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This document prepared by
and upon recording return to:



Doc#: 0705234056 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/21/2007 10:26 AM Pg: 1 of 20

Levenfeld Pearlstein, LLC
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602
Attention: Steven F. Ginsberg

INTERCREDITOR AGREEMENT

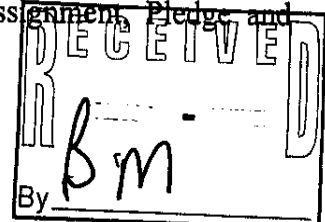
This **INTERCREDITOR AGREEMENT** (the "**Agreement**"), dated as of February 7, 2007, is entered into by and among **EE DEVELOPMENT LLC**, an Illinois limited liability company ("**Borrower**"), and **EREF MEZZANINE FUND, LLC**, a Delaware limited liability company, with an address of 1200 North Ashland Avenue, Suite 600, Chicago, Illinois 60622 ("**Mezzanine Lender**") and **NATIONAL CITY BANK**, a national banking association, having an address of One North Franklin, Suite 150, Chicago, Illinois 60606 ("**Senior Lender**").

WHEREAS, Chicago Title Land Trust Company, not personally but as Trustee of Trust Agreement dated September 8, 2004 and known as Trust #01-04119 ("**Chicago Title Land Trust 01-04119**") currently owns fee simple title to that certain real property and all improvements thereon commonly known as 1931-1947 N. Halsted, Chicago, Illinois (the "**Trust Property**"), which is more particularly described on **Exhibit A** attached hereto and by this reference incorporated herein; and

WHEREAS, Borrower is the owner of 100% of the beneficial interests in and to the Chicago Title Land Trust Company #01-04119; and

WHEREAS, 1901 Halsted LLC, an Illinois limited liability company ("**1901 Halsted**") is the direct owner of 50% of the ownership interests in and to Borrower, and LPB LLC, an Illinois limited liability company ("**LPB**"), is the direct owner of 50% of the ownership interests in and to Borrower; and

WHEREAS, Mezzanine Lender has made a loan (the "**Mezzanine Loan**") to Borrower (Borrower and each Guarantor or other obligor with respect to the Mezzanine Loan being called an "**Obligor**") which is evidenced by that certain Promissory Note dated December 27, 2006 in the maximum principal amount of Four Million and No/100 Dollars (\$4,000,000.00) (the "**Mezzanine Note**"), which is secured, by among other things, an Assignment, Pledge, and



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Security Agreement (the "**Pledge Agreement**") dated the same date as the Mezzanine Note pursuant to which 100% of the ownership interests in and to Borrower were pledged to Mezzanine Lender as additional collateral for the Mezzanine Loan. The Mezzanine Note, the Pledge Agreement and all other documents evidencing or securing the Mezzanine Loan (including without limitation all documents listed on **Exhibit B** to this Agreement) are hereinafter referred to as the "**Mezzanine Loan Documents**"; and

WHEREAS, Senior Lender has agreed to make loans and other credit accommodations to and for the account of Chicago Title Land Trust 01-04119 and Borrower (the "**Senior Loan**"), which are evidenced by that certain Commercial Note dated February __, 2007 in the maximum principal amount of Eleven Million One Hundred Thousand and No/100 Dollars (\$11,100,000.00) (the "**Senior Note**") secured by, among other things a Real Estate Mortgage (the "**Mortgage**"), which Mortgage has been or may be recorded against the Trust Property and shall be a first priority lien against the Trust Property and certain other collateral as described in the Mortgage (the Trust Property and such other collateral being collectively called the "**Collateral**"). The Senior Note, the Mortgage and all other documents evidencing or securing the Senior Loan (including without limitation, all documents listed on **Exhibit C** to this Agreement) are hereinafter collectively referred to as the "**Senior Loan Documents**"; and

WHEREAS, it is a condition precedent to the Senior Loan that, subject to the terms and conditions of this Agreement, the Senior Loan shall be and remain at all times prior to and superior to the Mezzanine Loan in right of payment, and that the Mortgage and Senior Loan Documents shall be and remain at all times a lien or charge upon the Trust Property and all of the Collateral prior to and superior to any lien or charge of Mezzanine Lender pursuant to the Mezzanine Loan Documents, except as otherwise specifically provided herein.

AGREEMENT.

NOW, THEREFORE, in order to induce Senior Lender to make loans and advances as provided in the Senior Loan Documents, the parties to this Agreement agree as follows:

1. **RECITALS.** Borrower, each other Obligor executing and/or otherwise acknowledging this Agreement, Mezzanine Lender and Senior Lender each acknowledge that the Recitals in this Agreement are hereby incorporated in, and made a part of, this Agreement.

2. **SUBORDINATION.** Except as otherwise provided herein, Mezzanine Lender hereby agrees that: (a) all of the liens, encumbrances, security interests, terms, covenants and conditions of the Mezzanine Loan, and all advances of the Mezzanine Loan, shall at all times be wholly subordinate to: (i) the liens, encumbrances, security interests, terms, covenants and conditions of the Senior Loan and the Senior Loan Documents (as the same may be extended, amended or modified from time to time and as the indebtedness under the Senior Loan Documents may be increased from time to time, subject to Section 6 below); and (ii) any and all advances (whether or not obligatory) advanced or incurred in accordance with any of the terms, covenants, and conditions of the Senior Loan Documents (subject to Section 6 below), and (b) all amounts due to Mezzanine Lender under the Mezzanine Loan (including without limitation, each payment of principal, interest, or other charges and each prepayment, assignment of leases and

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rents, rights with respect to insurance proceeds and condemnation awards, advances and expenses, with interest), are hereby and shall at all times continue to be expressly subject and subordinate in right of payment to the indebtedness of Chicago Title Land Trust 01-04119 and/or Borrower evidenced by the Senior Loan Documents and any and all advances (whether or not obligatory) advanced or incurred in accordance with the Senior Loan Documents. The rights and priorities set forth in this Section shall be effective notwithstanding the order of creation, attachment, recording, vesting or perfection of the rights of Senior Lender in the Senior Loan Documents or of Mezzanine Lender in the Mezzanine Loan Documents or in and to any other collateral conveyed, assigned, mortgaged or pledged to Senior Lender with respect to the Senior Loan or to Mezzanine Lender with respect to the Mezzanine Loan. Notwithstanding anything contained herein or in the Senior Loan Documents to the contrary, Senior Lender hereby acknowledges and agrees that Mezzanine Lender's security interest in the ownership interests in and to Borrower pursuant to the Pledge Agreement shall be a first-priority lien against such ownership interests, and the interest of Senior Lender in such ownership interests, if any, shall be subordinate to the interest of Mezzanine Lender therein.

3. **NO SUBROGATION BY MEZZANINE LENDER.** Mezzanine Lender shall not acquire by subrogation, contract or otherwise, any lien upon the Collateral or any other estate, right or interest in the Collateral (or any part thereof or interest therein) including, without limitation, any lien which may arise in respect to real estate taxes, assessments or other governmental charges which is or may be prior in right to any lien or security interest created, evidenced or arising under any of the Senior Loan Documents.

4. **NOTICE BY MEZZANINE LENDER OF DEFAULT; RIGHTS OF MEZZANINE LENDER UPON DEFAULT.**

(a) Mezzanine Lender shall give Senior Lender: (i) notice of any default by the Borrower under the Mezzanine Loan Documents at the time notice of such default is given to Borrower, (ii) copies of each further notice to the Borrower relating to such default, and (iii) copies of each pleading and other document filed in connection with any action by or on behalf of, or against, Mezzanine Lender and involving Borrower, any Obligor or any of the Collateral.

(b) Notwithstanding anything to the contrary contained herein, upon the occurrence of an event pursuant to which Mezzanine Lender shall have option, in its own name or in the name of a nominee owned by Mezzanine Lender (a "**Permitted Transferee**"), to exercise certain remedies under the Mezzanine Loan Documents, including, but not limited to, the right (but not the obligation) to: (i) realize upon the Pledge Agreement and succeed to the ownership and control of Borrower, (ii) succeed to Borrower's rights, obligations and liabilities in, to and under the Senior Loan Documents, or (iii) exercise any right it may have to cause the operation of the Trust Property to be undertaken or completed at its direction in accordance with the requirements of the Senior Loan Documents without taking title to the Trust Property or the ownership interests in Borrower (collectively, (i), (ii) and (iii) are herein sometimes referred to as the "**Mezzanine Lender's Remedies**"), then (x) Mezzanine Lender shall immediately so notify Senior Lender; and (y) Senior Lender shall continue to recognize Borrower, or shall recognize Mezzanine Lender (or its Permitted Transferee), as the case may be, as its "Borrower" under the Senior Loan Documents and shall continue funding the Senior Loan subject and pursuant to the

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terms of the Senior Loan Documents and not call a default under the Senior Loan Documents provided Borrower or Mezzanine Lender (or its Permitted Transferee), as the case may be, (1) assumes the obligations of Borrower under the Senior Loan Documents in a writing reasonably acceptable to Senior Lender and its counsel, (2) pays and performs the obligations of the "Borrower" under the Senior Loan documents, (3) cures any defaults or Events of Default under the Senior Loan Documents (the fact that a default under the Mezzanine Loan Documents constitutes a default or an event of default under the Senior Loan Documents shall be deemed cured if Mezzanine Lender abides by the provisions of this Section 4); (4) continues the development and/or operation, as applicable, of the Trust Property substantially in accordance with the plans and specifications approved by the Senior Lender and pursuant to the terms and conditions contained in the Senior Loan Documents; and (5) Mezzanine Lender provides an additional guarantor for the obligations of John Terzakis and Mark Hunt under the Guaranty(ies) each one executed in favor of Senior Lender in connection with the Senior Loan; provided, that, such additional guarantor must have (A) a minimum net worth of at least \$50,000,000, and (B) liquidity of no less than \$5,000,000 (consisting of cash or cash equivalents or letters of credit and/or line of credit availability; provided, that, such liquidity may consist of no less than \$3,000,000 in cash); and provided, further that Senior Lender shall not be required to release John Terzakis and/or Mark Hunt from any such Guaranty(ies) each one executed in connection with the Senior Loan.

5. **NOTICE BY SENIOR LENDER OF DEFAULT; CURE RIGHTS.** Senior Lender shall give Mezzanine Lender notice of any Event of Default (as defined under the Senior Loan Documents) under the Senior Loan Documents (a "**Senior Loan Default Notice**"), at the time any such notice is given to Chicago Title Land Trust 01-04119 and/or Borrower, and shall permit Mezzanine Lender the same opportunity to cure such Event of Default as is provided Chicago Title Land Trust 01-04119 and/or Borrower under the Senior Loan Documents. Notwithstanding anything herein contained to the contrary, Senior Lender's failure to give any Senior Loan Default Notice as required herein shall not be deemed to render this Agreement, or the subordination provisions contained herein, invalid or unenforceable against Mezzanine Lender. From and after an Event of Default has occurred under any of the Senior Loan Documents, until such Event of Default is wholly cured, Chicago Title Land Trust 01-04119 and/or Borrower shall make no payments to Mezzanine Lender under the Mezzanine Note and the Mezzanine Loan Documents from revenue generated from or by the Trust Property and/or any other Collateral pursuant to the Senior Loan documents. In the event that, notwithstanding the foregoing, Chicago Title Land Trust 01-04119 and/or Borrower shall make any payment to the Mezzanine Lender prohibited by the foregoing provision, and if such fact shall then have been made known to such Mezzanine Lender, then and in such event such payment shall be paid over and delivered forthwith to the Senior Lender.

6. **SENIOR LOAN CHANGES.** Senior Lender shall have the option, but not the obligation, to give Mezzanine Lender a courtesy notice of any increase, amendment, deferral, extension, consolidation, or supplement of or to the Senior Loan or the Senior Loan Documents (each such increase, amendment, deferral, extension, consolidation or supplement being called a "**Senior Loan Change**").

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7. **CONSENT BY MEZZANINE LENDER TO SENIOR LOAN CHANGES; MEZZANINE LOAN CHANGES.** Mezzanine Lender agrees that its consent is not required for any Senior Loan Change, except as expressly provided herein, and that Mezzanine Lender is subject to each Senior Loan Change. Mezzanine Lender shall not, without the prior written consent of Senior Lender, amend, modify, extend or renew the terms of the Mezzanine Loan Documents if the same would (a) result in a change to the payments permitted under Section 10 as of the date hereof, including, without limitation, any change which would increase the maximum principal amount of, the interest rate or rates per annum beyond the highest rate chargeable under the Note, or fees payable with respect to the Mezzanine Loan or advance the scheduled payment dates or final maturity dates of the Mezzanine Loan beyond any currently documented extension periods, (b) impose any express restrictions on the Borrower's ability to make payments on the Senior Loan (it being understood that the Mezzanine Loan Documents currently contain no such restriction), (c) change or add any event of default or any covenant with respect to the Mezzanine Loan or make more restrictive any of the financial covenants (or the definitions applicable thereto) set forth in the Mezzanine Loan Documents as in effect on the date hereof or (d) if the foregoing would result in a default under any Senior Loan Document, increase the obligation of the Borrower or confer additional material rights on the Mezzanine Lender or any other holder of the Mezzanine Loan in a manner adverse to the Borrower or Senior Lender.

8. **RELEASE OR COMPROMISE BY SENIOR LENDER.** Senior Lender may, in its sole discretion, without affecting the subordination of the Mezzanine Loan or the Mezzanine Loan Documents, and without notice to Mezzanine Lender (or the consent of Mezzanine Lender):

- (a) release, subordinate, or compromise any obligation pursuant to the Senior Loan Documents, or
- (b) release or subordinate any of Senior Lender's liens or security interests in, or surrender, or release, or permit any substitution or exchange of all or any part of any Collateral securing repayment of the Senior Note, or
- (c) retain or obtain a lien or security interest in any property to further secure payment or performance of any obligation under the Senior Loan Documents, or
- (d) retain or obtain the obligation of any other Obligor with respect to the Senior Loan or any part thereof, or
- (e) sell, exchange, realize upon, or otherwise deal with, in any manner and in any order, any Collateral or any part thereof.

9. **CROSS-DEFAULT.** Senior Lender acknowledges and agrees that the Mezzanine Loan is cross-collateralized and cross-defaulted with that certain (i) Mezzanine Loan in the maximum principal amount of \$3,000,000 made as of December 27, 2006 by Mezzanine Lender to Lincoln Park Clybourn 1900 LLC, MM Halsted LLC, VM Halsted LLC, 1201 CC LLC and GM Halsted LLC with respect to that certain real property commonly known as 1201 W. Cortland, Chicago, Illinois (the "**Clybourn Mezzanine Loan**"); and (ii) Mezzanine Loan in

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the maximum principal amount of \$15,000,000 made as of December 27, 2006 by Mezzanine Lender to LPH LLC with respect to that certain real property commonly known as the Lincoln Park Hospital Campus consisting of: that certain real property consisting of 550 West Webster Avenue, Chicago, Illinois and 551 West Grant Plaza, Chicago, Illinois which are commonly referred to as the Lincoln Park Hospital Campus, which consists of the following buildings: (i) the so-called 1928 Building; (ii) the so-called 1963 Building; (iii) the so-called 1975 Building; (iv) the so-called 1983 Building; (v) the so-called Boiler House; and (vi) the so-called Parking Garage (the "Lincoln Park Hospital Mezzanine Loan"). Senior Lender and Mezzanine Lender hereby further acknowledge and agree that Section 9 of each Intercreditor Agreement that was executed by Senior Lender and Mezzanine Lender on or about December 27, 2006 with respect to each of the Clybourn Mezzanine Loan and the Lincoln Park Hospital Mezzanine Loan shall each hereby be deemed to be amended to provide that each of the Mezzanine Loan, the Clybourn Mezzanine Loan and the Lincoln Park Mezzanine Loan are cross-collateralized and cross-defaulted amongst each other during the period in which National City Bank is the senior lender with respect to such projects, as applicable.

10. **PAYMENT OF MEZZANINE LOAN.** Borrower shall have the right to: (a) make scheduled monthly interest payments to Mezzanine Lender under the Mezzanine Loan Agreement, whether such funds come from the cash flow from the Trust Property, or otherwise; (b) on the maturity date of the Mezzanine Loan, pay off the Mezzanine Loan in full, provided that if at such time the Senior Loan has not been paid off or is not simultaneously getting paid off, the funds used to payoff the Mezzanine Loan shall come from sources other than the Trust Property (unless otherwise agreed to by Senior Lender at such time); (c) make partial prepayments of the Mezzanine Loan using net proceeds (proceeds after payoff of the Senior Loan and customary refinancing closing costs) from any refinance of Trust Property; and (d) make partial prepayments of the Mezzanine Loan using net proceeds (proceeds after payment of the applicable release price to the Senior Lender under the Senior Loan Documents, and customary closing costs) from any sale of any portion of the Trust Property. If, notwithstanding the provisions of this Agreement, any payment or distribution is received by Mezzanine Lender on the Mezzanine Loan in contravention of the terms of this Agreement, such payment or distribution shall not be commingled with any asset of Mezzanine Lender, shall be held in trust by Mezzanine Lender for the benefit of Senior Lender, and shall be paid over to Senior Lender for application to the payment of amounts payable pursuant to the Senior Loan Documents until the Senior Loan shall have been repaid in full.

11. **RIGHT OF SENIOR LENDER TO FILE PROOF OF CLAIM FOR MEZZANINE LENDER.** Except as otherwise provided in Section 4(b) and except with respect to any action that may be taken by Mezzanine Lender pursuant to that certain Guaranty of Payment and Completion executed in connection with the Mezzanine Loan, regardless of whether a default exists under the Mezzanine Loan Documents, Mezzanine Lender shall not, without the prior written consent of Senior Lender, take any action to exercise any rights with respect to (including without limitation those rights and remedies set forth in Mezzanine Loan Documents), any of the Collateral until the Senior Loan and any other amounts payable pursuant to the Senior Loan Documents have been repaid in full. In the event Chicago Title Land Trust 01-04119 and/or Borrower defaults on the Senior Loan or otherwise under any of the Senior Loan Documents and, as a result, Senior Lender undertakes to enforce its security interest in the

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Collateral, Mezzanine Lender agrees that Mezzanine Lender will not hinder, delay or otherwise prevent Senior Lender from taking any and all action which Senior Lender deems necessary to enforce its security interest in the Collateral and realize thereon. Upon the occurrence of any Proceeding (as hereinafter defined), (a) the Senior Loan and any other amounts payable pursuant to the Senior Loan Documents shall have been paid in full before any payment or distribution shall be made in respect of the Mezzanine Loan, (b) any payment or distribution which, but for the terms hereof, otherwise would be payable or deliverable in respect of the Mezzanine Loan, shall be paid or delivered directly to the Senior Lender until the Senior Loan and any other amounts payable pursuant to the Senior Loan Documents shall have been paid in full and Mezzanine Lender irrevocably authorizes Senior Lender to demand, sue for, collect and receive every such payment or distribution described herein and (c) Mezzanine Lender agrees to execute and deliver to Senior Lender all such further instruments confirming the authorization referred to in the foregoing clause (b) and agrees to take all such other actions as may be reasonably requested by the Senior Lender in order to enforce all claims upon or in respect of the Mezzanine Loan. For purposes hereof, "**Proceeding**" shall mean any voluntary or involuntary receivership, conservatorship, custodianship, general meeting of creditors, insolvency or bankruptcy proceeding, assignment for the benefit of creditors or any proceeding or action by or against the Borrower for any relief under any bankruptcy or insolvency law or other laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, dissolution, winding up, liquidation, compositions or extensions, or the appointment of any receiver, intervenor, conservator or custodian of, or trustee, or similar officer for, the Borrower or any substantial part of its properties or assets, including without limitation, proceedings under the United States Bankruptcy Code, or under other federal, state or local statutes, laws, rules and regulations, all whether now or hereafter in effect.

12. **FURTHER SUBORDINATIONS.** So long as (a) the Senior Loan is outstanding, or (b) Chicago Title Land Trust 01-04119 and/or Borrower has any obligation under the Senior Loan Documents, or (c) there is any lien or security interest under the Senior Loan Documents against the Collateral or any part thereof, then Mezzanine Lender shall execute, acknowledge and deliver, upon the Senior Lender's reasonable request, at any time or from time to time, any and all further subordinations, agreements or other instruments, in recordable form as Senior Lender may reasonably require for carrying out the purpose and intent of the covenants contained in this Agreement.

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) Mezzanine Lender represents, warrants and covenants to Senior Lender that it has received all consents and approvals required in order for it to execute and deliver this Agreement. Concurrently with the execution hereof, Mezzanine Lender shall provide Senior Lender with certified copies of resolutions of its Manager authorizing the execution and performance of this Agreement. Senior Lender represents, warrants and covenants to Mezzanine Lender that it has received all consents and approvals required in order for it to execute and deliver this Agreement.

(b) Mezzanine Lender has delivered to Senior Lender true and complete copies of the Mezzanine Loan Documents, and such documents have not been amended, modified, or

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supplemented in any way, except for any amendment which has been delivered to Senior Lender and is listed on **Exhibit B** attached to this Agreement. Senior Lender hereby consents to and approves all provisions of the Mezzanine Loan Documents, subject to the terms and conditions hereof. Senior Lender has delivered to Mezzanine Lender true and complete copies of the Senior Loan Documents, and such documents have not been amended, modified, or supplemented in any way, except for any amendment which has been delivered to Mezzanine Lender and is listed on **Exhibit C** attached to this Agreement.

(c) Mezzanine Lender hereby consents to and approves all provisions of the Senior Loan Documents, subject to the terms and conditions hereof, and waives all defenses, offsets, credits to or against the Senior Loan Documents and further waives all claims and counterclaims against Senior Lender. In addition, no holder of the Mezzanine Loan shall initiate, prosecute or maintain or encourage any enforcement action or other claim, action, suit or other proceeding contesting: (i) the enforceability or validity of the Senior Loan, the Senior Loan Documents or this Agreement; or (ii) the enforceability, validity, perfection, priority, attachment or recordation by the Senior Lender of any senior lien, and the Mezzanine Lender hereby waives any and all rights it may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the Senior Lender seeks to enforce the senior liens in the Collateral.

(d) Senior Lender represents, warrants and covenants that to the knowledge of Tracy Larrison, without any duty of diligence or inquiry, as of the date hereof there is no default, breach, violation or event of default under any of the Senior Note, Senior Mortgage or other Senior Loan Documents.

(e) Mezzanine Lender represents, warrants and covenants that as of the date hereof: (i) there is no default, breach, violation or event of default under any of the Mezzanine Note, Pledge Agreement or other Mezzanine Loan Documents; (ii) Mezzanine Lender is not aware of any fact, circumstance, event or condition which might ripen into a default, breach, violation or event of default under any of the Mezzanine Note, Pledge Agreement or other Mezzanine Loan Documents; and (iii) all conditions precedent to the funding of the Mezzanine Loan have been satisfied or waived by Mezzanine Lender.

14. **PURCHASE OPTION.** If (x) the Senior Loan has been accelerated, (y) any enforcement action has been commenced and is continuing under the Senior Loan Documents or (z) an Event of Default has occurred under the Senior Loan (each of the foregoing, a "**Purchase Option Event**"), Mezzanine Lender shall have the right to purchase, in whole but not in part, the Senior Loan for a price equal to the outstanding principal balance thereof, together with all accrued interest and other amounts due thereon (including, without limitation, exit fees, yield maintenance charges, prepayment premiums, advances and post-petition interest), any other amounts due under the Senior Loan Documents including all costs and expenses (including legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Senior Loan Documents (collectively, the "**Loan Purchase Price**"). Upon the occurrence of a Purchase Option Event, Mezzanine Lender shall have thirty (30) days thereafter to notify Senior Lender in writing that Mezzanine Lender desires to exercise such purchase option (the "**Purchase Option Notice**") in which case the closing of such purchase option shall take place within thirty (30) days after the date of the Purchase Option Notice. Concurrently with payment to the Senior

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Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered to Mezzanine Lender all Senior Loan Documents held by or on behalf of Senior Lender and will execute in favor of Mezzanine Lender, or its designee assignment documentation, in form and substance reasonably acceptable to Senior Lender and Mezzanine Lender, at the sole cost and expense of Mezzanine Lender to assign the Senior Loan and Senior Lender's rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan, Senior Lender's ownership of the Senior Loan Documents and as to Senior Lender's not having assigned or encumbered its rights in the Senior Loan). The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate: (i) upon a transfer of the Trust Property by foreclosure sale, delivery of a deed in lieu of foreclosure or any such similar transfer; or (ii) if a Purchase Option Event ceases to exist. Upon Mezzanine Lender's purchase of the Senior Loan, Mezzanine Lender and Borrower, hereby each agrees that Senior Lender shall be automatically released from any further obligations otherwise imposed upon the Senior Lender under the Senior Loan Documents arising subsequent to such purchase, including any obligation to make additional advances under the Senior Loan, if any.

15. MISCELLANEOUS.

(a) This Agreement contains the entire agreement between Mezzanine Lender and Senior Lender with respect to this subject, and may be modified only by an instrument in writing signed by both parties.

(b) Either Senior Lender's or Mezzanine Lender's failure to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any other time and from time to time thereafter, and such rights shall be cumulative and not exclusive.

(c) The knowledge by either Senior Lender or Mezzanine Lender of any breach or other non-observance by the other of the terms of this Agreement shall not constitute a waiver thereof or of any obligations to be performed by the other hereunder.

(d) Section headings used herein are for convenience only, and shall not affect the meaning of any provision of this Agreement.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In the event any action is brought to enforce this Agreement, then the prevailing party in such action shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorney fees.

(f) Notices shall be given to the parties at the addresses first set forth above.

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(g) This Agreement shall be binding upon and inure to the benefit of Senior Lender and Mezzanine Lender and their respective successors and permitted assigns. Mezzanine Lender shall be permitted, upon written notice to Senior Lender, to assign its rights pursuant to this Agreement to any nominee wholly owned by Mezzanine Lender, provided that such nominee assumes in writing all obligations of Mezzanine Lender under the Mezzanine Loan Documents and this Agreement. Mezzanine Lender shall not otherwise assign its rights pursuant to this Agreement without the prior written consent of Senior Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

(h) This Agreement shall continue until the earliest of: (i) all indebtedness under the Senior Loan Documents has been paid, and Senior Lender has no further obligation under the Senior Loan Documents, or (ii) until termination of this Agreement in accordance with the terms and provisions of this Agreement.

(i) Senior Lender shall not have by reason of the Mezzanine Loan Documents, this Agreement or any other document a fiduciary relationship in respect of the Mezzanine Lender. The rights granted to the Senior Lender in this Agreement are solely for its protection and nothing herein contained imposes on the Senior Lender any duties with respect to the property of the Borrower or the Mezzanine Lender received hereunder beyond reasonable care in its custody and preservation while in the Senior Lender's possession.

[Signature Page Follows]

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[Signature Page to Intercreditor Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as on the date first written above.

MEZZANINE LENDER:

EREF MEZZANINE FUND, LLC, a Delaware limited liability company

By: _____

Name: Michael W. Husman

Title: An Authorized Signatory

SENIOR LENDER:

NATIONAL CITY BANK, a national banking association

By: _____

Name: Tracy S. Larrison

Title: Senior Vice President

BORROWER:

EE DEVELOPMENT LLC, an Illinois limited liability company

By: _____

Mark Hunt, its Co-Manager

By: _____

John D. Terzakis, its Co-Manager

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[Signature Page to Intercreditor Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as on the date first written above.

MEZZANINE LENDER:

EREF MEZZANINE FUND, LLC, a Delaware limited liability company

By: Peter T. Wall
Name: ~~Michael W. Husman~~ Peter T. Wall
Title: An Authorized Signatory

SENIOR LENDER:

NATIONAL CITY BANK, a national banking association

By: _____
Name: _____
Title: _____

BORROWER:

EE DEVELOPMENT LLC, an Illinois limited liability company

By: Mark Hunt
Mark Hunt, its Co-Manager

By: _____
John D. Terzakis, its Co-Manager

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[Signature Page to Intercreditor Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as on the date first written above.

MEZZANINE LENDER:

EREF MEZZANINE FUND, LLC, a Delaware limited liability company

By: _____
Name: Michael W. Husman
Title: An Authorized Signatory

SENIOR LENDER:

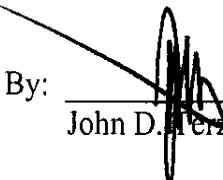
NATIONAL CITY BANK, a national banking association

By: _____
Name: _____
Title: _____

BORROWER:

EE DEVELOPMENT LLC, an Illinois limited liability company

By: _____
Mark Hunt, its Co-Manager

By:  _____
John D. Perzakis, its Co-Manager

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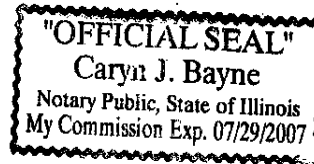
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 7th day of February, 2007, by ~~Michael W. Husman~~ ^{Per M. W. H.}, as Authorized Signatory of EREF Mezzanine Fund, LLC, a Delaware limited liability company. The above-named person is personally known to me or has produced a Driver's License as identification. If no type of identification is indicated, the above-named person is personally known to me.

Caryn J. Bayne
Signature of Notary Public
(Notary Seal)

Caryn J. Bayne
Print Name of Notary Public

I am a Notary Public of the State of IL,
and my commission expires on _____.



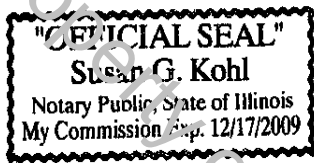
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Illinois)
) SS:
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 6th day of February, 2007, by Tracy S. Larrison, as Senior Vice President of National City Bank, a national banking association. The above-named person is personally known to me or has produced a Driver's License as identification. If no type of identification is indicated, the above-named person is personally known to me.

Susan G. Kohl
Signature of Notary Public
(Notary Seal)



Susan G. Kohl
Print Name of Notary Public

I am a Notary Public of the State of Illinois,
and my commission expires on 12-17-09.

PROCESSED BY
CLERK'S OFFICE
OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 5th day of February, 2007, by Mark Hunt as the Co-Manager of EE Development LLC, an Illinois limited liability company. The above-named person is personally known to me or has produced a Driver's License as identification. If no type of identification is indicated, the above-named person is personally known to me.



Signature of Notary Public
(Notary Seal)

MICHAEL LAPORTA

Print Name of Notary Public

I am a Notary Public of the State of IL,
and my commission expires on _____.



Property of Cook County Clerk's Office

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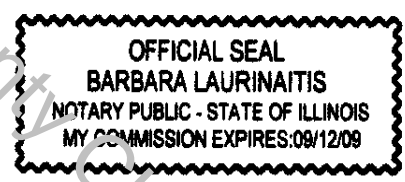
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 6th day of February, 2007, by John D. Terzakis, as the Co-Manager of EE Development LLC, an Illinois limited liability company. The above-named person is personally known to me or has produced a Driver's License as identification. If no type of identification is indicated, the above-named person is personally known to me.

Barbara Laurinaitis
Signature of Notary Public
(Notary Seal)

BARBARA LAURINAITIS
Print Name of Notary Public

I am a Notary Public of the State of ILLINOIS
and my commission expires on 9/12/09.



Property of Cook County Clerk's Office

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EXHIBIT A

TRUST PROPERTY

LOTS 29, 30,31, 32, 33, 34, 35,IN THE SUBDIVISION OF THE WEST ½ OF LOTS 20-24 IN BLOCK 2 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1931 North Halsted, Chicago, Illinois

PIN: 14-33-300-012-00

THE WEST ½ OF LOTS 6, 7, AND 8 IN CIRCUIT COURT PARTITION OF THE WEST 1/2 OF LOT 25 IN BLOCK 2 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST ½ OF THE SOUTHWEST ¼ OF IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-33-300-011-0000

Commonly known as: 1947 North Halsted, Chicago, Illinois

UNOFFICIAL COPY

EXHIBIT B

MEZZANINE LOAN DOCUMENTS

1. Loan and Security Agreement
2. Promissory Note
3. Guaranty of Payment and Completion
4. Environmental Indemnity Agreement
5. UCC Financing Statements
6. Original Stock/Membership Interest Certificates, and Irrevocable Transfer Powers, to the extent applicable
7. Assignment, Pledge and Security Agreement
8. Security Agreement and Collateral Assignment of Beneficial Interest
9. Delayed Funding Request
10. First Modification of Loan Documents

UNOFFICIAL COPY

EXHIBIT C

SENIOR LOAN DOCUMENTS

1. Construction Loan Agreement
2. Commercial Note
3. Payment, Performance and Completion Guaranty
4. Environmental Indemnity Agreement
5. Real Estate Mortgage
6. Assignment of Rents and Leases
7. Assignment of Agreements, Permits and Contracts
8. Assignment of Construction Contract
9. Security Agreement
10. Security Agreement and Collateral Assignment of Beneficial Interest
11. Consent to Assignment
12. Various UCC Financing Statements/Fixture Filings