

UNOFFICIAL COPY

This document was prepared by,
and after recording return to:

Riordan, Fulkerson, Smith & Coleman
30 North LaSalle Street
Suite 2630
Chicago, Illinois 60602
Attention: Alan L. Fulkerson, Esq.



Doc#: 0701802067 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/18/2007 09:14 AM Pg: 1 of 19

BOX 440

Permanent Index No.:
08-12-101-023-0000

32/3
FIRST AMERICAN TITLE

ORDER #

1511711

Property Address:
5 West Pine
Mount Prospect, Illinois

This space reserved for Recorders use only.

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT ("Intercreditor Agreement") is dated as of the 11th day of December, 2006, by and among CLOCK TOWER CENTER, LLC, an Illinois limited liability company, formerly known as CLOCK TOWER CENTER, LLC, an Illinois limited liability company ("Borrower"), AMCORE BANK, N.A., a national banking association, its successors and assigns ("Senior Lender") and GENESSE ROAD PROPERTIES, INC., a Michigan corporation, its successors and assigns ("Junior Lender").

RECITALS:

A. Senior Lender has heretofore loaned Borrower the original principal amount of One Million and No/100 Dollars (\$1,000,000.00) (the "Senior Loan"), which Senior Loan is evidenced by that certain promissory note (the "Senior Note"), dated as of April 5, 1999, made by Borrower and payable to Lender in the principal amount of the Senior Loan, as the same may be amended, modified, replaced or restated from time to time. The Senior Loan is secured by a Mortgage, Assignment of Rents and Security Agreement (as amended from time to time, the "Senior Mortgage") from Borrower in favor of Lender encumbering the Premises legally described in Exhibit A attached hereto and the improvements located thereon (collectively, the "Premises") dated as of April 5, 1999 and recorded in the Office of the Cook County Recorder (the "Recorder's Office") on April 14, 1999 as Document No. 99355694. The Senior Note, the Senior Mortgage and all of the other documents now or hereinafter executed in favor or for the benefit of Senior Lender which evidence, secure or are otherwise executed in connection with the Senior Loan are hereinafter referred to collectively as the "Senior Loan Documents".

B. In addition, Senior Lender has heretofore loaned Borrower the original principal amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) (the "Junior Loan"), which Junior Loan is evidenced by that certain promissory note (the "Junior Note"), dated as of

19

UNOFFICIAL COPY

September 30, 2003, made by Borrower and payable to Lender in the principal amount of the Junior Loan, as the same may be amended, modified, replaced or restated from time to time. The Junior Loan is secured by a Mortgage, Assignment of Rents and Security Agreement (as amended from time to time, the "Junior Mortgage") from Borrower in favor of Lender encumbering the Premises dated as of September 30, 2003 and recorded in the Recorder's Office on October 22, 2003 as Document No. 0329519154. The Junior Note, the Junior Mortgage and all of the other documents now or hereinafter executed in favor or for the benefit of Senior Lender which evidence, secure or are otherwise executed in connection with the Junior Loan are hereinafter referred to collectively as the "Junior Loan Documents".

C. Junior Lender has agreed to make a mezzanine loan in the original principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (as such amount is increased pursuant to the terms thereof, the "Mezzanine Loan") to Borrower, which Mezzanine Loan shall be evidenced by a Promissory Note from Borrower to Junior Lender bearing even date herewith (the "Mezzanine Note") in the original principal amount of the Mezzanine Loan and is secured by, among other things, a Mezzanine Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing executed by Borrower and encumbering the Premises (the "Mezzanine Mortgage"), a Collateral Pledge and Security Agreement (the "Pledge Agreement"), pursuant to which Junior Lender was granted a security interests in all of the equity interests of Borrower (the "Pledged Collateral") and by certain other documents and instruments (collectively, with the Mezzanine Note, the Mezzanine Mortgage and the Pledge Agreement, the "Mezzanine Loan Documents").

D. It is a condition precedent to Senior Lender's agreement to consent to the making of the Mezzanine Loan that, subject to the terms of this Agreement (i) the Senior Loan and the Junior Loan remain at all times prior and superior to the Mezzanine Loan, and (ii) the Senior Loan Documents and the Junior Loan Documents remain at all times a lien or charge upon the Premises prior and superior to the lien or charge of the Mezzanine Loan Documents in accordance with the terms of this Agreement.

NOW, THEREFORE, in order to induce Senior Lender to consent to the making of the Mezzanine Loan, and in consideration of the mutual agreements and acknowledgements contained herein, the parties hereto agree as follows:

1. Adoption of Recitals. The recitals to this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. Lien and Payment Subordination. Junior Lender hereby acknowledges and agrees that until the entire Senior Loan and the entire Junior Loan shall have been repaid in full, (a) all of the liens, security interests, terms, covenants and conditions of the Mezzanine Loan (except for those in Pledged Collateral) are and shall at all times be wholly subordinate to all of the liens, security interests, terms, covenants and conditions of the Senior Loan and the Junior Loan, and any and all obligatory advances and Protective Advances (as hereinafter defined) advanced or incurred in accordance therewith, and (b) all amounts due to Junior Lender under the Mezzanine Loan (including interest and/or principal payments or prepayments, assignments of rents and leases, rights with respect to insurance proceeds and condemnation awards, advances and

UNOFFICIAL COPY

expenses with interest), are and shall at all times continue to be expressly subject to and subordinate in right of payment to the indebtedness of the Borrower evidenced by the Senior Loan Documents and the Junior Loan Documents, and any and all obligatory advances and Protective Advances advanced or incurred in accordance therewith. The term "Protective Advances" means any advances necessary to protect the security of a mortgagee or holder of a loan in the Premises and other collateral therein described such as, by way of example and not limitation, advances to pay real estate taxes, insurance premiums or required repair or required maintenance costs. Notwithstanding the foregoing, Junior Lender shall be entitled to receive and retain (i) regularly scheduled payments, if any, of Interest (as defined in the Mezzanine Note) on the Mezzanine Loan if paid when due and (ii) any other payments due under the Mezzanine Loan Documents (the payments in Sections (i) and (ii) above being hereinafter collectively referred to as the "Permitted Payments"), provided that at the time of each such payment Junior Lender has not received from Senior Lender written notice that an Event of Default (as defined in the Senior Loan Documents or the Junior Loan Documents, as the case may be) or event which, with the passage of time, the giving of notice, or both, would constitute such an Event of Default, has occurred and is continuing. The Senior Loan shall not be deemed paid or satisfied in full until Senior Lender has received full payment of all amounts due Senior Lender, and the Junior Loan shall not be deemed paid or satisfied in full until Senior Lender has received full payment of all amounts due Senior Lender. In the event payment of amounts due under the Mezzanine Loan Documents that are subordinated and prohibited is made, whether in cash, rent, profits, Premises or securities, Junior Lender shall promptly pay to Senior Lender an amount equal to such payment so long as the Senior Loan and/or the Junior Loan are outstanding.

3. Prohibition Against Additional Lien Rights. Junior Lender shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Premises (including without limitation any which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to the Senior Mortgage, the Junior Mortgage, the other Senior Loan Documents or the other Junior Loan Documents. Notwithstanding the foregoing, Senior Lender and Junior Lender acknowledge and agree that: (a) neither the Senior Loan Documents, nor the Junior Loan Documents create a lien upon the Pledged Collateral, and (b) Senior Lender shall not, without the prior written consent of Junior Lender retain or obtain a security interest in the Pledged Collateral.

4. Senior Lender's Dealings with Borrower. Senior Lender may, without affecting the subordination of the Mezzanine Loan, in its sole and absolute discretion and without the approval of Junior Lender, and without regard to any effect upon the Mezzanine Loan or the interest, if any, of Junior Lender in the Premises or the value of Junior Lender's interests, if any, in the Premises: (a) release or compromise any obligation in the Senior Note, the Junior Note, the Senior Loan Documents or Junior Loan Documents or (b) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the Senior Note and/or the Junior Note.

5. Notice of Default and Related Rights. Junior Lender shall give Senior Lender notice of any Event of Default by Borrower under any of the Mezzanine Loan Documents at the time such notice is given to the Borrower and copies of all further notices to Borrower relating to such Event of Default and copies of any foreclosure proceedings involving Borrower. Senior

UNOFFICIAL COPY

Lender shall give Junior Lender notice of any Event of Default by Borrower under any of the Senior Loan Documents or the Junior Loan Documents at the time such notice is given to the Borrower and copies of all further notices to Borrower relating to such Event of Default and copies of any foreclosure proceedings involving Borrower. Senior Lender shall provide to Junior Lender (a) a copy of any written "deed-in-lieu of foreclosure" agreement between Borrower and Senior Lender at least thirty (30) days prior to the date of closing thereunder and (b) fifteen (15) days' prior written notice before making any Protective Advance.

6. Modification of Senior Loan Documents. Senior Lender shall not increase the principal balance due on the Senior Note or the Junior Note without first obtaining Junior Lender's written consent to such modification, which consent shall not be unreasonably withheld, provided however that nothing herein contained shall preclude an increase in the principal balance of either loan that is the result of obligatory advances and/or Protective Advances made by Senior Lender.

7. Event of Default. The commencement of foreclosure proceedings, appointment of a receiver, or any other remedial action under the Mezzanine Loan Documents, except in accordance with Section 15, below, without the prior, written consent of the holder or holders of the Senior Loan and the Junior Loan, shall constitute an Event of Default under the Senior Loan, the Junior Loan, the Senior Loan Documents and the Junior Loan Documents at the time such enforcement or remedial action is initiated.

8. Junior Lender's Cooperation. So long as the Senior Mortgage and/or the Junior Mortgage shall remain a prior lien upon the Premises or any part thereof, Junior Lender shall execute, acknowledge and deliver, promptly following Senior Lender's demand, from time to time, any and all further subordinations, agreements or other instruments consistent with the terms of this Agreement in recordable form as Senior Lender may reasonably require for carrying out the purpose and intent of the covenants contained herein.

9. Warranties and Covenants of Junior Lender. Junior Lender hereby represents and warrants to and covenants and agrees with Senior Lender as follows:

(a) Junior Lender has delivered to Senior Lender true and complete fully executed copies of the Mezzanine Loan Documents, and such documents have not been amended, modified or supplemented in any way.

(b) Junior Lender hereby consents to the provisions of the Senior Note, Senior Mortgage and the other Senior Loan Documents delivered to Junior Lender, as well as the provisions of the Junior Note, Junior Mortgage and the other Junior Loan Documents delivered to Junior Lender subject to this Intercreditor Agreement.

(c) Junior Lender shall have the right without the written consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Mezzanine Loan Modification") of the Mezzanine Loan or the Mezzanine Loan Documents provided that no such Mezzanine Loan Modification shall (i) increase the

UNOFFICIAL COPY

interest rate or principal amount of the Mezzanine Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Mezzanine Loan Documents, (iii) extend or shorten the scheduled maturity date of the Mezzanine Loan, (iv) convert or exchange the Mezzanine Loan into or for any other indebtedness or subordinate any of the Mezzanine 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 cash flow or appreciation of the Premises or (vi) cross default the Mezzanine Loan with any other indebtedness. Notwithstanding anything to the contrary contained herein, if an Event of Default exists under the Mezzanine Loan Documents, Junior Lender shall be permitted to modify or amend the Mezzanine Loan Documents in connection with a work-out or other surrender, compromise, release, renewal or modification of the Mezzanine Loan except that under no conditions shall clause (i) (with respect to increases in principal amounts only), clause (ii), clause (iii) (with respect to shortening the maturity only), clause (iv) or clause (v) be modified without the written consent of Senior Lender. In addition and notwithstanding the foregoing provisions of this Section 8(c), any amounts funded by the Junior Lender under the Mezzanine Loan Documents as a result of (y) the making of any Protective Advances or other advances by the Junior Lender, or (z) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 8(c).

(d) Notwithstanding any other provisions in the Mezzanine Loan Documents to the contrary, Junior Lender agrees to assign and release unto the holder or holders of the Senior Loan or the Junior Loan, as the case may be, as long as the Senior Loan or the Junior Loan, as the case may be, is outstanding, all of its right, title and interest or claim in and to (i) all insurance policies and insurance proceeds in respect to the Premises for application pursuant to the provisions of the Mezzanine Loan Documents, and (ii) all condemnation awards made for any taking of any part of the Premises for application pursuant to the provisions of the Mezzanine Loan Documents.

(e) If Junior Lender obtains any assets of the Borrower and is not entitled to apply such assets to the Mezzanine Loan in accordance with the provisions of this Agreement, Junior Lender will hold such assets in trust for, and immediately pay, deliver and assign to the holders of the Senior Loan or the Junior Loan, as the case may be, such assets for application to the Senior Loan or the Junior Loan, as the case may be.

(f) Junior Lender, as the holder of the Mezzanine Loan, shall not at any time demand or retain any voluntary or optional payment, prepayment, redemption or repurchase of any portion of the Mezzanine Loan from the Borrower, which optional or voluntary payments, repayments, redemptions or repurchases are expressly prohibited hereby.

(g) If the holder or holders of the Senior Loan, the Junior Loan or their agents exercise any right or take any remedial action pursuant to the terms and provisions of the Senior Mortgage, the Junior Mortgage, the Senior Loan Documents or the Junior Loan Documents, Junior Lender expressly waives any defenses or claims it may have as a junior mortgagee or otherwise against the Senior Lender or holder of the Senior Loan or

UNOFFICIAL COPY

the Junior Loan, as the case may be, in connection with such act by the holder or holders of the Senior Loan, the Junior Loan or their agents, other than defenses or claims predicated on a breach of this Agreement by Senior Lender, the holder of the Senior Loan, the holder of the Junior Loan, or Senior Lender's or such holder's bad faith or willful misconduct.

(h) Junior Lender agrees not to oppose any plan of reorganization or rehabilitation proposed or approved by the holder or holders of the Senior Loan or the Junior Loan, as the case may be, in any Bankruptcy Proceeding (as hereinafter defined) on the basis that Junior Lender is entitled to any payments until the Senior Loan and Junior Loan have been paid in full.

(i) The foregoing provisions are solely for the purpose of defining the relative rights of the holder or holders of the Senior Loan and the Junior Loan and the holder or holders of the Mezzanine Loan, and nothing herein shall impair, as between the Borrower and Senior Lender, the obligation of the Borrower, which is unconditional and absolute, to pay the Senior Loan and the Junior Loan in accordance with their respective terms, nor shall anything herein prevent Senior Lender from exercising all remedies otherwise permitted by applicable law or under the Senior Note, the Junior Note, the Senior Mortgage, the Junior Mortgage, the Senior Loan Documents or the Junior Loan Documents.

10. Priority of Payments in Liquidation or Insolvency. In the event of any proceedings to liquidate, dissolve or wind up the Borrower, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or its Premises (a "Bankruptcy Proceeding"), the Senior Loan and the Junior Loan shall be preferred in payment over the Mezzanine Loan, and the Senior Loan and Junior Loan shall be paid in full before any payment is made upon the Mezzanine Loan; and in any such event any payment or distribution of any kind or character, whether in cash, Premises or securities (other than in securities or other evidences of indebtedness, the payment of which is subordinated to the Senior Loan and Junior Loan to the same extent as herein provided), which shall be made upon or in respect of the Mezzanine Loan as a result of any such proceeding, shall be paid over first to the holder or holders of the Senior Loan or the Junior Loan, as the case may be, for application in payment thereof unless and until the Senior Loan and Junior Loan shall have been paid or satisfied in full.

11. Junior Lender Cooperation. Junior Lender, as the holder of the Mezzanine Loan, undertakes and agrees for the benefit of each holder of the Senior Loan and the Junior Loan, to execute, verify, deliver and file any proofs of claim, consents, assignments or other instruments in form and content reasonably satisfactory to Junior Lender which any holder of the Senior Loan or the Junior Loan may at any time reasonably require in connection with any Bankruptcy Proceeding in order to effectuate the agreements contained herein.

12. Right to Purchase Senior Lender's Interest.

UNOFFICIAL COPY

(a) Junior Lender shall have the right to purchase the Senior Loan and the Junior Loan and all rights, interests, documents, instruments, insurance policies, and accounts in connection therewith (without recourse), from Senior Lender following an Event of Default under the Senior Loan Documents or the Junior Loan Documents, as the case may be, for a purchase price (the "Purchase Price") equal to the sum of (i) 100% of the outstanding principal indebtedness evidenced and secured by the Senior Loan Documents and the Junior Loan Documents, (ii) all accrued, unpaid interest due on the Senior Loan and the Junior Loan to and including the date on which the sale is closed and (iii) all amounts of any kind owed Senior Lender pursuant to the terms of the Senior Loan Documents and Junior Loan Documents (other than late fees and interest at the Default Rate). If the purchase is not closed on or before the 60 days from the date Senior Lender notifies Junior Lender of an Event of Default under the Senior Loan Documents or the Junior Loan Documents, for any reason other than the delay, adjournment or default of Senior Lender, the purchase price shall be increased by the amount of any late fees and interest at the Default Rate otherwise due and payable on the Senior Loan and/or the Junior Loan to the date of closing.

(b) Junior Lender's election to purchase the Senior Loan and the Junior Loan must be exercised by written notice to Senior Lender which notice shall designate a date for the closing of the purchase (which date may not be less than ten (10), nor more than thirty (30) days from the date of the closing of the purchase).

(c) On the date of the Closing, Senior Lender shall deliver to Junior Lender the following documents:

(i) Original, signed copies of all of the Senior Loan Documents (except for UCC Financing Statements of which copies shall be delivered);

(ii) Original, signed copies of all of the Junior Loan Documents (except for UCC Financing Statements of which copies shall be delivered), if applicable; and

(iii) An assignment, without recourse, and without representation or warranty of any kind (other than a representation as to the outstanding principal balance of the Senior Loan and the Junior Loan (if applicable), accrued and unpaid interest and other amounts due, and that Senior Lender is the owner and holder of the entire Senior Loan and Junior Loan (if applicable), and has not assigned, pledged or hypothecated all or any interest therein), of the Senior Loan Documents, the Junior Loan Documents (if applicable) and all rights, interests, documents, instruments, insurance policies (including title insurance policies), accounts, escrows, moneys and deposits held by Senior Lender pursuant to the terms of the Senior Loan Documents and the Junior Loan Documents (if applicable) in form reasonably satisfactory to Senior Lender and Junior Lender in their reasonable discretion;

UNOFFICIAL COPY

(d) Junior Lender shall wire transfer into an account or accounts designated by Senior Lender the Purchase Price.

(e) If for any reason whatsoever, other than the default of Senior Lender or other failure of Senior Lender to deliver the documents described in Subsections (c)(i) and (c)(ii), the sale is not consummated and Senior Lender does not receive the Purchase Price in its account on the date of closing, Junior Lender's right to purchase the Senior Loan Documents and Junior Loan Documents (if applicable) shall be null and void; provided, that if the designated closing date is less than thirty (30) days from the date of notice from Senior Lender, Junior Lender shall have the right to extend the closing date to any date up to and including the last day of such thirty (30) day period.

(f) Neither any of the rights granted Junior Lender in this Section 11, nor Junior Lender's election to purchase the Senior Loan Documents and Junior Loan Documents (if applicable), shall nullify, impair, diminish or in any way affect any of the rights or remedies granted to or available to Senior Lender pursuant to the Senior Loan Documents and the Junior Loan Documents or available to Senior Lender at law or in equity, or the exercise of any such rights or remedies by Senior Lender; provided, however, that if Senior Lender is notified of the exercise of Junior Lender's right to purchase the Senior Loan and Junior Loan (if applicable) prior to the filing of a foreclosure action or seeking the appointment of a receiver, Senior Lender shall defer filing such action or actions to have a receiver appointed, until the thirty first (31st) day after the date of such notice. Notwithstanding the foregoing, Senior Lender shall not be precluded from exercising its rights in rents or other cash collateral or its rights to take any action deemed reasonably necessary or reasonably desirable by Senior Lender to protect its interests or security in the Premises, irrespective of receipt of notice of the exercise of Junior Lender's right to purchase the Senior Loan and the Junior Loan (if applicable) (provided that any proceeds received by Senior Lender as a result of its exercising such rights shall be applied to the costs thereof and then to the outstanding balance of the Senior Loan, as more fully provided in the Senior Loan Documents, and then to the outstanding balance of the Junior Loan, as more fully provided in the Junior Loan Documents, with any such reduction in the balance of the Senior Loan and/or the Junior Loan reducing the Purchase Price accordingly).

13. Junior Lender's Right to Cure Borrower's Default. Prior to Senior Lender commencing any action to enforce its rights under the Senior Loan Documents or the Junior Loan Documents, as the case may be, Senior Lender shall provide written notice of the default which would permit the Senior Lender to commence such action to Junior Lender whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "Senior Lender Default Notice") and shall permit Junior Lender an opportunity to cure such default in accordance with the provisions of this Section 12. If the default is a monetary default relating to a liquidated sum of money, Junior Lender shall have until ten (10) business days after the later of (a) the giving by Senior Lender of the Senior Lender Default Notice and (b) 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, Junior Lender shall (i) defend and hold harmless Senior Lender for all cost, expenses, losses, liabilities, obligations, damages, penalties,

UNOFFICIAL COPY

costs, and disbursements imposed on, incurred by or asserted against Senior Lender due to or arising from such Monetary Cure Period and (ii) without duplication of the foregoing, reimburse the Senior Lender for interest on the Senior Loan and/or on any Protective Advances. Junior Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan or the Junior Loan for a period of more than four (4) consecutive months. If the default is of a non-monetary nature, Junior Lender shall have the same period of time as the Borrower under the Senior Loan Documents and/or the Junior Loan Documents to cure such non-monetary default; provided, however if such non-monetary default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Junior Lender, Junior Lender shall be given an additional period of time as is reasonably necessary for Junior Lender to cure such nonmonetary default for so long as (x) Junior Lender makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal and/or interest payments under the Senior Loan and/or the Junior Loan, (y) such additional period of time does not exceed 90 days in the aggregate from the date Junior Lender commenced cure and (z) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower. Any additional cure period granted to the Junior Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of the Borrower.

14. Warranties and Covenants of Senior Lender. Senior Lender hereby represents and warrants and covenants and agrees with Junior Lender as follows:

(a) Senior Lender has delivered to Junior Lender true and complete fully executed copies of the Senior Loan Documents, and such documents have not been materially amended, modified or supplemented in any way since the date hereof.

(b) Senior Lender has delivered to Junior Lender true and complete fully executed copies of the Junior Loan Documents, and such documents have not been materially amended, modified or supplemented in any way since the date hereof.

(c) Senior Lender hereby consents to the provisions of the Mezzanine Note, Mezzanine Mortgage and the other Mezzanine Loan Documents.

(d) Subject to the provisions of this Section 14, Senior Lender may, at any time and from time to time, in its sole discretion, take any or all of the following actions; (i) retain or obtain a security interest in any Premises, other than the Pledged Collateral, to secure the Senior Loan and/or the Junior Loan; (ii) retain or obtain the primary or secondary obligation of any Borrower with respect to the Senior Loan and/or the Junior Loan; (iii) extend or renew the Senior Loan or the Junior Loan for one or more periods of time (whether or not longer than the original period), alter or modify the Senior Loan or the Junior Loan; (iv) amend any one or more of the Senior Loan Documents, including without limitation a decrease in the principal amount of the Senior Loan or an increase or decrease in the rate of interest payable thereunder; (v) amend any one or more of the Junior Loan Documents, including without limitation a decrease in the principal amount of the Junior Loan or an increase or decrease in the rate of interest payable thereunder; (vi) release its security interest in, or surrender, release or permit any substitution or

UNOFFICIAL COPY

exchange for all or any part of, the Premises securing any of the Senior Loan or the Junior Loan, or extend or renew the Senior Loan or the Junior for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any Borrower with respect to any such Premises; and (vii) take any such action with respect to any collateral for the Senior Loan or the Junior Loan which it may be entitled to take under the Senior Loan Documents, the Junior Loan Documents or pursuant to applicable law. Senior Lender will provide written notice to Junior Lender of any of the foregoing actions.

15. Junior Lender's Rights Upon Borrower's Default Under the Mezzanine Loan Documents. Upon an Event of Default under any of the Mezzanine Loan Documents, Junior Lender may accelerate the Mezzanine Loan and exercise Junior Lender's remedies under the Pledge Agreement to effect a transfer of the Pledged Collateral to Junior Lender or its nominee. Provided no Event of Default then exists under the Senior Loan Documents or the Junior Loan Documents, the acceleration of the Mezzanine Loan, the exercise of the Junior Lender's remedies under the Pledge Agreement, the transfer of the Pledged Collateral to Junior Lender or its nominee (collectively, the "Enforcement of Junior Lender's Remedies") shall not constitute an Event of Default under the Senior Loan Documents or the Junior Loan Documents. Notwithstanding the foregoing or anything else to the contrary contained herein, Junior Lender agrees that it shall not exercise its rights and remedies, in law or in equity, or otherwise, in order to realize on any collateral that is not Pledged Collateral, until, in any such case, the earlier of (y) thirty (30) days following the satisfaction in full of the Senior Loan and Junior Loan, or (z) thirty (30) days following the acquisition of the Senior Loan and the Junior Loan (if applicable) by the Junior Lender as provided under this Agreement.

16. Senior Lender's Rights Not Impaired. No right of the holder or holders of the Senior Loan or the Junior Loan to enforce the subordination of the Mezzanine Loan Documents or the Mezzanine Loan, as herein provided, shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower, or by any noncompliance by the Borrower with any of the terms, provisions and covenants of the Mezzanine Loan or the Mezzanine Loan Documents, regardless of any knowledge thereof that the holder or holders of the Senior Loan or the Junior Loan may have or be otherwise charged with.

17. Authority. Each party hereby represents and warrants to the other that the party making such representation has full power and authority to enter into and perform its obligations hereunder, that this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of such party enforceable in accordance with its terms.

18. Notice. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

UNOFFICIAL COPY

To Senior Lender: AMCORE Bank, N. A.
 1971 Gowdey Road
 Naperville, Illinois 60563
 Attn: David Maloney, Vice President

With a copy to: Randall & Kenig LLP
 NBC Tower – Suite 2510
 455 North Cityfront Plaza
 Chicago, Illinois 60611
 Attn: Scott H. Kenig, Esq.

To Junior Lender: Genesse Road Properties, Inc.
 8395 Wesley Drive
 Flushing, Michigan 48433
 Attn: Mr. Pierre Najjar

With a copy to: Riordan, Fulkerson, Hupert & Coleman
 30 North LaSalle Street – Suite 2630
 Chicago, Illinois 60602
 Attn: Alan L. Fulkerson, Esq.

If to Borrower: Clocktower Center, LLC
 2225 East Oakton Ave.
 Arlington Heights, Illinois 60005
 Attn: Mr. Robert Baroud

With a copy to: Ernest K. Koehler, Esq,
 Attorney at Law
 2225 East Oakton Ave.
 Arlington Heights, Illinois 60005

or to each party at such other addresses as such party may designate in a written notice to the other parties.

19. Governing Law. THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF ILLINOIS. BORROWER, SENIOR LENDER AND JUNIOR LENDER, IN ORDER TO INDUCE SENIOR LENDER TO ENTER INTO THIS AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, 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 COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR SAID COUNTY. BORROWER, SENIOR LENDER, AND JUNIOR LENDER EACH HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR

UNOFFICIAL COPY

CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT ON THIS AGREEMENT IN ACCORDANCE WITH THIS PARAGRAPH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SENIOR LENDER TO ENTER INTO THIS AGREEMENT.

20. Waivers. EACH OF BORROWER, SENIOR LENDER, AND JUNIOR LENDER, EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY SENIOR LENDER OR JUNIOR LENDER ON THIS AGREEMENT, ANY AND EVERY RIGHT IT MAY HAVE TO (A) A TRIAL BY JURY, (B) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS EXPRESSLY PERMITTED HEREUNDER OR SUCH CLAIM IS REQUIRED TO BE SO PLED BY APPLICABLE COURT RULES TO PREVENT SUCH RIGHTS FROM BEING BARRED, AND (C) SEEK TO HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS REQUIRED TO DO SO BY APPLICABLE COURT RULES TO PREVENT SUCH RIGHTS FROM BEING BARRED.

21. Continuing Effectiveness. The covenants and agreements of Junior Lender contained in this Agreement that benefit Senior Lender or the holder of the Senior Loan and/or the Junior Loan, and any restriction on Junior Lender shall cease upon repayment of the Senior Loan and the Junior Loan.

22. Assignment or Transfer. Junior Lender may not sell, assign or transfer its loan to any entity other than an institutional lender; provided, Junior Lender may transfer the Mezzanine Loan to an entity owned and controlled by such persons or entities that control Junior Lender as of the date hereof. Any such purchaser, assignee or transferee shall expressly assume all such obligation and duties hereunder.

23. Counterparts. This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument.

24. Invalidity of Provisions. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Agreement shall in no way be affected thereby.

25. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Agreement contained by or on behalf of any party shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

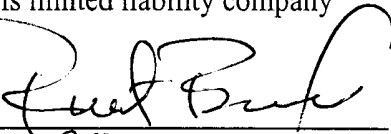
26. Amendment and Modification. This Agreement and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

UNOFFICIAL COPY

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

Borrower:

CLOCKTOWER CENTER, LLC, an Illinois limited liability company

By: 

Name: ROBERT BAROUD

Title: MANAGING MEMBER

Senior Lender:

AMCORE BANK, N. A.

By: _____

Name: _____

Title: _____

Junior Lender:

GENESSE ROAD PROPERTIES, INC., a Michigan corporation

By: _____

Name: Pierre Najjar

Title: President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

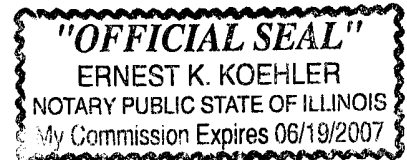
STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, Ernest Koehler a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Baroni the Manager of Clocktower Center, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, 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 limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ^{11th}~~20th~~ day of ^{December}~~October~~, 2006.

Ernest Koehler
NOTARY PUBLIC

(SEAL)



STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, _____ a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, a _____ of Amcore Bank, N. A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her 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 20th day of October, 2006.

NOTARY PUBLIC

(SEAL)

UNOFFICIAL COPY

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

Borrower:

CLOCKTOWER CENTER, LLC, an Illinois limited liability company

By: _____
Name: _____
Title: _____

Senior Lender:

AMCORE BANK, N. A.

By: David Maloney VP
Name: David Maloney
Title: Vice President

Junior Lender:

GENESSE ROAD PROPERTIES, INC., a Michigan corporation

By: _____
Name: Pierre Najjar
Title: President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
 COUNTY OF _____)

I, _____ a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of Clocktower Center, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, 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 limited liability company, for the uses and purposes therein set forth.

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

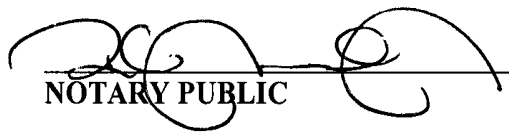
 NOTARY PUBLIC

(SEAL)

STATE OF ILLINOIS)
) ss.
 COUNTY OF DUPAGE)

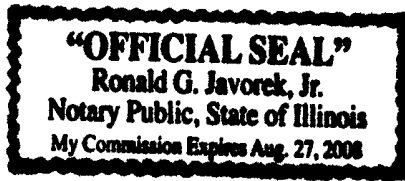
I, R.G. Javorek Notary Public in and for said County, in the State aforesaid, do hereby certify that David Maloney, a Vice President of AMCORE Bank, N. A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her 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 14th day of December, 2006.



 NOTARY PUBLIC

(SEAL)



UNOFFICIAL COPY

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

Borrower:

CLOCKTOWER CENTER, LLC, an Illinois limited liability company

By: _____

Name: _____

Title: _____

Senior Lender:

AMCORE BANK, N. A.

By: _____

Name: _____

Title: _____

Junior Lender:

GENESSE ROAD PROPERTIES, INC.,
a Michigan corporation

By: _____

Name: Pierre Najjar

Title: President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF IL)
) ss.
COUNTY OF Cook)

I, Stephen A. Fulkerson a Notary Public in and for said County, in the State aforesaid, do hereby certify that Pierre Najjar, President of Genesse Road Properties, Inc., a Michigan corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, 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 11th day of December, 2006.



(SEAL)

Stephen A. Fulkerson
NOTARY PUBLIC

Notary Public of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A
Legal Description

Lot 3 in Clock Tower Place Re Subdivision, being a re subdivision in the West half of the Northwest quarter of Section 12, Township 41 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded as document 94581887 and certificate of correction recorded as document 94737238 in Cook County, Illinois (excepting therefrom that part of Lot 3 conveyed to the People of the State of Illinois, Department of Transportation by Trustees Deed recorded March 8, 1996 as document 96177025 described as follows: beginning at the Southwest corner of said Lot 3 (The West line of Lot 1 in said Clock Tower Place Re Subdivision having an assumed bearing of North 00 degrees 00 minutes 00 seconds East for this legal description); thence Southeasterly along the Southerly line of said Lot 3, being a curved line convex Southwesterly and having a radius of 955.45 feet, an arc distance of 185.45 feet to a point of compound curvature in the Southerly line of said Lot 3 (the chord of said ARC bears South 69 degrees 24 minutes 25 seconds East, 185.16 feet; thence North 67 degrees 25 minutes 13 seconds, West 184.65 feet to the Westerly Line of said lot 3; thence South 26 degrees 09 minutes 13 seconds West along the Westerly line of said Lot 3 to the point of beginning).