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Cook County Recorder of Deeds  
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**SUBORDINATION AND NON- DISTURBANCE AND  
ATTORNNMENT AGREEMENT**

Prepared by and after Recording Return to:

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300 North La Salle Street  
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Chicago, Illinois 60654

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*Handwritten vertical text: 1008818083*

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this “**Agreement**”) is dated as of the 23rd day of October, 2009, between **HYPO REAL ESTATE CAPITAL CORPORATION** (“**Lender**”) and **INTERCONTINENTALEXCHANGE, INC.** (“**Tenant**”).

### RECITALS

A. Tenant is the tenant under a certain lease (the “**Lease**”), dated as of October 23, 2009 with 351 MORTGAGE LOAN BORROWER, LLC (“**Landlord**”), of premises described in the Lease (the “**Premises**”) located on the 31<sup>st</sup> Floor of the building known as 353 North Clark Street, Chicago, Illinois.

B. This Agreement is being entered into in connection with a certain loan (the “**Loan**”) which Lender has made to Landlord, and secured, in part, by a Mortgage and Security Agreement dated November 8, 2006, recorded November 9, 2006 with the Recorder of Deeds of Cook County, Illinois (“**Recorder**”) as Document No. 0631326207 and an Assignment of Leases and Rents dated as of November 8, 2006 recorded November 9, 2006 with the Recorder as Document No. 0631326208 (the “**Assignment**”); the Mortgage, the Assignment and the other documents executed and delivered in connection with the Loan are hereinafter collectively referred to as the “**Loan Documents**”).

### AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby is and shall be subordinate in all respects to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.

2. Lender agrees that, if Lender exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including but not limited to an entry by Lender pursuant to the Mortgage, a foreclosure of the Mortgage, a power of sale under the Mortgage or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and subject to all the terms, covenants and conditions of the Lease, and (b) Lender shall not disturb Tenant’s right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

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3. Tenant agrees that, in the event of a exercise of the power of sale or foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to ownership of the Premises, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(i) liable in any way for any act, omission, neglect or default of any prior Landlord (including, without limitation, the then defaulting Landlord) that occurred prior to the date Lender obtained possession of or title to the Property, except that Lender is not relieved from responsibility for repair and maintenance obligations of a continuing nature imposed on the Landlord under the provisions of the Lease, or

(ii) subject to any claim, defense, counterclaim or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord) that arose prior to the date Lender obtained possession of or title to the Property; provided, however, that Tenant does not waive (i) any rights to amounts due on account of the Landlord's Contribution or any other allowance from time to time payable to Tenant under the Lease, (ii) any rights of offset to which it may be entitled under the Lease or (iii) any defense that Tenant may have on account of any default that continues after Lender obtains possession of or title to the property, or

(iii) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord) except for (i) estimated payments of Adjustment Rent provided for in the Lease and (ii) payments made on account of the exercise of the termination right of Tenant pursuant to the express terms of the Lease, or

(iv) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest, other than (i) refunds of overpayments to be made on account of estimated payments of Adjustment Rent provided for in the Lease or (ii) any amounts due on account of the Landlord's Contribution, or

(v) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender and except for (i) estimated payments of Adjustment Rent provided for in the Lease and (ii) payments made on account of the exercise of the termination right of Tenant pursuant to the express terms of the Lease, or

(vi) bound by any amendment or modification of the Lease made without the written consent of Lender.

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Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

The foregoing provisions of this Paragraph 4 shall not be applicable to any Lender which is a Landlord Affiliate or a Landlord Successor. A Landlord Affiliate means a person or entity that directly or indirectly (i.e., through one or more intermediaries) controls, is controlled by, or together with the Landlord is subject to common control (control, for purposes hereof, to mean the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise) and a Landlord Successor means any person or entity which merges with, is acquired by or acquires Landlord.

Notwithstanding any of the foregoing provisions of this Paragraph 4 or any other provision of this Agreement to the contrary, and without limitation of any of the same, Tenant shall not be deemed to have waived Landlord's (or any successor to Landlord's) obligation to correct any default on the part of any Landlord that continues after Lender or a successor to Lender takes possession of the Property.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right but no obligation to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender, in addition to the period given to Landlord for remedying defaults, an additional thirty (30) days to remedy, or cause to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Loan Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee remains, the owner of the Premises. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy,

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execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Loan Documents.

6. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the making of the Assignment from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in the Assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of the Assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.

7. If Tenant is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. If Landlord is a partnership or limited liability company, each individual executing this Agreement on behalf of said partnership or limited liability company represents and warrants the s/he is duly authorized to execute and deliver this Agreement on behalf of said partnership or limited liability company in accordance with the partnership agreement for the partnership or operating agreement for the limited liability company.

8. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be at the following addresses (or such other parties or addresses as may be designated by notice in accordance herewith):

If to Tenant: (prior to the Commencement Date)  
55 West Monroe Street  
Chicago, IL 60603  
Attention: David Goone

(following Commencement Date)  
At the Building  
Attention: David Goone

With a copies to Intercontinentalexchange, Inc., 2100 RiverEdge Parkway, 5<sup>th</sup> Floor, Atlanta, GA 30328, Attention: Doug Foley, and

Intercontinentalexchange, Inc., 2100 RiverEdge Parkway, 5<sup>th</sup> Floor, Atlanta, GA 30328, Attention: General Counsel

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If to Lender: Hypo Real Estate Capital Corporation  
622 Third Avenue  
New York, New York 10017  
Attn: Chief Legal Officer

9. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes any successor and assign of the named Tenant herein.

10. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

11. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

12. This Agreement shall be construed in accordance with the laws of the State of Illinois.

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Witness the execution hereof as of the date first above written.

**HYPO REAL ESTATE CAPITAL CORPORATION**

By: [Signature]

**Bruce Kimmelman  
Director**

By: [Signature]

Name: David Katz

Title: Managing Director

**INTERCONTINENTALEXCHANGE, INC.**

By: [Signature]

Name: Scott A. Hill

Title: SVP+CEO

The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

**LANDLORD:**

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

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

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

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

By: [Signature]

Name: Michael Szkutalski

Title: Senior Managing Director

[Signature]

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STATE OF New York

COUNTY OF New York

Execution of the foregoing instrument was acknowledged before me this 21 day of January <sup>2010</sup>~~2009~~ by David Katz, as Managing Director of HYPO REAL ESTATE CAPITAL CORPORATION, on behalf of the \_\_\_\_\_ . He/She is either personally known to me or has produced \_\_\_\_\_ as identification.

Christina Velez, Notary Public

My Commission Expires: \_\_\_\_\_  
CHRISTINA VELEZ  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01VE6127137  
Qualified in Kings County  
My Commission Expires May 23, 2013

(AFFIX NOTARIAL SEAL)

STATE OF GA

COUNTY OF Cobb

Execution of the foregoing instrument was acknowledged before me this 15th day of December 2009 by Scott A. Hill, as SVP and CFO of INTERCONTINENTAL EXCHANGE, INC., on behalf of the \_\_\_\_\_ . He/She is either personally known to me or has produced \_\_\_\_\_ as identification.

Jane Bowendick, Notary Public

My Commission Expires: 8-13-10

(AFFIX NOTARIAL SEAL)



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STATE OF IL

COUNTY OF Cook

Execution of the foregoing instrument was acknowledged before me this ~~11~~<sup>2010</sup> day of ~~January~~<sup>2009</sup>, by Michael Szkatulski, Senior Managing Director of Mesirov Financial Real Estate, Inc. on behalf of 351 MORTGAGE LOAN BORROWER LLC, a Delaware limited liability company. He is either personally known to me or has produced \_\_\_\_\_ as identification.

Rux B. Currin, Notary Public

My Commission Expires: 4/2/13

(AFFIX NOTARIAL SEAL)



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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

#### Parcel 1:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the intersection of the East line of North Clark Street (also being the West line of Lot 5 in said Block 2) and the South line of West Kinzie Street (also being the North line of Lots 5 thru 8, both inclusive, in said Block 2); thence East along the South line of said West Kinzie Street a distance of 321.47 feet to the West line of North Dearborn Street; thence South along the West line of said North Dearborn Street (also being the East line of Lot 8 in said Block 2) a distance of 178.60 feet to a point 311.60 feet North (as measured along said West line of North Dearborn Street) of the Chicago River, as occupied; thence West at right angles to the last described line a distance of 321.47 feet to a point on the East line of said North Clark Street 300.43 feet North (as measured along said East line of North Clark Street) of said Chicago River, as occupied; thence North along the East line of said North Clark Street a distance of 177.86 feet to the point of beginning, in Cook County, Illinois.

#### Parcel 2:

Non-Exclusive Easement for the benefit of Parcel 1, as created by First Amendment to Easement and Operating Agreement dated August 23, 1988 and recorded August 24, 1988 as document number 88384561 for pedestrian and vehicular ingress and egress on, over, through and across the "Hotel Road Easement Area" and the "Project Road Easement Area" described as follows:

#### Hotel Road Easement Area:

Part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows: Commencing at the point of intersection of the South line of West Kinzie Street (also being the North line of Lots 5, 6, 7 and 8 in said Block 2) and the East line of North Clark Street (also being the East line of Lots 4 and 5 in said Block 2); thence South 0 degrees West along said East line of North Clark Street a distance of 177.86 feet to an intersection with the North line of Tracts I and II in said Block 2; thence South 90 degrees East along said North line of Tracts I and II a distance of 134.10 feet to an intersection with the line between Parcels 1 (below +50.00 feet Chicago City Datum) of said Tracts I and II and the point of beginning, thence continuing South 90 degrees East along said North line of Tracts I and II a distance of 187.57 feet to a point in the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) said point being 178.60 feet South of said South line of West Kinzie Street as measured along the West line of North Dearborn Street; thence South 0 degrees West along said West line of North Dearborn Street a distance of 26.32 feet to the back of a curb of an elevated driveway; thence South 89 degrees 59 minutes 22 seconds West along said back of curb a distance of 68.78 feet; thence North 89 degrees 34 minutes 27 seconds West a distance of 47.20 feet; thence South 89 degrees 59 minutes 22 seconds West a distance of 29.31 feet; thence North 75 degrees 07 minutes 03

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seconds West a distance of 43.45 feet to a point where the said line between Parcels 1 intersects the back of curb of said elevated driveway; thence North 0 degrees East along said line between Parcels 1 a distance of 14.83 feet to the point of beginning.

**Project Road Easement Area:**

Part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows: Commencing at the point of intersection of the South line of West Kinzie Street (also being the North line of Lots 5, 6, 7 and 8 in said Block 2) and the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2); thence South 0 degrees West along the East line of North Clark Street a distance of 177.85 feet to an intersection with the North line of Tracts I and II in said Block 2 and the point of beginning; thence South 90 degrees East along said North line of Tracts I and II a distance of 134.10 feet to an intersection with the line between Parcels 1 (below +50.00 feet Chicago City Datum) of said Tract I and II; thence South 0 degrees West along said line between Parcels 1 a distance of 14.83 feet to a point of intersection, not tangent with a curved line, said curved line being the back of a curb of an elevated driveway; thence Westerly along the back of curb of said driveway being the arc of a circle convex Northerly and having a radius of 15.00 feet a distance of 5.08 feet to a point of tangency; thence South 89 degrees 59 minutes 39 seconds West along the back of curb of said driveway and tangent to the last described curved line a distance of 129.11 feet to said East line of North Clark Street; thence North 0 degrees East along said East line of North Clark Street a distance of 13.99 feet to the point of beginning.

353 N. CLARK STREET  
CHICAGO, IL  
17-09-408-009  
17-09-408-010