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INTERCREDITOR AGREEMENT

by and between

WACHOVIA BANK, NATIONAL ASSOCIATION
in its capacity as Senior Lender

and

FT-MARC LOAN LLC, a Delaware limited liability company,
in its capacity as Mezzanine Lender

Dated as of February 21, 2008

**THIS INSTRUMENT PREPARED BY
AND UPON RECORDING RETURN TO:**

Joseph Q. McCoy, Esq.
Schwartz, Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

ADDRESS OF PREMISES:

2000-2060 Algonquin Road
Schaumburg, Illinois

Box 400-CTCC

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Certain Definitions; Rules of Construction.....	2
2. Approval of Loans and Loan Documents	7
3. Representations and Warranties.....	9
4. Transfer of Mezzanine Loan or Senior Loan.....	12
5. Foreclosure of Separate or Equity Collateral.....	13
6. Modifications, Amendments, Etc	14
7. Subordination of Mezzanine Loan and Mezzanine Loan Documents	16
8. Payment Subordination.....	16
9. Rights of Subrogation; Bankruptcy	18
10. Rights of Cure.....	20
11. No Actions; Restrictive Provisions.....	21
12. Right to Purchase Senior Loan	21
13. Additional Understandings	22
14. Obligations Hereunder Not Affected.....	23
15. Notices	24
16. Estoppel Certificate.....	25
17. Further Assurances.....	25
18. No Third Party Beneficiaries; No Modification	25
19. Successors and Assigns.....	25
20. Counterpart Originals.....	25
21. Legal Construction.....	25
22. No Waiver; Remedies	26
23. No Joint Venture.....	26
24. Captions	26
25. Conflicts.....	26
26. No Release	26
27. Continuing Agreement.....	26
28. Severability	26
29. Expenses	27
30. Injunction.....	27

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31. Mutual Disclaimer 27

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INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "**Agreement**"), dated as of February 21, 2008 by and between **WACHOVIA BANK, NATIONAL ASSOCIATION**, having an office at 77 West Wacker Drive, 29th floor, Chicago, Illinois 60606, in its capacity as Senior Lender ("**Senior Lender**"), and **FT-MARC LOAN LLC**, having an office at 7 Bulfinch Place, Suite 500, P.O. Box 9507, Boston, Massachusetts 02114, in its capacity as Mezzanine Lender ("**Mezzanine Lender**").

RECITALS:

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of February 21, 2008, between SALT CREEK LLC, an Illinois limited liability company (the "**Salt Creek Borrower**"), ENTERPRISE TRUST BENEFICIARIES (as hereinafter defined), and NORTH STAR TRUST COMPANY, as Trustee ("**Trustee**") under the provisions of that certain Trust Agreement dated December 30, 2004, and known as Trust Number 04-7869 (the "**Enterprise Land Trust**") (Enterprise Trust Beneficiaries and Trustee are collectively the "**Enterprise Borrower**," and collectively with the Salt Creek Borrower, the "**Borrower**"), Senior Lender has made a loan to the Borrower in the original principal amount of up to Thirteen Million One Hundred Thousand and 00/100 Dollars (\$13,100,000.00) (the "**Senior Loan**"), evidenced by that certain Promissory Note by Borrower dated as of February 21, 2008 (the "**Senior Note**"), and secured by, among other things, the Senior Mortgage (defined below), which Senior Mortgage encumbers (i) the real property described on **Exhibit A-1** attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (the "**Enterprise Property**"), and (ii) the real property described on **Exhibit A-2** attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (the "**Salt Creek Property**", and together with the Enterprise Property, the "**Premises**"); and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement, dated as of April 19th, 2005 between MARC SALT CREEK LLC, an Illinois limited liability company ("**Mezzanine Borrower**") and Mezzanine Lender (the "**Mezzanine Loan Agreement**"), Mezzanine Lender is the owner and holder of a loan to Mezzanine Borrower in the original principal amount of \$ 434,369.00 (the "**Mezzanine Loan**"), which Mezzanine Loan is evidenced by a certain Promissory Note, dated as of April 19th, 2005, made by Mezzanine Borrower in favor of Mezzanine Lender in the amount of the Mezzanine Loan (the "**Mezzanine Note**"), and secured by, among other things, (i) a Pledge and Security Agreement dated as of April 19th, 2005, made by Mezzanine Borrower in favor of Mezzanine Lender pursuant to which Mezzanine Lender is granted a first priority security interest in all of Mezzanine Borrower's ownership interests in Borrower (the "**Pledge Agreement**"); and

WHEREAS, Senior Lender and Mezzanine Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents (as such term is hereinafter defined) and the Mezzanine Loan Documents (as such term is hereinafter defined) on the terms and conditions hereinbelow set forth, and to evidence certain agreements with respect to the

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relationship between the Mezzanine Loan and the Mezzanine Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Mezzanine Lender hereby agree as follows:

1. **Certain Definitions; Rules of Construction.**

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

“**Affiliate**” means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, controlling, Controlled by or under common control with the Person or Persons in question.

“**Agreement**” means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof

“**Award**” has the meaning provided in Section 8(d) hereof.

“**Borrower**” has the meaning provided in the Recitals hereto.

“**Borrower Group**” has the meaning provided in Section 10(c) hereof.

“**Business Day**” means any day other than a Saturday or Sunday or other day on which banks in Chicago, Illinois are authorized or required to close..

“**Consolidated Proceeding**” means any consolidated Proceeding involving both the Borrower and the Mezzanine Borrower.

“**Continuing Senior Loan Event of Default**” means an Event of Default under the Senior Loan for which (i) Senior Lender has provided notice of such Event of Default to Mezzanine Lender in accordance with Section 10(a) of this Agreement and (ii) the cure period provided to Mezzanine Lender in Section 10(a) of this Agreement has expired.

“**Control**” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “**Controlled by,**” “**controlling**” and “**under common control with**” shall have the respective correlative meaning thereto.

“**Directing Mezzanine Lender**” has the meaning provided in Section 4(c) hereof.

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“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$100,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$5,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including, without limitation, the taking of possession or control of the Premises, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises.

“Equity Collateral” means the equity interests of Borrower pledged by the Mezzanine Borrower pursuant to the Pledge Agreement.

“Equity Collateral Enforcement Action” means any action or proceeding or other exercise of Mezzanine Lender’s rights and remedies commenced by Mezzanine Lender at law or in equity, or otherwise, in order to realize upon the Equity Collateral.

“Event of Default” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default thereunder which has occurred, is continuing (i.e., has not been cured by Borrower or by the Mezzanine Lender in accordance with the terms of this Agreement) and (ii) with respect to the Mezzanine Loan and the Mezzanine Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Mezzanine Borrower).

“Guarantor” has the meaning provided in the Recitals hereto.

“Guaranty” has the meaning provided in the Recitals hereto.

“Loan Purchase Price” has the meaning provided in Section 12(a) hereof

“Mezzanine Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine Lender” has the meaning provided in the first paragraph of this Agreement.

“Mezzanine Loan” has the meaning provided in the Recitals hereto.

“Mezzanine Loan Agreement” has the meaning provided in the Recitals

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hereto.

“**Mezzanine Loan Documents**” means the Mezzanine Loan Agreement, the Mezzanine Note, and the Pledge Agreement, together with all documents and instruments set forth on Exhibit C hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“**Mezzanine Loan Modification**” has the meaning provided in Section 6(b) hereof

“**Mezzanine Note**” has the meaning provided in the Recitals hereto.

“**Monetary Cure Period**” has the meaning provided in Section 10(a) hereof

“**Permitted Fund Manager**” means any Person that on the date of determination is (i) one of the entities listed on Exhibit D or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least \$250,000,000 and (iii) not subject to a Proceeding.

“**Person**” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

“**Pledge Agreement**” has the meaning provided in the Recitals hereto.

“**Premises**” has the meaning provided in the Recitals hereto.

“**Proceeding**” has the meaning provided in Section 9(c) hereof

“**Property Manager**” means Marc Realty or any successor thereto as property manager of the Premises.

“**Protective Advances**” means all sums advanced for the purpose of curing defaults under the Senior Loan Documents or payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance and operating costs, tenant improvements or other improvements to improve, complete, or enhance the Premises, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises including, but not limited to, all reasonable attorney’s fees, costs relating to the entry upon the Premises to make repairs or replacements, and the payment, purchase, contest or compromise of any encumbrance, charge or lien which is not permitted under the Senior Loan Documents or the Separate Collateral, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Mezzanine Loan, amounts

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advanced by Mezzanine Lender pursuant to Section 10 hereof.

“Purchase Option Notice” has the meaning provided in Section 12(a) hereof.

“Qualified Manager” shall mean a property manager of the Premises which (i) is a reputable management company having at least five (5) years’ experience in the management of commercial properties with similar uses as the Premises and in the jurisdiction in which the Premises are located, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least (5) properties of the same property type as the Premises, (iii) at the time of its engagement as property manager has leasable square footage of the same property type as the Premises equal to the lesser of (A) 5,000,000 leasable square feet and (B) (iv) (5) times the leasable square feet of the Premises and (iv) is not the subject of a bankruptcy or similar insolvency proceeding.

“Qualified Transferee” means (i) Mezzanine Lender, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or **“qualified institutional buyer”** within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional **“accredited investor”** within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (ii)(A) or (ii)(B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by any of the entities described in clause (i) or clauses (ii)(A) or (ii)(C) above; or

(E) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (ii)(A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition.

“Senior Lender” has the meaning provided in the first paragraph of this Agreement.

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“**Senior Loan**” has the meaning provided in the Recitals hereto.

“**Senior Loan Collateral**”

“**Senior Loan Default Notice**” has the meaning provided in Section 10(a) hereof.

“**Senior Loan Documents**” means the Senior Loan Agreement, the Senior Note, the Guaranty and the Senior Mortgage, together with the instruments and documents set forth on Exhibit B hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“**Senior Loan Liabilities**” shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower and Guarantor evidenced by the Senior Loan Documents and all amounts due or to become due pursuant to the Senior Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“**Senior Loan Modifications**” has the meaning provided in Section 6(a) hereof

“**Senior Mortgage**” has the meaning provided in the Recitals hereto.

“**Senior Note**” has the meaning provided in the Recitals hereto.

“**Separate Collateral**” means (i) the Equity Collateral, (ii) the accounts (and monies therein from time to time) established pursuant to the Mezzanine Loan Agreement, and (iii) any other collateral given as security for the Mezzanine Loan pursuant to the Mezzanine Loan Documents, in each case not directly constituting security for the Senior Loan.

“**Transfer**” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, or other disposition, either directly or indirectly, by operation of law or otherwise; provided, however, in no event shall the sale of shares of beneficial interest in First Union Real Estate Equity and Mortgage Investments or the sale of limited partnership interests in First Union REIT L.P., the sole member of the Mezzanine Borrower, be deemed a “Transfer”).

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this

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Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) terms not otherwise defined herein shall have the meaning assigned to them in the **Senior Loan Agreement**;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(v) the terms **"includes"** or **"including"** shall mean without limitation by reason of enumeration;

(vi) the words **"herein"**, **"hereof"**, **"hereunder"** and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(vii) the words **"to Mezzanine Lender's knowledge"** or **"to the knowledge of Mezzanine Lender"** (or words of similar meaning) shall mean to the actual knowledge of officers of Mezzanine Lender with direct oversight responsibility for the Mezzanine Loan without independent investigation or inquiry and without any imputation whatsoever; and

(viii) the words **"to Senior Lender's knowledge"** or **"to the knowledge of Senior Lender"** (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever.

2. Approval of Loans and Loan Documents.

(a) Mezzanine Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Senior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents, (ii) the execution, delivery and performance of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine Loan Documents, (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds, and (iv) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall

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not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Mezzanine Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Mezzanine Loan Documents, (ii) the execution, delivery and performance of the Mezzanine Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Mezzanine Lender is under no obligation or duty to, nor has Mezzanine Lender represented that it will, see to the application of the proceeds of the Mezzanine Loan by Mezzanine Borrower or any other Person to whom Mezzanine Lender disburses such proceeds and (iv) any application or use of the proceeds of the Mezzanine Loan for purposes other than those provided in the Mezzanine Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Mezzanine Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender's consent to mezzanine financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Mezzanine Loan Documents or the making of the Mezzanine Loan, have been either satisfied or waived.

(c) Mezzanine Lender hereby acknowledges and agrees that (i) Borrower will not ever have any liability or obligation whatsoever with respect to the Mezzanine Note, the other Mezzanine Loan Documents or otherwise in connection with the payment of the Mezzanine Loan, (ii) the Mezzanine Loan and the Mezzanine Loan Documents do not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Premises or any other Senior Loan Collateral or otherwise grant to Mezzanine Lender the status as a creditor of Borrower in any action or proceeding, including any Proceeding, and (iv) Mezzanine Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Mezzanine Loan as having conferred upon Mezzanine Lender any lien or encumbrance upon, or security interest in, the Senior Loan Collateral or any portion thereof or as having conferred upon Mezzanine Lender the status of a creditor of Borrower. Mezzanine Lender hereby further acknowledges and agrees that (x) Borrower does not and will not ever have any liability or obligation whatsoever with respect to the Mezzanine Loan Documents or otherwise in connection with the payment of the Mezzanine Loan, (y) the Mezzanine Loan and the Mezzanine Loan Documents do not and will not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon the Premises or any security interest in any portion of the collateral for the Senior Loan or any direct or indirect ownership interest in the Borrower (except to the extent such interest relates solely to Mezzanine Borrower) or otherwise grant to Mezzanine Lender the status as a creditor of Borrower and (z) Mezzanine Lender shall not assert, claim or raise as a defense, any such lien, encumbrance or security interest in any collateral for the Senior Loan or any status as a creditor of Senior Loan Borrower in any action or proceeding.

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(d) Mezzanine Lender (in its capacity as Mezzanine Lender) intentionally and unconditionally waives and relinquishes any right to challenge the validity, enforceability and binding effect of any of the Senior Loan Documents, and any lien, encumbrance, claim or security interest now or hereafter created thereunder, or the attachment, perfection or priority thereof, regardless of the order of recording or filing of any thereof, or compliance by Senior Lender with the terms of any of the Senior Loan Documents, by reason of any matter, cause or thing now or hereafter occurring, nor shall Mezzanine Lender raise any such matter, cause or thing as a defense to the enforcement thereof.

3. Representations and Warranties.

(a) Mezzanine Lender hereby represents and warrants as follows:

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine Loan Documents as of the date hereof. To Mezzanine Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Mezzanine Loan Documents.

(ii) Mezzanine Lender is the legal and beneficial owner of the entire Mezzanine Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) Mezzanine Lender has, independently and without reliance upon Senior Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) Mezzanine Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mezzanine Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Mezzanine Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mezzanine Lender enforceable against Mezzanine Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

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(viii) To Mezzanine Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Mezzanine Lender of this Agreement or consummation by Mezzanine Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Mezzanine Lender, (w) to Mezzanine Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Mezzanine Lender is a party or to which any of its properties are subject, (x) to Mezzanine Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Mezzanine Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument (provided, however, that Mezzanine Lender and any participant in the Mezzanine Loan shall have the right to grant a lien, charge, encumbrance, claim or security interest in the Mezzanine Loan or any portion thereof to a Loan Pledgee as contemplated by the provisions of Section 15 hereof), (y) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Mezzanine Lender has knowledge against or binding upon, Mezzanine Lender or upon any of the securities, properties, assets, or business of Mezzanine Lender or (z) to Mezzanine Lender's knowledge, constitute a violation by Mezzanine Lender of any statute, law or regulation that is applicable to Mezzanine Lender.

(x) The Premises do not secure any loan from Mezzanine Lender to Mezzanine Borrower or any other Affiliate of Borrower.

(b) Senior Lender hereby represents and warrants as follows:

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

(ii) Senior Lender is the legal and beneficial owner of the Senior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

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(iii) There are no conditions precedent to the effectiveness of this Agreement against Senior Lender that have not been satisfied or waived.

(iv) Senior Lender has, independently and without reliance upon Mezzanine Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) Senior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Senior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Senior Lender, (w) to Senior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Senior Lender is a party or to which any of its properties are subject, (x) to Senior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Senior Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument, (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Senior Lender has knowledge against, or binding upon, Senior Lender or

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upon any of the securities, properties, assets, or business of Senior Lender or (z) to Senior Lender's knowledge, constitute a violation by Senior Lender of any statute, law or regulation that is applicable to Senior Lender.

(x) The Senior Loan is not cross-defaulted with any other loan. The Premises do not secure any other loan from Senior Lender to Borrower, Mezzanine Borrower or any other Affiliate of Borrower.

4. Transfer of Mezzanine Loan or Senior Loan.

(a) Mezzanine Lender shall not Transfer, or suffer or permit to be Transferred, any of its beneficial interests in the Mezzanine Loan unless such Transfer is to a Qualified Transferee, provided, however, that in all events, (x) Mezzanine Lender shall remain a "**Lender**" under the Mezzanine Loan holding not less than fifty one percent (51%) of the legal and beneficial interests in the Mezzanine Loan, and (y) Mezzanine Lender shall remain, and any other permitted transferee of an interest in the Mezzanine Loan must acknowledge Mezzanine Lender's right to act, as administrative agent with the power to act unilaterally on behalf of all of the owners of any interests in the Mezzanine Loan Agreement, including the right to demand, sue for, collect and receive every payment or distribution payable or deliverable on account of the Mezzanine Loan, and give acquittance therefore and to file claims and proofs of claim in any statutory or non-statutory proceeding, and take such other actions, in its own name as administrative agent, or in the name of the such other owners or otherwise.

(b) Any such transferee (other than a participant, provided such participant acknowledges in writing that it is taking its participation interest subject to the transferor's obligations hereunder) must assume in writing the obligations of Mezzanine Lender hereunder and agree to be bound by the terms and provisions hereof. Such proposed transferee (other than a participant) shall also remake each of the representations and warranties contained herein for the benefit of Senior Lender.

(c) At least five (5) days prior to a transfer to a Qualified Transferee, the Mezzanine Lender shall provide to Senior Lender a certification that such transfer will be made in accordance with this Section 4, such certification to include the name and contact information of the Qualified Transferee.

(d) If more than one Person shall hold a direct interest in the Mezzanine Loan, the holder(s) of more than 50% of the principal amount of the Mezzanine Loan shall designate by written notice to Senior Lender one of such Persons (the "**Directing Mezzanine Lender**") to act on behalf of all such Persons holding an interest in the Mezzanine Loan. The Directing Mezzanine Lender shall have the sole right to receive any notices which are required to be given or which may be given to Mezzanine Lender pursuant to this Agreement and to exercise the rights and power given to Mezzanine Lender hereunder, including any approval rights of Mezzanine Lender; provided, that until the Directing Mezzanine Lender has been so designated, the last Person known to the Senior Lender to hold more than a 50% direct interest in the Mezzanine Loan shall be deemed to be the Directing Mezzanine Lender. Once the Directing Mezzanine Lender

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has been designated hereunder, Senior Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than 50% of the principal amount of the Mezzanine Loan of the designation of a different Person to act as the Directing Mezzanine Lender.

(e) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein to any Person, and notwithstanding any such Transfer or subsequent Transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Mezzanine Loan and the Mezzanine Loan Documents in accordance with the terms and provisions of this Agreement.

5. Foreclosure of Separate or Equity Collateral.

(a) Mezzanine Lender shall not complete a foreclosure or other realization upon the Equity Collateral (including, without limitation, obtaining title to the Equity Collateral or selling or otherwise transferring the Equity Collateral) unless (i) the transferee of title to the Equity Collateral is a Qualified Transferee, and (ii) the Premises will be managed by a Qualified Manager promptly after the transfer of title to the Equity Collateral. Additionally, if a non-consolidation opinion was delivered in connection with the closing of the Senior Loan, the transferee of the Equity Collateral shall deliver a new non-consolidation opinion relating to the transferee acceptable to, Senior Lender in its reasonable discretion, within ten (10) business days of the transfer of title to the Equity Collateral. The Mezzanine Lender shall provide notice of the transfer and an officer's certificate from an officer of Mezzanine Lender certifying that all conditions set forth in this Section 5(a) have been satisfied to Senior Lender, as applicable, upon consummation of any transfer of the Equity Collateral pursuant to this Section 5(a). Senior Lender may request reasonable evidence that the foregoing requirements have been satisfied. In the event that such Transfer results in the removal of Guarantor or any other obligor under the Senior Loan Documents, such transferee (or, if such transferee does not have and does not agree to maintain a net worth of at least \$20,000,000 (exclusive of any net worth attributable to the Premises) and liquid assets of at least \$20,000,000, an Affiliate thereof reasonably satisfactory to the Senior Lender which does have and will agree to maintain a net worth of at least \$20,000,000 (exclusive of any net worth attributable to the Premises) and liquid assets of at least \$20,000,000) shall at such transferee's option either (a) promptly execute and deliver to Senior Lender Environmental Indemnity Agreement in substantially the same form as the Environmental Indemnity Agreement described in Exhibit B attached hereto (the "Environmental Agreement") or (b) a policy of environmental insurance in form and substance acceptable to Senior Lender in its sole and absolute discretion. The foregoing Environmental Agreement or policy of environmental insurance shall, respectively, guaranty or insure Senior Lender only against all claims, damages and liabilities arising from and after the date upon which Guarantor or such other obligor is removed as described above; provided, however, that Senior Lender agrees that notwithstanding the foregoing, the parties executing the Environmental Agreement shall have no personal liability or obligation whatsoever for any indemnification obligations accruing on or before the date of the consummation of the transfer of the Equity Collateral pursuant to this Section 5(a) (but the foregoing is not,

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and shall not be deemed to be, a release, waiver, modification or limitation in any respect of any obligation of any party to the Senior Loan Documents to remediate, clean up, cure or otherwise comply, or cause the Premises to be in compliance, with all applicable legal requirements relating to Hazardous Substances and, further, is not and shall not be deemed to be a release, waiver modification or limitation in any respect of any liability or obligation of any other party to the Senior Loan Documents).

(b) Notwithstanding the foregoing or anything else to the contrary contained herein, Mezzanine Lender agrees that it shall not exercise its rights and remedies, in law or in equity, or otherwise, in order to realize on any Separate Collateral that is not Equity Collateral, until, in any such case, the earlier of (i) thirty (30) days following the satisfaction in full payment and satisfaction in full of the Senior Loan Liabilities, or (ii) thirty (30) days following the acquisition of the Senior Loan by the Mezzanine Lender as provided under this Agreement; provided, however, that Mezzanine Lender shall have the right at any time to exercise any remedy granted it pursuant to any guaranty given solely in connection with the Mezzanine Loan by a guarantor that is not also a guarantor of the Senior Loan.

(c) In the event Mezzanine Lender or any purchaser at a UCC sale obtains title to the Equity Collateral, Senior Lender hereby acknowledges and agrees that any transfer or assumption fee in the Senior Loan Agreement shall be waived as a condition to such Transfer and any such Transfer shall not constitute a breach or default under the Senior Loan Documents, provided the conditions in Sections 5(a) and 5(b) are met. Senior Lender also acknowledges and agrees that it will not impose any fees other than reasonable out-of-pocket costs and expenses, including reasonable attorney' fees and expenses, actually incurred by Senior Lender in connection with such Transfer.

6. Modifications, Amendments, Etc.

(a) Senior Lender shall have the right without the consent of Mezzanine Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Senior Loan Modification") of the Senior Loan or the Senior Loan Documents provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan, except for increases in principal to cover work-out costs (including closing costs in connection therewith) and Protective Advances, (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in the Borrower or the Premises, (vi) modify or amend the terms and provisions of the Senior Loan Cash Management Agreement with respect to the manner, timing and method of the application of payments under the Senior Loan Documents, (v.i) cross default the Senior Loan with any other indebtedness, (viii) obtain any contingent interest, additional interest or so-called "**kicker**" measured on the basis of

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the cash flow or appreciation of the Premises, (or other similar equity participation), or (ix) 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; provided, however in no event shall Senior Lender be obligated to obtain Mezzanine Lender's consent to a Senior Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or indulgence relating to the Senior Loan during the existence of a Continuing Senior Loan Event of Default, except that under no conditions shall clause (i) (with respect to increase principal amount only), or clause (ix) be modified without the written consent of Mezzanine Lender. In addition and notwithstanding the foregoing provisions of this Section 6, any amounts funded by the Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Senior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 6(a).

(b) Mezzanine 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 "Mezzanine Loan Modification") of the Mezzanine Loan or the Mezzanine Loan Documents provided that no such Mezzanine Loan Modification shall (i) increase the interest rate or principal amount of the Mezzanine Loan, (ii) increase in any other material respect any monetary obligations of Mezzanine Borrower under the Mezzanine Loan Documents, (iii) extend or shorten the scheduled maturity date of the Mezzanine Loan (except that Mezzanine Lender may permit Mezzanine Borrower to exercise any extension options in accordance with the terms and provisions of the Mezzanine Loan Documents), (iv) convert or exchange the Mezzanine Loan into or for any other indebtedness or subordinate any of the Mezzanine Loan to any indebtedness of Mezzanine 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, Mezzanine 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 the Senior Lender. In addition and notwithstanding the foregoing provisions of this Section 6(b), any amounts funded by the Mezzanine Lender under the Mezzanine Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Mezzanine Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 6(b).

(c) Senior Lender shall deliver to Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents

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(including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender) within a reasonable time after any of such applicable instruments have been executed by Senior Lender.

(d) Mezzanine Lender shall deliver to Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mezzanine Lender) within a reasonable time after any of such applicable instruments have been executed by Mezzanine Lender.

7. Subordination of Mezzanine Loan and Mezzanine Loan Documents.

(a) Mezzanine Lender hereby subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this Section 7(a).

(b) Every document and instrument included within the Mezzanine Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

(c) This Agreement shall not be construed as subordinating and shall not subordinate or impair Mezzanine Lender's first lien priority right, estate and interest in and to the Separate Collateral and Senior Lender hereby acknowledges and agrees that Senior Lender does not have and shall not hereafter acquire, any lien on, or any other interest whatsoever in, the Separate Collateral, or any part thereof, and that the exercise of remedies and realization upon the Separate Collateral by Mezzanine Lender in accordance with the terms and provisions of this Agreement shall not in and of itself constitute a default or an Event of Default under the Senior Loan Documents.

8. Payment Subordination.

(a) Except (i) as otherwise expressly provided in this Agreement and (ii) in connection with the exercise by Mezzanine Lender of its rights and remedies in accordance with the terms of this Agreement, all of Mezzanine Lender's rights to payment of the Mezzanine Loan and the obligations evidenced by the Mezzanine Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower and/or Guarantor of the Senior Loan and the obligations secured by the Senior Loan Documents, and Mezzanine Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly,

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indirectly or by set-off, counterclaim or otherwise) from Borrower, Guarantor and/or from the Premises prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents are paid. If a Proceeding shall have occurred or a Continuing Senior Loan Event of Default shall have occurred and be continuing, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender before Mezzanine Lender is entitled to receive any payment on account of the Mezzanine Loan. All payments or distributions upon or with respect to the Mezzanine Loan which are received by Mezzanine Lender contrary to the provisions of this Agreement shall be received and held in trust by the Mezzanine Lender for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents. Nothing contained herein shall prohibit the Mezzanine Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Mezzanine Loan) notwithstanding the existence of a default under the Senior Loan at such time.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 8(a), provided that no Event of Default shall then exist under the Senior Loan Documents, Mezzanine Lender may accept payments of any amounts due and payable from time to time which Mezzanine Borrower is obligated to pay Mezzanine Lender in accordance with the terms and conditions of the Mezzanine Loan Documents and Mezzanine Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Mezzanine Lender may take any Equity Collateral Enforcement Action which is permitted under Section 5 hereof; provided that (i) Mezzanine Lender shall, prior to commencing any Equity Collateral Enforcement Action, give the Senior Lender written notice of the default which would permit Mezzanine Lender to commence such Equity Collateral Enforcement Action and (ii) Mezzanine Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Equity Collateral Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"). If the amount of the Award is in excess of all amounts owed to Senior Lender under the Senior Loan Documents, however, and either the Senior Loan has been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Mezzanine Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be

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required to provide notice to Mezzanine Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Mezzanine Lender.

(e) With respect to any insurance policies (collectively, the “**Policies**”) for the Premises for which either Mezzanine Lender and/or its Affiliate are identified as “named insureds” or “additional insureds,” until such time as the Senior Loan has been paid in full, Mezzanine Lender acknowledges and agrees that neither Mezzanine Lender nor any such Affiliate shall have any right whatsoever to (i) participate in any negotiations or discussions concerning the settlement or adjustment of any claims under the Policies, or to otherwise contest or challenge (in their capacity as named insureds) any such settlement or adjustment, (ii) consent to, or disapprove, any settlement or adjustment of any claim or any distribution of proceeds under the Policies or (iii) be issued checks, drafts or wires (jointly or otherwise) representing proceeds of the Policies. Subject to the foregoing, however, after the occurrence of a casualty event, Senior Lender shall, from time to time, at Mezzanine Lender’s request advise Mezzanine Lender of the status of Senior Lender’s negotiations with the issuers of the applicable policies relating to the settlement and adjustment of claims, provided that under no circumstances shall Mezzanine Lender have any right to challenge Senior Lender’s settlement, adjustment or other resolution of such claims. Nothing contained in this subparagraph (e) is meant to limit any rights that Mezzanine Lender has under any Mezzanine Loan Documents to approve of or participate in any action taken by Mezzanine Borrower.

9. **Rights of Subrogation; Bankruptcy.**

(a) Each of Mezzanine Lender and Senior Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Mezzanine Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Mezzanine Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, Mezzanine Borrower, Guarantor the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Mezzanine Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Mezzanine Lender agrees that Senior Lender owes no fiduciary duty to Mezzanine Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Mezzanine

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Lender agrees not to assert any such claim. Senior Lender agrees that Mezzanine Lender owes no fiduciary duty to Senior Lender in connection with the administration of the Mezzanine Loan and the Mezzanine Loan Documents and Senior Lender agrees not to assert any such claim.

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Mezzanine Lender shall entitle Mezzanine Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Mezzanine Lender agrees that, except with respect to the enforcement of its remedies under the Mezzanine Loan Documents permitted hereunder, prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

(c) Subject to Section 27 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a "**Proceeding**"). For as long as the Senior Loan shall remain outstanding, Mezzanine Lender in its capacity as mezzanine lender, shall not, and shall not solicit any person or entity to, and shall not direct or cause Mezzanine Borrower to direct or cause either the Borrower or any entity which controls Borrower (the "**Borrower Group**") to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower or Guarantor adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower or Guarantor; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower or Guarantor; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or Guarantor, the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower or Guarantor; (vii) seek to consolidate the Premises or any other assets of the Borrower or Guarantor with the assets of the Mezzanine Borrower or any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing. Mezzanine Lender waives any right to claim that the assets of Mezzanine Borrower and Borrower should be substantively consolidated in any Proceeding, it being understood that the creditors of Mezzanine Borrower and Borrower are substantially different and that any such substantive consolidation would frustrate the intent of the parties. The provisions of this Section 19(c) shall not, however, limit or preclude the right of Mezzanine Lender to (x) file a proof of claim against Mezzanine Borrower in any Consolidated Proceeding or (y) file a motion to lift stay in any Consolidated Proceeding in order to foreclose the Equity Collateral provided such foreclosure is consummated in accordance with the terms of this Agreement.

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(d) If Mezzanine Lender is deemed to be a creditor of Borrower or Guarantor in any Proceeding (i) Mezzanine Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against the Borrower or Guarantor without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Mezzanine Lender's interest in the Equity Collateral; provided, however, that any such filing shall not be as a creditor of the Borrower or Guarantor, (ii) Senior Lender may vote in any such Proceeding any and all claims of Mezzanine Lender, and Mezzanine Lender hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy for the purpose of exercising any and all rights and taking any and all actions available to the Mezzanine Lender in connection with any case by or against the Borrower or Guarantor in any Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(c) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Mezzanine Lender only if the proposed plan would result in Senior Lender being "**impaired**" (as such term is defined in the United States Bankruptcy Code) and (iii) Mezzanine Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

10. Rights of Cure.

(a) Prior to Senior Lender commencing any Enforcement Action under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit the Senior Lender to commence such Enforcement Action to Mezzanine Lender whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "**Senior Loan Default Notice**") and shall permit Mezzanine Lender an opportunity to cure such default in accordance with the provisions of this Section 10(a). If the default is a monetary default relating to a liquidated sum of money, Mezzanine Lender shall have until five (5) Business Days after the later of (i) the giving by Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower's cure provision, if any (a "**Monetary Cure Period**") to cure such monetary default; provided, however, in the event it elects to cure any such monetary default, Mezzanine Lender shall (x) defend and hold harmless Senior Lender for all cost, expenses, losses, liabilities, obligations, damages, penalties, costs, and disbursements imposed on, incurred by or asserted against Senior Lender due to or arising from such Monetary Cure Period and (y) without duplication of the foregoing, reimburse the Senior Lender for interest on the Senior Loan and/or on any Protective Advances. Mezzanine Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than four consecutive months unless Mezzanine Lender has commenced and is continuing to diligently pursue its rights against the Separate Collateral. If the default is of a non-monetary nature, Mezzanine

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Lender shall have the same period of time as the Borrower under the 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 Mezzanine Lender, Mezzanine Lender shall be given an additional period of time as is reasonably necessary for Mezzanine Lender in the exercise of due diligence to cure such nonmonetary default for so long as (i) Mezzanine 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 any other amounts due under the Senior Loan Documents, (ii) such additional period of time does not exceed thirty (30) days, unless such non-monetary default is of a nature that can not be cured within such thirty (30) days, in which case, Mezzanine Lender shall have such additional time as is reasonably necessary to cure such default and gain ownership of the Separate Collateral but not to exceed six months provided that Mezzanine Lender is continuously and diligently pursuing the ownership of the Separate Collateral, (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower or Guarantor and (iv) during such non-monetary cure period, there is no material impairment to the cash flow, priority, value, use or operation of the Premises or Senior Lender's lien thereon. Any additional cure period granted to the Mezzanine Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of the Borrower or Guarantor.

11. **No Actions; Restrictive Provisions.** Senior Lender consents to Mezzanine Lender's right, pursuant to the Mezzanine Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event both Mezzanine Lender and Senior Lender shall have such rights at any time, and Senior Lender shall fail to exercise such rights, Mezzanine Lender may exercise such rights, provided such exercise may be superseded by any subsequent exercise of such rights by Senior Lender pursuant to the Senior Loan Documents. Upon the occurrence of any event which would entitle Mezzanine Lender to cause the termination of the Property Manager pursuant to the Mezzanine Loan Documents, Mezzanine Lender shall have the right to select, or cause the selection, of a replacement property manager (including any asset manager) or leasing agent for the Premises, which replacement manager, asset manager and/or leasing agent shall either (a) be subject to Senior Lender's reasonable approval or (b) be a Qualified Manager. Notwithstanding anything in this Section 11 to the contrary, if an Event of Default under the Senior Loan then exists or any other event shall have occurred pursuant to which Senior Lender has the right to select any replacement manager, asset manager and/or leasing agent pursuant to the Senior Loan Documents, Senior Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Mezzanine Lender.

12. **Right to Purchase Senior Loan.**

(a) If the Senior Loan has been accelerated or any Enforcement Action has been commenced and is continuing under the Senior Loan Documents a "**Purchase Option Event**"), upon ten (10) Business Days prior written notice to Senior Lender (the "**Purchase Notice**"), 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,

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together with all accrued interest and other amounts due thereon (including, without limitation, any late charges, breakage costs, default interest, exit fees, prepayment premiums, advances and post-petition interest), any Protective Advances made by Senior Lender and any interest charged by Senior Lender on any advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances), including all costs and expenses (including legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Loan Documents (the "**Loan Purchase Price**"). Concurrently with payment to the Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered 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 Mezzanine Lender, at the sole cost and expense of Mezzanine Lender to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan and as to Senior Lender's not having assigned or encumbered its rights in the Loan). The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate (i) upon a transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or (ii) if a Purchase Option Event ceases to exist. Mezzanine Lender shall have no right to purchase the collateral for the Senior Loan, if title to same is transferred pursuant to foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure, it being acknowledged and agreed that Mezzanine Lender shall be entitled to bid at foreclosure and participate therein as permitted by applicable law. Notwithstanding the foregoing sentence, if title to the Premises is transferred to Senior Lender less than ten (10) days after the earlier to occur of acceleration of the Senior Loan or the commencement of a foreclosure proceeding under the Senior Loan Documents, Mezzanine Lender shall have a ten (10) day period (after the transfer to Senior Lender) to deliver the Purchase Notice to Senior Lender with the obligation to purchase the Premises within such ten (10) day period for a sum equal to the Loan Purchase Price, plus (x) any and all costs and expenses incurred by Senior Lender (or its nominee) during the time it owned the Premises, net of all cash receipts from the Premises actually received by Senior Lender during such period (from tenants, by apportionment with the Mezzanine Lender or otherwise), and (y) any and all reasonable out-of-pocket costs and expenses incurred by Senior Lender in connection with the transfer of the Premises to Mezzanine Lender, including, without limitation, reasonable attorneys fees and expenses, and any transfer or gains or similar taxes and fees paid in connection with such transfer.

(b) Mezzanine Lender covenants not to enter any agreement with the Borrower or any Affiliate thereof to purchase the Senior Loan pursuant to subsection (a) above or in connection with any refinancing of the Senior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents which require the payment of a prepayment fee or yield maintenance charge in connection with a prepayment of the Senior Loan by the Borrower.

13. **Additional Understandings.** For as long as the Mezzanine Loan remains outstanding:

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(a) Notices of Transfer; Consent. Senior Lender promptly shall notify Mezzanine Lender if Borrower seeks or requests a release of the lien of the Senior Loan or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by the Borrower for Senior Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender shall, if Senior Lender has the right to consent, obtain the prior written consent of Mezzanine Lender prior to Senior Lender's granting of its consent or agreement thereto.

(b) Annual Budget. The Mezzanine Lender shall have the right to approve the annual operating budget of Borrower in accordance with the terms of the Mezzanine Loan Documents. In the event the Mezzanine Lender objects to any such proposed budget, the Mezzanine Lender shall advise the Senior Lender of such objections, along with its suggestions for changes, within ten (10) days after its receipt of such budget in accordance with the Mezzanine Loan Documents. Senior Lender agrees to consult with the Mezzanine Lender with respect to such objections and suggestions but such consultation shall not be binding on Senior Lender. The Mezzanine Lender shall consent to any changes in the budget reasonably requested by the Senior Lender.

14. Obligations Hereunder Not Affected.

(a) All rights, interests, agreements and obligations of Senior Lender and Mezzanine Lender under this Agreement shall remain in full force and effect irrespective of

(i) any lack of validity or enforceability of the Senior Loan Documents or the Mezzanine Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Mezzanine Loan;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Mezzanine Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Mezzanine Loan or any other assets of Borrower or Mezzanine borrower or any other Affiliates of Borrower;

(iv) any change, restructuring or termination of the corporate structure or existence of Borrower or Mezzanine Borrower or any other Affiliates of Borrower; or

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(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Mezzanine Borrower or a subordinated creditor or a Senior Lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Mezzanine Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

15. **Notices.** All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 15. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) three (3) Business Days after the date mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Mezzanine Lender:

FT-MARC Loan LLC
7 Bulfinch Place
Suite 500
P.O. Box 9507
Boston, Massachusetts 02114
Attention: Thomas Staples
Telecopy: (617) 742-4543

With a copy to:

Post Heymann & Koffler LLP
Two Jericho Plaza
Wing A, Suite 111
Jericho, New York 11753
Attention: David J. Heymann, Esq.
Telecopy: (516) 433-2777

To Senior Lender:

Wachovia Bank, National Association
77 West Wacker Drive
29th Floor
Chicago, Illinois 60606
Attention: Mike Sedivy
Telecopy: (312) 574-6898

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With a copy to: Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attention: Joseph Q. McCoy, Esq.
Telecopy (312) 264-2413

16. **Estoppel Certificate.**

(a) Mezzanine 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 Mezzanine Loan, the aggregate accrued and unpaid interest under the Mezzanine Loan, and stating whether to Mezzanine Lender's knowledge any default or Event of Default exists under the Mezzanine Loan.

(b) Senior Lender shall, within ten (10) days following a request from Mezzanine Lender, provide Mezzanine 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.

17. **Further Assurances.** So long as all or any portion of the Senior Loan and the Mezzanine Loan remains unpaid and the Senior Mortgage encumbers the Premises, Mezzanine Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

18. **No Third Party Beneficiaries; No Modification.** The parties hereto do not intend the benefits of this Agreement to inure to Borrower, Guarantor, Mezzanine 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 Junior Mortgage shall be satisfied, released or otherwise relinquished by Mezzanine Lender, the provisions herein related to the Junior Mortgage shall not be affected.

19. **Successors and Assigns.** This Agreement shall bind all successors and permitted assigns of Mezzanine Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Mezzanine Lender.

20. **Counterpart Originals.** This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

21. **Legal Construction.** In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Illinois applicable to agreements intended to be wholly performed within the State of Illinois.

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22. **No Waiver; Remedies.** No failure on the part of the Senior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

23. **No Joint Venture.** Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

24. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

25. **Conflicts.** In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Mezzanine Loan Documents, the terms and conditions of this Agreement shall control.

26. **No Release.** Nothing herein contained shall operate to release Borrower or Guarantor from (a) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower or Guarantor under the Senior Loan Documents or to release Mezzanine Borrower or Guarantor from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Mezzanine Loan Documents or (y) any liability of Mezzanine Borrower or Guarantor under the Mezzanine Loan Documents.

27. **Continuing Agreement.** This Agreement is a continuing agreement and shall remain in full force and effect until the earliest of (a) payment in full of the Senior Loan, (b) transfer of the Premises by foreclosure of the Senior Mortgage or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, (c) transfer of title to the Mezzanine Lender of the Separate Collateral or (d) payment in full of the Mezzanine Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

28. **Severability.** In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

29. **Expenses.**

(a) To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is realized by Senior Lender, Mezzanine Lender agrees upon demand to pay to Senior Lender the amount of any and all reasonable expenses,

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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 Mezzanine Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Mezzanine Lender to perform or observe any of the provisions hereof.

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

30. **Injunction.** Senior Lender and Mezzanine 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 Mezzanine Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Mezzanine 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.

31. **Mutual Disclaimer.**

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

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Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Mezzanine Loan).

(b) Each of Senior Lender and Mezzanine Lender acknowledges that the Senior Loan and the Mezzanine Loan are distinct, separate transactions and loans, separate and apart from each other.

[NO FURTHER TEXT ON THIS PAGE]

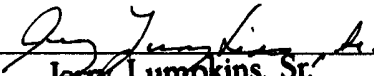
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IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.


SENIOR LENDER:

**WACHOVIA BANK, NATIONAL
ASSOCIATION**

By: 
Name: Jerry Lumpkins, Sr.
Title: Vice President

MEZZANINE LENDER:

FT-MARC LOAN LLC

By: 
Name: Michael L. Aske
Title: ESU

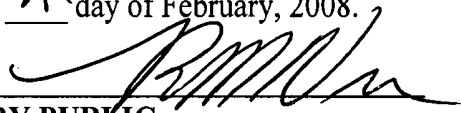
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STATE OF IL)
COUNTY OF COOK) ss.

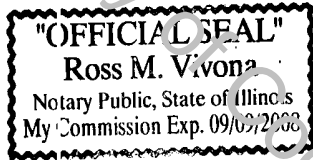
I, Ross M. Vivona a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sammy Lumpkins Sr., the VP of **WACHOVIA BANK, NATIONAL ASSOCIATION**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sammy Lumpkins Sr. appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 21 day of February, 2008.



NOTARY PUBLIC

(SEAL)




Property of Cook County Clerk's Office

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STATE OF NEW YORK)
) ss.
COUNTY OF NASSAU)

I, David J. Heymann a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael L. Ashner, the Chief Executive Officer of FT-Marc Loan LLC, 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 he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 19th day of February, 2008.


NOTARY PUBLIC DAVID J. HEYMANN
Notary Public State of New York
No. 02HE5039009
Qualified in Nassau County
Commission Expires February 13, 20__

(SEAL)

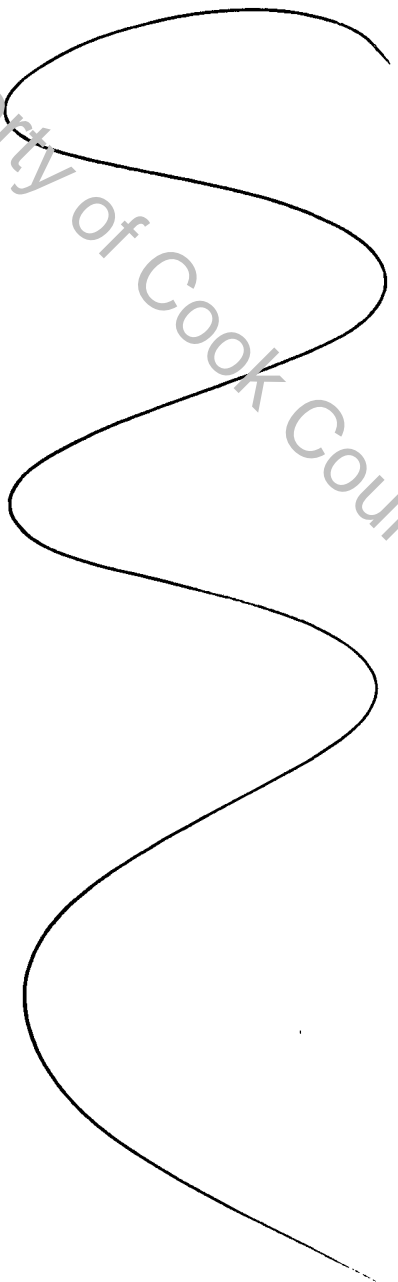
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EXHIBIT A-1

LEGAL DESCRIPTION OF ENTERPRISE PROPERTY

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LEGAL DESCRIPTION

THAT PART OF LOTS 1 AND 2 LYING NORTH OF THE FOLLOWING DESCRIBED LINE,

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, THAT IS 32.50 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 89 DEGREES, 56 MINUTES, 35 SECONDS EAST TO A POINT ON THE WEST RIGHT OF WAY OF ENTERPRISE DRIVE, IN ENTERPRISE CENTRE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON AUGUST 4, 1989 AS DOCUMENT 89357915, IN COOK COUNTY, ILLINOIS.

2205-2255 ENTERPRISE
WESTCHESTER, IL

015-30-205-004-0000

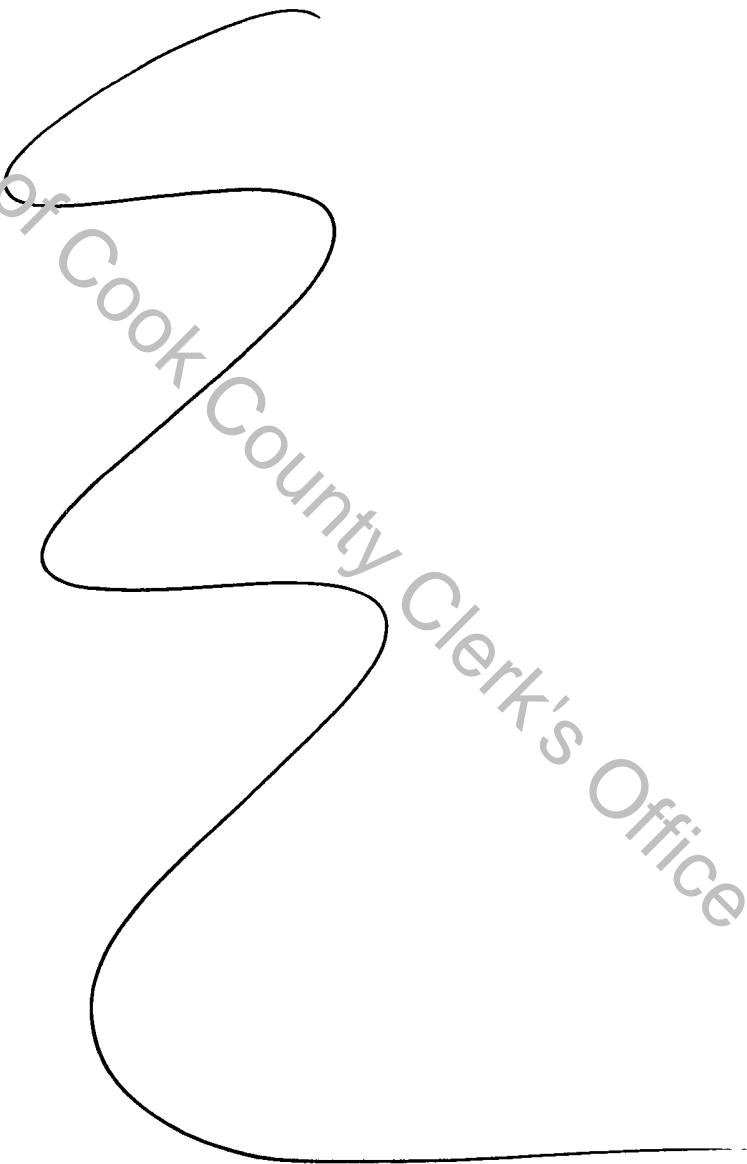
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EXHIBIT A-2

LEGAL DESCRIPTION OF SALT CREEK PROPERTY

Property of Cook County Clerk's Office



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LEGAL DESCRIPTION

TRACT 1:

THAT PART OF SECTIONS 1 AND 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF ALGONQUIN ROAD THAT IS THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED NOVEMBER 30, 1956 AS DOCUMENT NO. 16769161; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 370.0 FEET; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 40.0 FEET FOR THE PLACE OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, 365.0 FEET; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 292.51 FEET TO A POINT ON THE WESTERLY LINE OF A FRONTAGE ROAD; THENCE SOUTHERLY ALONG THE LINE OF SAID ROAD, BEING A CURVED LINE CONVEX TO THE NORTHWEST AND HAVING A RADIUS OF 389.0 FEET, A DISTANCE OF 13.96 FEET, ARC MEASURE, TO A POINT OF TANGENT; THENCE SOUTH 14 DEGREES 23 MINUTES 54 SECONDS WEST ALONG THE WESTERLY LINE OF SAID FRONTAGE ROAD, 273.76 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 60.0 FEET, A DISTANCE OF 102.28 FEET, ARC MEASURE, TO A POINT OF TANGENT; THENCE NORTH 57 DEGREES 55 MINUTES 53 SECONDS WEST ALONG THE NORTHERLY LINE OF SAID FRONTAGE ROAD, 249.05 FEET TO AN INTERSECTION WITH A LINE 280.0 FEET SOUTHEASTERLY OF, MEASURED AT RIGHT ANGLES AND PARALLEL WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, AFORESAID; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG SAID PARALLEL LINE, 76.67 FEET; THENCE NORTH 37 DEGREES 16 MINUTES 40 SECONDS WEST, 240.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TRACT 2:

THAT PART OF SECTIONS 1 AND 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF ALGONQUIN ROAD THAT IS THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED NOVEMBER 30, 1956 AS DOCUMENT NO. 16769161; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 370.0 FEET FOR A PLACE OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE CONTINUING NORTH 52 DEGREES 43 MINUTES 20

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SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 405.0 FEET; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 306.77 FEET TO A POINT ON THE WESTERLY LINE OF A FRONTAGE ROAD; THENCE SOUTHERLY ALONG THE LINE OF SAID ROAD, BEING A CURVED LINE CONVEX TO THE NORTHWEST AND HAVING A RADIUS OF 389.0 FEET, A DISTANCE OF 47.60 FEET, ARC MEASURE; THENCE NORTH 37 DEGREES 16 MINUTES 40 SECONDS WEST, 292.51 FEET TO AN INTERSECTION WITH A LINE 40.0 FEET SOUTHEASTERLY OF, MEASURED AT RIGHT ANGLES AND PARALLEL WITH, THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, AFORESAID; THENCE SOUTH 52 DEGREES 43 MINUTES 20 SECONDS WEST, ALONG SAID PARALLEL LINE, 365.0 FEET; THENCE NORTH 37 DEGREES 16 MINUTES 40 SECONDS WEST, 40.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TRACT 3:

EASEMENT FOR THE BENEFIT OF PARCEL 2, TRACTS 1 AND 2 AS CREATED BY GRANT MADE BY CITIZENS BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 21, 1977 AND KNOWN AS TRUST NUMBER 66-3411 DATED MARCH 26, 1979 AND RECORDED APRIL 4, 1979 AS DOCUMENT NO. 24904042 FOR STORM SEWER AND WATER DETENTION PURPOSES OVER THE FOLLOWING DESCRIBED LAND:

AND EXCEPTING ANY PART OF PARCEL 3, TRACT 1, AND ALSO EXCEPTING ANY PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY DEEDS RECORDED AS DOCUMENT NOS. 91092231 AND 91092232: THAT PART OF SECTIONS 1 AND 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE THEN EXISTING NORTHERLY LINE OF ALGONQUIN ROAD THAT IS THE INTERSECTION OF SAID NORTHERLY LINE WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED NOVEMBER 30, 1956 AS DOCUMENT NUMBER 16769161; THENCE SOUTHEASTERLY ALONG THE THEN EXISTING NORTHERLY LINE OF ALGONQUIN ROAD, BEING A CURVED LINE, CONVEX TO THE SOUTHWEST AND HAVING A RADIUS OF 5679.65 FEET, A DISTANCE OF 10.35 FEET, ARC MEASURE; THENCE SOUTH 68 DEGREES 39 MINUTES 20 SECONDS EAST, 35.27 FEET ALONG THE THEN NORTHEASTERLY LINE OF ALGONQUIN ROAD, AS WIDENED, FOR A PLACE OF BEGINNING OF THAT TRACT OF LAND TO BE DESCRIBED; THENCE NORTH 52 DEGREES 13 MINUTES 20 SECONDS EAST, PARALLEL WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, AFORESAID, 127.93 FEET; THENCE NORTH 07 DEGREES 43 MINUTES 20 SECONDS EAST, 55.74 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID SUBDIVISION WHICH IS 155.24 FEET NORTHEASTERLY OF THE INTERSECTION OF THE SOUTHEASTERLY LINE OF SAID SUBDIVISION WITH THE THEN NORTHEASTERLY LINE, OF ALGONQUIN ROAD, THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 179.76 FEET TO A POINT WHICH IS 370.0 FEET NORTHEASTERLY OF THE INTERSECTION OF THE SOUTHEASTERLY LINE OF SAID SUBDIVISION WITH THE THEN NORTHEASTERLY LINE OF ALGONQUIN ROAD; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 5.0 FEET; THENCE SOUTH 52 DEGREES 43 MINUTES 20 SECONDS WEST, 177.68 FEET; THENCE SOUTH 07 DEGREES 43 MINUTES 20 SECONDS WEST, 48.67 FEET; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 121.38 FEET TO A POINT ON THE NORTHWESTERLY LINE OF FRONTAGE ROAD; THENCE SOUTHWESTERLY ALONG THE LINE OF SAID ROAD, BEING A CURVED LINE, CONVEX TO THE NORTHWEST AND HAVING A RADIUS OF 92.0 FEET, A DISTANCE OF 33.18 FEET, ARC MEASURED TO A POINT OF TANGENT; THENCE SOUTH 24 DEGREES 37 MINUTES 50 SECONDS WEST ALONG SAID TANGENT, BEING ALSO A RADIAL LINE OF ALGONQUIN ROAD, 20.02 FEET TO A

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POINT 65.0 FEET, MEASURED RADIALLY, NORTHEASTERLY OF THE CENTER LINE OF SAID ALGONQUIN ROAD AS THEN LOCATED AND ESTABLISHED; THENCE NORTH 68 DEGREES 39 MINUTES 20 SECONDS WEST ALONG A STRAIGHT LINE THAT FORMS AN ANGLE OF 93 DEGREES 17 MINUTES 10 SECONDS WITH THE LAST DESCRIBED LINE, AS MEASURED FROM NORTH, 165.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TRACT 4:

THAT PART OF SECTIONS 1 AND 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND SECTIONS 6 AND 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF ALGONQUIN ROAD THAT IS THE INTERSECTION OF SAID NORTHERLY LINE WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES, UNIT NO. 4, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED NOVEMBER 30, 1956 AS DOCUMENT NUMBER 16769161; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 775.0 FEET FOR A PLACE OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE CONTINUING NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 505.51 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 76 DEGREES 41 MINUTES 50 SECONDS EAST, 315.57 FEET TO THE SOUTHEAST CORNER OF LOT 147 IN SAID PLUM GROVE ESTATES UNIT NO. 4, AND THE WESTERLY LINE OF A FRONTAGE ROAD; THENCE SOUTHWESTERLY ALONG THE LINE OF SAID FRONTAGE ROAD THE FOLLOWING FOUR COURSES; THENCE SOUTH ALONG THE WESTERLY LINE OF SAID ROAD, BEING A CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 4,961.15 FEET, A DISTANCE OF 45.97 FEET, ARC MEASURE, THE CHORD OF SAID CURVE BEARING SOUTH 02 DEGREES 29 MINUTES 14 SECONDS WEST TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 350.0 FEET, A DISTANCE OF 352.27 FEET, ARC MEASURE, THE CHORD OF SAID CURVE BEARING SOUTH 31 DEGREES 03 MINUTES 51 SECONDS WEST, 337.59 FEET, TO A POINT OF TANGENT; THENCE SOUTH 59 DEGREES 53 MINUTES 02 SECONDS WEST, 214.63 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEX TO THE NORTHWEST AND HAVING A RADIUS OF 389.0 FEET, A DISTANCE OF 247.35 FEET, ARC MEASURE, TO AN INTERSECTION WITH A LINE DRAWN AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF SAID PLUM GROVE ESTATES UNIT NO. 4, THROUGH THE POINT OF BEGINNING OF THIS LEGAL DESCRIPTION; THENCE NORTH 37 DEGREES 16 MINUTES 40 SECONDS WEST ALONG THE LAST DESCRIBED LINE, 308.77 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TRACT 5:

THAT PART OF SECTIONS 1 AND 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF ALGONQUIN ROAD THAT IS THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHEASTERLY LINE OF PLUM GROVE ESTATES UNIT NO. 4, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED NOVEMBER 30, 1956 AS DOCUMENT NO. 16769161; THENCE NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID SUBDIVISION, 362.0 FEET FOR A PLACE OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE CONTINUING NORTH 52 DEGREES 43 MINUTES 20 SECONDS EAST, ALONG THE SOUTHEASTERLY LINE OF SAID PLUM GROVE ESTATES UNIT NO. 4, 8.0 FEET; THENCE SOUTH 37 DEGREES 16 MINUTES 40 SECONDS EAST, 280.0 FEET; THENCE SOUTH 52 DEGREES 43 MINUTES 20 SECONDS WEST, 4.0 FEET; THENCE NORTH 38 DEGREES 05 MINUTES 46 SECONDS WEST, 280.03 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

2000-2060 E. ALGONQUIN RD.
SCHAUMBURG, IL

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07-01-200-056-0000
07-12-201-002-0000
07-12-201-020-0000
08-06-150-006-0000

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EXHIBIT B

Senior Loan Documents

1. Loan Agreement
2. Promissory Note
3. Open-End Mortgage and Security Agreement and Financing Statement
4. Assignment of Rents
5. Security Agreement
6. Environmental Indemnity Agreement
7. Unconditional Guaranty
8. Assignment and Subordination of Management Agreement
9. UCC-1 Financing Statements

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EXHIBIT C

Mezzanine Loan Documents

1. Loan Agreement
2. Pledge and Security Agreement
3. Loan Promissory Note

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EXHIBIT D

Permitted Fund Managers

Property of Cook County Clerk's Office

