consent to Subordinate Lender's voting for a different plan of reorganization if (i) the different plan is at least as beneficial to Senior Lender (including without limitation with respect to Senior Lender's payment, lien and remedy rights thereunder) as the plan approved by Senior Lender, and (ii) Subordinate Lender agrees in writing (A) that any payments received by Subordinate Lender by virtue of such bankruptcy proceeding will be held by Subordinate



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Lender in trust for the benefit of Senior Lender until such time as the Senior Loan is satisfied in full, and (B) if the Senior Loan will not be satisfied in full by virtue of such Bankruptcy Proceeding, pay over to Senior Lender the payments so held in trust up to the amount of the deficiency.

## **8. Insurance and Condemnation Provisions.**

**8.1** Subordinate Lender hereby subordinates all of its right, title, interest or claim in and to: (i) all proceeds of all policies of insurance covering the Property or insuring the Borrower, and (ii) all awards or other compensation made for any taking of all or any part of the Property, to the rights of Senior Lender in and to such insurance proceeds and condemnation awards.

**8.2** So long as any indebtedness remains outstanding under the Senior Loan Documents, Senior Lender shall be exclusively entitled to receive any and all insurance or condemnation awards or proceeds, either for application to such indebtedness or for such repair, reconstruction, or renewal of the Project as Senior Lender shall direct in its sole discretion. If, following any such application or disposition of the insurance proceeds or condemnation awards and other compensation, any balance remains, then such excess shall be made payable to Subordinate Lender, or if Subordinate Lender's rights to receive such proceeds are disputed by the Borrower or other parties, then Senior Lender may either make such excess payable to the order of Subordinate Lender as their interests may appear under the Subordinate Loan Documents, or Senior Lender may interplead such excess into court for further disposition.

**8.3** Subordinate Lender agrees at any time and from time to time to execute such documents as Senior Lender or the insurer may reasonably require to confirm that any rights that Subordinate Lender may have as a loss payee or additional insured are expressly subject and subordinate to the rights of Senior Lender as an additional insured or loss payee. If any insurance or condemnation awards or proceeds are tendered or paid to Subordinate Lender in violation of this Section 8, Subordinate Lender shall immediately transfer such awards or proceeds to Senior Lender.

## **9. Other Provisions.**

**9.1** Subordinate Lender acknowledges having received and reviewed copies of all of the Senior Loan Documents and consents to and approves all of the provisions of each of the Senior Loan Documents and all other agreements.

**9.2** This Agreement constitutes the entire agreement between the parties, and shall supersede and cancel any prior agreements regarding the subordination of the Subordinate Loan Documents and any liens or rights created thereunder.

**9.3** If any provision of this Agreement is invalid, illegal, or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if the invalid provision had not been included.

**9.4** This Agreement inures to the benefit of and is binding upon the parties hereto and their respective heirs, successors and assigns.

**9.5** This Agreement is construed by and governed in accordance with the laws of the state in which the Project is located.

## **9.6 Expenses.**

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**9.6.1** To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is realized by Senior Lender, Subordinate 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 Subordinate Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Subordinate Lender to perform or observe any of the provisions hereof.

**9.6.2** To the extent not paid by Borrower out of or from any collateral securing the Subordinate Loan which is realized by Subordinate Lender, Senior Lender agrees upon demand to pay to Subordinate 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 Subordinate Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Subordinate Lender against Senior Lender hereunder to the extent that Subordinate 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.

## **9.7 Consent**

**9.7.1** Intentionally Omitted.

**9.7.2** If the Subordinate Loan Documents contain any provision or requirement that Subordinate Lender's consent or approval be obtained for any act or determination by Senior Borrower in connection with the Property or the Senior Loan Collateral, to the extent that such consent or approval is also required by Senior Lender under the Senior Loan Documents, Subordinate Lender hereby agrees that it shall advise Senior Lender of whether Subordinate Lender objects to the requested consent or approval three (3) Business Days after its receipt of a written request for a consent or approval. Provided that Senior Lender receives a notice of objection along with its suggestions for changes from Subordinate Lender at least two (2) Business Days prior to the date, if any, upon which Senior Lender is obligated to respond to Senior Borrower with respect to such request for consent or approval, Senior Lender shall consult with Subordinate Lender with respect to any such consent or approval right of Subordinate Lender but Subordinate Lender shall have no right to approve or disapprove any decision of Senior Lender with respect to such request for consent or approval. Subordinate Lender shall not unreasonably withhold, delay or condition its consent to such act or determination if Senior Lender approves such request, act or determination and such approval shall be binding on the Subordinate Lender and Borrower.

## **9.8 Estoppel Certificate**

**9.8.1** Subordinate Lender shall, within ten (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 Subordinate Loan, the aggregate accrued and unpaid interest under the Subordinate Loan, and stating whether to Subordinate Lender's knowledge any default or Event of Default exists under the Subordinate Loan.

**9.8.2** Senior Lender shall, within ten (10) days following a request from Subordinate Lender, provide Subordinate 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.

**9.9** So long as all or any portion of the Senior Loan and the Subordinate Loan remains unpaid and the Senior Mortgage encumbers the Property, Subordinate Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements

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reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

**9.10** The parties hereto do not intend the benefits of this Agreement to inure to Borrower 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 Subordinate Mortgage shall be satisfied, released or otherwise relinquished by Subordinate Lender, the provisions herein related to the Subordinate Mortgage shall not be affected.

**9.11** Senior Lender and Subordinate 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 Subordinate Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Subordinate 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.

**9.12** This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument. If counterpart originals are deposited into escrow for recording, the escrow agent may insert and substitute signature and notary pages, as needed, to create a single recordable original agreement, which shall be delivered to the Senior Lender after recording, with a copy to the Borrower and Subordinate Lender.

## **9.13 Mutual Disclaimer**

**9.13.1** Each of Senior Lender and Subordinate Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Subordinate Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Subordinate Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Subordinate Lender deem relevant. Each of Senior Lender and Subordinate Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Subordinate Loan or the Subordinate 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 Subordinate Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Subordinate 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 Subordinate Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Subordinate Loan or the Property (including, without limitation, the cash flow of the Property, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Property, or the sufficiency of the cash flow of the Property, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Subordinate Loan).

**9.13.2** Each of Senior Lender and Subordinate Lender acknowledges that the Senior Loan and the Subordinate Loan are distinct, separate transactions and loans, separate and apart from each other.

[Signature page to follow]

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EXECUTED as of the date set forth above.

**Subordinate Lender:**

NEW WEST REALTY GROUP LLC  
An Illinois limited liability company

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


**Senior Lender:**

AMCORE BANK N.A.

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

**Borrower:**

51<sup>ST</sup> STREET RESIDENTIAL LLC  
an Illinois limited liability company

By:   
Managing Member

## ACKNOWLEDGMENT

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Michael Passarelli, the managing member of 51<sup>st</sup> Street Residential LLC personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered 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.

GIVEN under my hand and notarial seal this 22 day of December, 2006

Notary Public   
My Commission Expires: 6-2-2010





EXECUTED as of the date set forth above

**UNOFFICIAL COPY**

NEW WEST REALTY GROUP LLC

**Subordinate Lender:**

By: THEODORE MAZOLA  
AMCOR BANK

**Senior Lender:**

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

**Borrower:**

51<sup>ST</sup> STREET RESIDENTIAL LLC  
an Illinois limited liability company

By: [Signature]  
Managing Member

**ACKNOWLEDGMENT**

STATE OF ILLINOIS ) ) SS. COUNTY OF COOK )  
I, the undersigned, a Notary Public in and for and residing in said County and State, DO  
HEREBY CERTIFY THAT \_\_\_\_\_, the \_\_\_\_\_ of 51<sup>st</sup> Street Residential LLC  
personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared  
before me this day in person and acknowledged that he signed and delivered 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.

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

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

STATE OF ILLINOIS ) ) SS. COUNTY OF COOK )  
I, the undersigned, a Notary Public in and for and residing in said County and State, DO  
HEREBY CERTIFY THAT \_\_\_\_\_, the \_\_\_\_\_ of AMCOR Bank personally  
known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me  
this day in person and acknowledged that he signed and delivered 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 \_\_\_ day of December, 2006.

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

**UNOFFICIAL COPY**

STATE OF ILLINOIS

SS. COUNTY OF COOK

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT THEODORE MAZOLA New West Realty Group LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered 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.

GIVEN under my hand and notarial seal this 22<sup>nd</sup> day of December, 2006.

[Signature] Notary Public  
My Commission Expires:



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EXECUTED as of the date set forth above.

**Subordinate Lender:** NEW WEST REALTY GROUP LLC  
An Illinois limited liability company

**Senior Lender:** By: \_\_\_\_\_  
AMCORE BANK N.A.

By: Andrew Prunty, VP

**Borrower:** 51<sup>st</sup> STREET RESIDENTIAL LLC  
an Illinois limited liability company

By: \_\_\_\_\_  
Managing Member

## ACKNOWLEDGMENT

STATE OF ILLINOIS ) ) SS. COUNTY OF COOK )  
I, the undersigned, a Notary Public in and for and residing in said County and State, DO  
HEREBY CERTIFY THAT \_\_\_\_\_, the \_\_\_\_\_ of 51<sup>st</sup> Street Residential LLC  
personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared  
before me this day in person and acknowledged that he signed and delivered 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.

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

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

STATE OF ILLINOIS ) ) SS. COUNTY OF ~~COOK~~ LAKE )  
I, the undersigned, a Notary Public in and for and residing in said County and State, DO  
HEREBY CERTIFY THAT Andrew Prunty, the Vice-President of AMCORE Bank N.A.  
personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared  
before me this day in person and acknowledged that he signed and delivered 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 22<sup>nd</sup> day of December, 2006.



Theresa A. Rizzo  
Notary Public  
My Commission Expires \_\_\_\_\_

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## Exhibit A

### Legal Description of Property

BLOCK 27 (EXCEPT THAT PART OF THE LAND TAKEN FOR ST. LOUIS AVENUE AND 51<sup>ST</sup> STREET THEREOF) AND BLOCK 28 (EXCEPT THAT PART OF THE LAND TAKEN FOR HOMAN AVENUE AND 51<sup>ST</sup> STREET THEREOF) IN JAMES H. REES' SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 19-11-203-001; 19-11-203-004; 19-11-203-005

Street Address: 3434 West 51<sup>st</sup> Street, Chicago, Illinois 60602

Property of Cook County Clerk's Office