

# UNOFFICIAL COPY

This instrument prepared by or under the supervision of and after recording return to:

Harry S. Dannenberg, Esq.  
Holland & Knight LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston, Massachusetts 02116



Doc#: 1219218102 Fee: \$82.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/10/2012 12:57 PM Pg: 1 of 23

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of July 9, 2012 by and among SHORELAND MASTER TENANT, LLC, a Delaware limited liability company ("Lessee"); 5454 S. SHORE DRIVE LLC, a Delaware limited liability company ("the "Owner"); DORAL BANK, a Commonwealth of Puerto Rico financial institution (together with any permitted successors or assigns, the "Lender"); SHORELAND SUBTENANT, LLC, a Delaware limited liability company ("Sublessee") and CHEVRON U.S.A. INC., a Pennsylvania corporation ("Investor").

FIDELITY NATIONAL TITLE

### RECITALS

WHEREAS, Owner is the owner of a building located in Chicago, Illinois and commonly known as the Shoreland Hotel Building (the "Building"), which Owner is in the process of rehabilitating; and

WHEREAS, Owner is the owner of the certain tract(s) of land upon which the Building is located, together with certain other improvements and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto or to the Building, more particularly described on Exhibit A attached hereto (collectively, the "Land" and, together with the Building, the "Property"); and

WHEREAS, Owner is in the process of rehabilitating the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to the Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"); and

WHEREAS, Lessee has been formed to lease the Property including the rehabilitated Building from Owner pursuant to the terms of that certain Lease dated as of the date hereof between Owner, as landlord, and Lessee, as lessee (the "Lease"); and

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WHEREAS, pursuant to that certain Operating Agreement of Lessee dated as of the date hereof (the "Lessee's Operating Agreement"), Investor has acquired a 99.99% interest in Lessee and will make a substantial investment therein; and

WHEREAS, Owner and Lessee have executed or will execute that certain HTC Pass-Through Agreement (the "Pass-Through Agreement") dated as of the date hereof pursuant to which Owner will elect under Section 50 of the Code to pass-through to Lessee the Historic Tax Credit to which Owner would otherwise have been entitled as a result of the rehabilitation of the Building; and

WHEREAS, Sublessee is subleasing the Property including the rehabilitated Building, from Lessee pursuant to a Sublease dated as of the date hereof between Lessee, as sublandlord and Sublessee, as subtenant (the "Sublease").

WHEREAS, Lender is the lender under that certain loan ("Loan") to Owner and Shoreland Subtenant, LLC a Delaware limited liability company (collectively the "Borrower") evidenced by a Promissory Note made by Borrower for the benefit of Lender dated as of the date hereof (the "Note") and Construction Loan and Security Agreement dated as of the date hereof by and between Lender and Borrower relating to a loan by Lender to Borrower, as amended (the "Mortgage Loan Agreement"), which Mortgage Loan is secured by means of a first lien fee and leasehold mortgage or deed of trust on the Property dated as of the date hereof (the "Mortgage") and other related security documents and financing statements given by Owner, Borrower and any other guarantors of the Loan in favor of Lender, as amended (collectively, the "Mortgage Loan Documents"); and

WHEREAS, the Mortgage Loan Documents require that Lender consent to any lease of the Property; and

WHEREAS, Investor has required that Lender provide certain assurances as to non-disturbance of Lessee's rights under the Lease.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Lender hereby agrees as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease. In addition to the defined terms set forth in the Recitals to this Agreement, the following defined terms used herein shall have the meanings specified below:

"Credit Commencement Date" means the date on which the improvements arising from the rehabilitation of the Building are placed in service for federal income tax purposes and the Rehabilitation (as defined in Lessee's Operating Agreement) is otherwise eligible for the Historic Tax Credit.

"Disqualified Transferee" means any of the following:

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- (a) a tax exempt organization described in Section 50(b)(3) of the Code unless the property is used by such organization predominantly in an unrelated trade or business the income of which is subject to tax under Section 511 of the Code; or
- (b) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing; or
- (c) a foreign person or entity (as defined in Section 168(h)(2)(C) of the Code) unless more than 50 percent of the gross income derived by the foreign person or entity is subject to U.S. tax or included under Section 951 of the Code in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived; or
- (d) a mutual savings bank, cooperative bank, or domestic building and loan association to which Section 593 of the Code applies; or
- (e) a regulated investment company or real estate investment trust subject to taxation under subchapter M, Chapter 1 of the Code (but not including a “taxable REIT subsidiary,” as defined in Section 856(1) of the Code; or
- (f) a cooperative organization described in Section 1381(a) of the Code; or
- (g) a partnership or other pass-thru entity in which any Disqualified Transferee described in subparts (a) through (f), above, owns a direct or indirect partner or member interest.

“Historic Tax Credit” means the tax credit allowable pursuant to Section 47 of the Code for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure”.

“Recapture Event” means any action, happening or event which would cause (i) any recapture of the Historic Tax Credits under Section 50 of the Code, (ii) any disallowance of Historic Tax Credits previously claimed by Investor, or (iii) any imposition of additional tax under Section 49 of the Code.

“Recapture Period” means the 5 year period commencing on the date on which substantial completion of the Rehabilitation occurs and a Certificate of Occupancy is issued for the Building.

“Transfer” means (a) the institution of any foreclosure, trustee’s sale or other like proceeding, (b) the appointment of a receiver for Owner or the Property, (c) the exercise of rights to collect rents under the Mortgage Loan Documents or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the property, or (e) any transfer or abandonment of possession of the Property to Lender or its successor or assigns, or any other person or entity, including, but not limited to, transfers or abandonments of possession in connection with any proceedings affecting Owner under the Bankruptcy Code, 11 U.S.C. §101

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et seq., or (f) taking direct or indirect ownership of any member interest (“Ownership Interest”) in the Owner.

“Transferee” means Lender, its successors and assigns, any designee of Lender or any other party taking title to the Property or an Ownership Interest in connection with or following a Transfer.

2. Lender Consent. Lender hereby consents to (i) the Lease and to the acquisition by Investor of an interest in the Lessee and to the execution of the Lessee’s Operating Agreement and related documents, and (ii) the Sublease, and agrees that the execution and delivery of the Lease and the Sublease by Owner and/or Lessee and/or Sublease, as the case may be, shall not constitute a default under the Loan.

3. Subordination. Subject to the provisions of Section 4, the Mortgage is and shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease and all rights and privileges of Lessee thereunder, or any subtenant thereunder (including, but not limited to, Sublessee pursuant to the Sublease), and the Lease, and all rights and privileges of Lessee or any subtenant (including, but not limited to, Sublessee pursuant to the Sublease) are hereby unconditionally subjected and made subordinate to the lien or charge of the Mortgage. Notwithstanding the foregoing, the Sublease shall remain subordinate to the Lease.

4. Lender’s Exercise of Remedies: Non-Disturbance.

(a) Notwithstanding anything to the contrary contained in this Agreement, prior to the Recapture Period, Lessee shall not be entitled to any right of non-disturbance and the Mortgage is and shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease and all rights and privileges of Lessee thereunder, or any subtenant thereunder (including, but not limited to, Sublessee pursuant to the Sublease), and the Lease, and all rights and privileges of Lessee or any subtenant (including, but not limited to, Sublessee pursuant to the Sublease) are hereby unconditionally subjected and made subordinate to the lien or charge of the Mortgage.

(b) Subject to the provisions of this Section 4(b) and provided that Investor has complied with its obligations under Section 5.1 of Lessee’s Operating Agreement to make Capital Contributions (as defined in Lessee’s Operating Agreement), during the Recapture Period neither Lender, Owner, Sublessee nor any Transferee shall terminate the Lease (even in the event of a default by the Lessee under the Lease, unless Investor’s fraud or intentional misconduct causes such default) or take any action or exercise any remedy (at law or in equity) that would cause a Recapture Event, including, without limitation, permitting any Transfer to a Disqualified Transferee. Notwithstanding the foregoing sentence, nothing in this Agreement, shall preclude Lender or Transferee from (i) exercising its rights and remedies under any guarantees of the Loan or (ii) effectuating a Transfer to any of the following even if any of the following is a Disqualified Transferee: (a) Lender, any of its participants or any of their respective affiliates or designees, or (b) a person or entity other than Lender, any of its participants, or any of their

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respective affiliates or designees as the result of a foreclosure, execution, receivership, bankruptcy, judicial, or trustee's sale with respect to the Owner's title to the Property, Owner's interest under the Lease or the Subtenant's interest under the Sublease. Prior to commencing efforts to effectuate a Transfer during the Recapture Period, Lender, Owner or Transferee, as the case may be, shall provide written notice to Investor of its intention to effectuate a Transfer. Any attempted Transfer in violation of this Section 4 shall be void *ab initio*. For the avoidance of doubt, the restrictions on Transfer and on the right to terminate the Lease as set forth in this Section 4(b), shall not apply after the Recapture Period.

- (c) After the Recapture Period, if Lender exercises any of its rights under the Mortgage or any of the other Mortgage Loan Documents, including any right of entry on the Property pursuant to the Mortgage or upon judicial foreclosure, or other proceedings brought by it or by any other manner, including, but not limited to, Lender's exercise of its rights under any collateral assignment(s) of leases and rents, or the delivery by Landlord to Lender of a deed or other conveyance of Owner's interest in the Property in lieu of any of the foregoing, the Lease shall not be terminated and Lender shall not disturb Lessee's right of quiet possession of the Premises under the terms of the Lease so long as Lessee is not in default (beyond any period given Lessee by the terms of the Lease to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed.
- (d) Prior to commencing any action to effect a termination of the Lease upon a default by Lessee thereunder, Lender shall first give written notice to Investor of its intention to terminate the Lease and Investor will have a reasonable time, not to exceed thirty (30) days from the date of Investor's receipt of such written notice, to cause Lessee to cure any defect in Lessee's compliance with the Lease, such that upon such cure the Lessee would be entitled to the non-disturbance of the Lease.
- (e) Except as otherwise provided herein, nothing in the Mortgage Loan Documents or any replacement documents with any Transferee will preclude Investor's right to collect the Priority Return and the Asset Management Fee (as such terms are defined in the Lessee's Operating Agreement) from Lessee, Shoreland MT Manager, LLC, a Delaware limited liability company (in such capacity, together with its successors and assigns, the "Lessee's Managing Member") and/or any guarantor of such obligations to Investor. Notwithstanding the foregoing, if, at anytime during the period from the date of this Agreement through the expiration of the Recapture Period, Lessee is in default of its obligations to pay (i) rent, (ii) additional rent or (iii) any other amounts due under the Lease (collectively, the "Amounts Due"), then no distributions of cash flow may be made to any member of Lessee under Lessee's Operating Agreement (including, but not limited to, Investor) and Lessee shall pay to Owner or Transferee, as applicable, all amounts of cash flow available from any source after the payment of reasonable and necessary operating expenses. Such amounts paid will be applied to Lessee's obligations to pay Amounts Due with any unsatisfied obligations accruing until

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Lessee has cash flow available to pay all such Amounts Due. All accrued and unpaid Amounts Due shall be due and payable at the expiration of the Recapture Period. Additionally, if Lessee is in default under its obligation to pay Amounts Due, Sublessee is hereby directed to pay rent due to Lessee under the Sublease directly to Owner on behalf of Lessee. Notwithstanding the prior sentence, if the Loan is in default, at the direction of Lender, Sublessee shall pay rent due to Lessee under the Sublease directly to Lender on behalf of Lessee and Owner.

- (f) No event of default under the Mortgage Loan Documents or any replacement documents with any Transferee will result from (i) the exercise of the “Put” or the “Call Option” as described in the Purchase Agreement of even date herewith between Investor and Lessee’s Managing Member (the “Purchase Agreement”) or (ii) the removal of the Lessee’s Managing Member by Investor pursuant to the Lessee’s Operating Agreement, provided that Investor complies with the second sentence of this Section 4(f). Any replacement for Lessee’s Managing Member selected by Investor shall either be an affiliate of Investor or a third party reasonably acceptable to Lender. Such acceptance by Lender shall be confirmed in writing and shall not be unreasonably withheld, conditioned or delayed. If Lender desires to select a new replacement Managing Member pursuant to the Lender’s MM Pledge (defined below), such selection shall supersede any selection of a replacement Managing Member of Investor Member. Investor agrees to provide to Lender a copy of any removal notice delivered by Investor under Section 8 of the Lessee’s Operating Agreement, and any information related to the proposed replacement party’s financial condition, experience and/or corporate structure reasonably requested by Lender to assess the replacement party’s acceptability. Investor shall use commercially reasonable efforts to cause any replacement for Lessee’s Managing Member selected by Investor to operate the Property in accordance with the standards for operation of the Property set forth in the Lessee’s Operating Agreement. Lender agrees to provide to Investor a copy of any default notice delivered by Lender under that certain Pledge and Security Agreement (Managing Member) of even date hereof (“Lender’s MM Pledge”) from Lessee’s Managing Member. Lessee and Investor (a) have reviewed the Lender’s MM Pledge and consent to the terms thereof, (b) agree to cooperate fully and in good faith (at Lender’s sole cost and expense) with Lender and Lessee’s Managing Member in carrying out such agreement, and (c) waive any transfer restrictions, other Contractual Obligations (as defined in the Lender’s MM Pledge) set forth in the Organizational Documents (as defined in the Lender’s MM Pledge) or other restrictions (other than under any applicable securities laws and pursuant to Section 8.3 of the Lessee’s Operating Agreement, but subject to the terms of this Agreement) which otherwise might apply to the granting of the pledges and security interests under the Lender’s MM Pledge or to the exercise by Lender of the rights and remedies provided therein so as to permit (x) Lessee’s Managing Member to enter into and perform Lessee’s Managing Member’s obligations under the Lender’s MM Pledge, and (y) Lender’s exercise of Lender’s rights and remedies thereunder. Lender shall use commercially reasonable efforts to cause any replacement for Lessee’s Managing Member selected by Lender to operate the Property in accordance with the standards for

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operating of the Property set forth in the Lessee's Operating Agreement. No replacement managing member, other than Lender, its participants or any of their respective affiliates or designees, shall be a Disqualified Transferee.

- (g) Other than a "Permitted Transfer" (defined below), during the Recapture Period Investor shall not transfer its interest in Lessee without the prior written consent of Lender, which consent shall not be unreasonably withheld. Permitted Transfer shall mean (a) a transfer by Investor of its interest in Lessee to Lessee's Managing Member or an Affiliate of Lessee's Managing Member pursuant to the Put or Call Option as described in the Purchase Agreement (after the Recapture Period or after the dissolution of the Lessee), or (b) to an Affiliate of Investor. No consent of the Lender shall be required for a Permitted Transfer. In addition, for so long as the Lease is in effect and has not been terminated, if a Transfer occurs, Investor may not transfer its interest in Lessee (except for a Permitted Transfer) without the prior written consent of Transferee (whether before or after the Recapture Period) which consent shall not be unreasonably withheld.
- (h) Except as expressly permitted by the Mortgage Loan Documents or with Lender's prior written consent (which consent Lender may withhold in Lender's sole and absolute discretion) (i) Lessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber the Lease or any interest thereunder or permit the use or occupancy of the Property or any part thereof, and (ii) Sublessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber the Sublease or any interest thereunder or permit the use or occupancy of the Property or any part thereof.
- (i) After a Transfer, if Owner has not yet received approval by the National Park Service of Part 3 of the Historic Preservation Certification Application – Request for Certification of Completed Work, then Lender and/or Transferee agree to take all commercially reasonable actions requested by Lessee and Investor to obtain such approval (at the sole expense of Lessee or Investor), including, without limitation, the execution of the Part 3 application and providing access to the Property for inspection by the Investor, its consultants, the National Parks Service, and any similar state agency.
- (j) During the Recapture Period without the prior written consent of Investor, neither Lender, Owner nor any Transferee shall take any action, authorize or consent to any action or otherwise permit any physical alterations to Property that might reasonably impact the status of the Building as a certified historic structure or that violate or conflict with the Part 2 approval. Such alterations include, but are not limited to (a) alteration of the façade of the Building including the alteration, repair or replacement of window and door elements, (b) construction of a new building addition which overshadows the historic structure, or (c) the demolition or destruction of any portion of the Building.
- (k) During the Recapture Period, notwithstanding any provision of the Sublease to the contrary, in no event may the Sublease be terminated (notwithstanding the

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existence of any default thereunder) without the prior written consent of Lender or any Transferee of Lender.

- (l) The Lease shall remain unconditionally subordinate to the Mortgage.
- (m) The provisions of this Agreement that are binding on Lender shall also be binding on any Transferee.

5. Attornment.

- (a) Lessee shall attorn to any Transferee, including Lender if Lender becomes a Transferee, as the landlord under the Lease, provided such Transfer complies with the provisions of this Agreement. Said attornment is subject to the limitation of Transferee's obligations set forth in Section 5(b) below and shall be effective and self-operative without the execution of any further instruments upon Transferee succeeding to the interest of the landlord under the Lease. Within ten (10) days after receipt of a written request therefor from a Transferee, Lessee agrees to provide such Transferee with a written confirmation of its attornment and any other matter set forth in this Agreement.
- (b) Upon a Transfer of the Property to a Transferee, which Transfer complies with the provisions of this Agreement, the Lease will be recognized as a direct lease from Transferee to Lessee upon such Transfer for the balance of the term thereof. In the event that the Lease is recognized as a direct lease from a Transferee as aforesaid, then the liability of a Transferee under the Lease shall exist only so long as such Transferee is the owner of the Property, and such liability shall not continue or survive with respect to claims accruing after further transfer of ownership. A Transferee shall not be: (i) liable for any act or omission of any prior landlord (including Owner), (ii) subject to any offsets or counterclaims which Lessee may have against a prior landlord (including Owner), unless expressly provided for herein, (iii) bound by any prepayment of Base Rent which Lessee may have made in excess of the amounts then due for the next succeeding month, unless specifically approved in writing by Lender, or be liable or responsible for any security deposit or other sums which Lessee may have paid under the Lease unless such deposit or other sums have been physically delivered to Transferee, (iv) bound by any notices given by Lessee to Owner of which it did not also receive notice, (v) required after a fire, casualty or condemnation of the Property to repair or rebuild the same to the extent that such repair or rebuilding requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Property and arising out of such fire, casualty or condemnation which have actually been received by a Transferee, and then only to the extent required by the terms of the Lease, (vi) bound by any modification to the Lease made without Lender's consent, or (vii) required to undertake or complete any of Landlord's Work.



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## 6. Notice and Cure Rights.

- (a) Lessee and Owner each agrees, simultaneously with the giving of any notice under the Lease, to give a duplicate copy thereof to Lender. Should either Owner or Lessee default in respect of any of the provisions of the Lease, Lender shall have the right, but not the obligation, to cure such default, and either Lessee or Owner, as the case may be, shall accept performance by or on behalf of Lender as though, and with the same effect as if, it had been done or performed by the defaulting party. Lender will have thirty (30) days after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, unless the nature of such default requires longer than thirty (30) days to cure or Lender requires possession of the Property in order to cure such default, in which event, so long as Lender commences foreclosure or other enforcement proceedings within such thirty (30) day period, Lender shall have such additional time to cure such default as shall be reasonable under the circumstances.
- (b) Lender and Owner each agrees, simultaneously with the giving of any default notices with respect to the Loan, to give a duplicate copy thereof to Lessee and to Investor. Should (i) Owner default in respect of any of the provisions of the Loan or (ii) Owner or Lessee default in respect of any of the provisions of the Lease, Investor shall have the right, but not the obligation, to cure such default or cause it to be cured, and Lender and Owner, as the case may be, shall accept performance by or on behalf of Investor as though, and with the same effect as if it had been done or performed by Owner or Lessee, as the case may be. Lessee and Investor each will have thirty (30) days (co-terminously) after the service of such notice upon it within which to cure or cause to be cured the default specified in such notice, or cause it to be cured.

## 7. Miscellaneous.

- (a) This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their permitted successors and assigns (including all Transferees); provided, however, that in the event of the assignment or transfer of the interest of a Transferee, all obligations and liabilities of such Transferee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Transferee's interest is assigned or transferred; and provided further that the interest of Lessee under this Agreement may not be assigned or transferred except to the extent the assignment of Lessee's interest in the Lease is permitted under the Lease and under this Agreement.
- (b) This Agreement is the whole and only agreement among the parties hereto with regard to the subordination of the Lease to the lien or charge of the Mortgage, and shall supersede and cancel all other subjection or subordination agreements, including, but not limited to, those provisions, if any, contained in the Lease that provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages, or other similar mortgage loan documents. This

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Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

- (c) This Agreement shall be governed by, construed, applied and enforced in accordance with the laws of the State of New York. The invalidity, legality or enforceability of any provision of this Agreement shall not affect or impair the validity, legality or enforceability of the remainder of this Agreement, and to this end, the provisions of this Agreement are declared to be severable.
- (d) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.
- (e) The Lease may not be modified or amended so as to reduce the rent or other payments due Owner thereunder or shorten the Term provided thereunder or so as to adversely affect in any other respect to any material extent the rights of Lender, nor shall the Lease be canceled or surrendered, without the consent, in each instance, of Lender.
- (f) Any notices required hereunder will be in writing and will be either given by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by telex or facsimile promptly confirmed in writing, or sent by personal delivery by a nationally recognized courier service for next day delivery. The current addresses and telecopy numbers of the parties to which any notice provided for herein shall be sent, are as follows:

If to Owner:

5454 S. Shore Drive, LLC  
c/o Antheus Capital, LLC  
32 N. Dean Street, Suite 2  
Englewood, NJ 07631  
Attention: David Gefsky  
Facsimile: (201) 408-7393

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With a copy to:

Faegre Baker Daniels LLP  
111 E. Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Attention: David Kuker, Esq.  
Facsimile: (260) 460-1700

If to Lessee:

Shore and Master Tenant, LLC  
c/o Andrus Capital, LLC  
32 N. Dear Street, Suite 2  
Englewood, NJ 07631  
Attention: David Gefsky  
Facsimile: (201) 408-7393

With a copy to:

Faegre Baker Daniels LLP  
111 E. Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Attention: David Kuker, Esq.  
Facsimile: (260) 460-1700

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If to Sublessee:

Shoreland Subtenant, LLC  
c/o Antheus Capital, LLC  
32 N. Dean Street, Suite 2  
Englewood, NJ 07631  
Attention: David Gefsky  
Facsimile: (201) 408-7393

With a copy to:

Faegre Baker Daniels LLP  
111 E. Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Attention: David Kuker, Esq.  
Facsimile: (260) 469-1700

If to Investor:

Chevron U.S.A. Inc.  
345 California Street, 30<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Richard Sheehy  
Facsimile: (415) 733-4591

With a copy to:

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: Harry Dannenberg, Esq.  
Facsimile: (617) 523-6850

and

If to Lender:

DORAL BANK  
623 Fifth Avenue, 16<sup>th</sup> Floor  
New York, NY 10022  
Attention: Timothy Zietera, Chief Investment Officer  
Facsimile: (212) 329-3758

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With a copy to:

Herrick Feinstein LLP  
2 Park Avenue  
New York, NY 10016  
Attention: Dennis W. Russo, Esq.  
Facsimile: (212) 545-3380

Any party may designate another addressee (and/or change its address or telecopy number) for notices hereunder by a notice given pursuant to this Section 7(f). Notices delivered personally or by facsimile will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the return receipt requested.

- (g) This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

**[SIGNATURE PAGE FOLLOWS]**

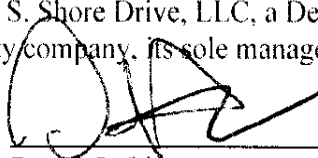
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IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER:

5454 S. SHORE DRIVE, LLC, a Delaware limited liability company

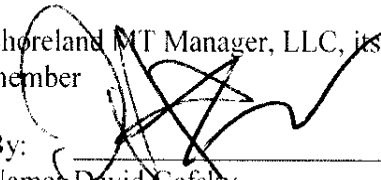
By: AL-5454 S. Shore Drive, LLC, a Delaware limited liability company, its sole manager

By:   
Name: David Gefsky  
Title: Vice President

LESSEE:

SHORELAND MASTER TENANT, LLC, a Delaware limited liability company

By: Shoreland MT Manager, LLC, its managing member

By:   
Name: David Gefsky  
Title: Vice President

LENDER:

DORAL BANK, a Commonwealth of Puerto Rico financial institution

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTOR:

CHEVRON U.S.A. INC., a Pennsylvania corporation

By: \_\_\_\_\_  
Richard Sheehy, Attorney-in fact

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IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER: 5454 S. SHORE DRIVE, LLC, a Delaware limited liability company

By: AL-5454 S. Shore Drive, LLC, a Delaware limited liability company, its sole manager

By: \_\_\_\_\_  
Name: David Gefsky  
Title: Vice President

LESSEE: SHORELAND MASTER TENANT, LLC, a Delaware limited liability company

By: Shoreland MT Manager, LLC, its managing member

By: \_\_\_\_\_  
Name: David Gefsky  
Title: Vice President

LENDER: DORAL BANK, a Commonwealth of Puerto Rico financial institution

By: \_\_\_\_\_  
Name: Timothy Zietara  
Title: Managing Director

INVESTOR: CHEVRON U.S.A. INC., a Pennsylvania corporation

By: \_\_\_\_\_  
Richard Sheehy, Attorney-in fact

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER: 5454 S. SHORE DRIVE, LLC, a Delaware limited liability company

By: AL-5454 S. Shore Drive, LLC, a Delaware limited liability company, its sole manager

By: \_\_\_\_\_  
Name: David Gefsky  
Title: Vice President

LESSEE: SHORELAND MASTER TENANT, LLC, a Delaware limited liability company

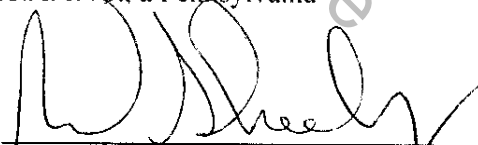
By: Shoreland MT Manager, LLC, its managing member

By: \_\_\_\_\_  
Name: David Gefsky  
Title: Vice President

LENDER: DORAL BANK, a Commonwealth of Puerto Rico financial institution

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTOR: CHEVRON U.S.A. INC., a Pennsylvania corporation

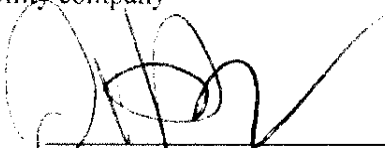
By:   
Richard Sheehy, Attorney-in fact



# UNOFFICIAL COPY

SUBLESSEE:

SHORELAND SUBTENANT, LLC, a Delaware  
limited liability company

By:   
Name: David Gefsky  
Title: Vice President

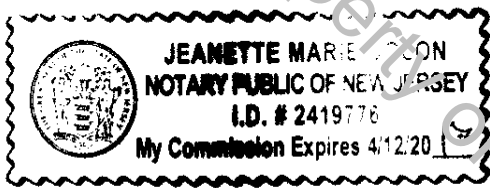
Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF BERGEN )

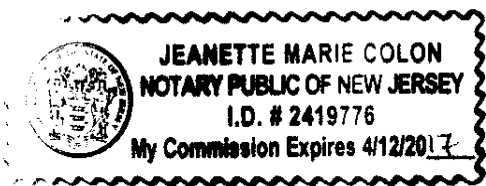
In said county and state, on this 5 day of July, 2012, before me personally appeared the above-named David Gefsky, Vice President of AL-5454 S. Shore Drive, LLC, the sole manager of 5454 S. Shore Drive, LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Vice President and the free act and deed of said limited liability companies.



*Jeanette Marie Colon*  
Notary Public *Jeanette Marie Colon*  
My Commission Expires: 4/12/2017

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF BERGEN )

In said county and state, on this 5 day of July, 2012, before me personally appeared the above-named David Gefsky, Vice President of Shoreland MT Manager, LLC, the managing member of Shoreland Master Tenant LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Vice President and the free act and deed of said limited liability companies.



*Jeanette Marie Colon*  
Notary Public *Jeanette Marie Colon*  
My Commission Expires: 4/12/2017

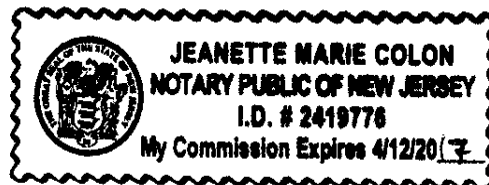
# UNOFFICIAL COPY

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF BERGEN )

In said county and state, on this 5 day of July, 2012, before me personally appeared the above-named David Gefsky, Vice President of Shoreland Subtenant, LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Vice President and the free act and deed of said limited liability companies.

  
Notary Public Jeanette Marie Colon  
My Commission Expires: 4/12/2017

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )



In said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared the above-named \_\_\_\_\_ of DORAL BANK as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as \_\_\_\_\_ of DORAL BANK and the free act and deed of said DORAL BANK

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

# UNOFFICIAL COPY

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF BERGEN )

In said county and state, on this \_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared the above-named David Gefsky, Vice President of Shoreland Subtenant, LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Vice President and the free act and deed of said limited liability companies.

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

STATE OF New York )  
 ) ss.  
COUNTY OF Queens )

In said county and state, on this 5 day of July, 2012, before me personally appeared the above-named Timothy T. Zetara of DORAL BANK as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Managing Director of DORAL BANK and the free act and deed of said DORAL BANK

FRANCILLIA LEBLANC  
Notary Public, State of New York  
No. 01LE6012448 Notary Public  
Qualified in Queens County  
Commission Expires 12/31/14

# UNOFFICIAL COPY

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF SAN FRANCISCO )

On July 5, 2012 before me, Sharon Edwards, Notary Public, personally appeared Richard Sheehy who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

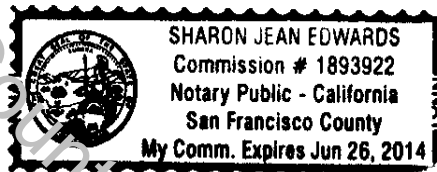
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Name: Sharon Edwards

PLACE NOTARY SEAL ABOVE




# UNOFFICIAL COPY

Exhibit A

[attach legal description]

Property of Co. of County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1:

THE NORTH 355 FEET 9 1/8 INCHES OF THE EAST 198 FEET OF THAT CERTAIN TRACT OF LAND DESCRIBED AS FOLLOWS:

ORIGINAL BLOCK 4 IN EAST END SUBDIVISION, OF PARTS OF SECTIONS 12 AND 13, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1887 AS DOCUMENT NUMBER 882936, TOGETHER WITH THE LAND EAST OF AND ADJOINING SAID BLOCK 4 AND WEST OF LINE ESTABLISHED BY DECREE OF CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ENTERED JANUARY 04, 1913 IN CASE NUMBER 317599 AND BETWEEN NORTH AND SOUTH LINES OF SAID BLOCK 4 EXTENDED EASTERLY TO SAID ESTABLISHED LINE IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 20-12-114-035-0000  
Address of Real Estate: 5454 South Shore Drive, Chicago, Illinois

### PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DOCUMENT DATED APRIL 14, 1925 AND RECORDED APRIL 28, 1925 AS DOCUMENT 8884836 FOR THE PURPOSES SET FORTH IN SAID DOCUMENT OVER THE FOLLOWING DESCRIBED LAND:

THAT PART OF THE NORTH 130 FEET OF THE SOUTH 163 OF THE EAST 198 FEET OF ORIGINAL BLOCK 4 IN EAST END SUBDIVISION OF PART OF SECTIONS 12 AND 13, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1887 AS DOCUMENT NO. 882936, TOGETHER WITH SO MUCH OF THE LAND EAST OF AND ADJOINING SAID BLOCK AND WEST OF THE LINE ESTABLISHED BY DECREE OF THE CIRCUIT COURT OF COOK COUNTY, ENTERED JANUARY 4, 1913 IN CASE NUMBER 317599, AND BETWEEN THE NORTH AND SOUTH LINES OF SAID BLOCK EXTENDED EASTERLY TO SAID ESTABLISHED LINE, IN COOK COUNTY, ILLINOIS FALLING WITHIN THE PROPERTY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SOUTH SHORE DRIVE, 14 FEET NORTH OF THE NORTH LINE OF EAST 55TH STREET; RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SOUTH SHORE DRIVE, 52 FEET MORE OR LESS TO ITS INTERSECTION WITH THE LINE OF THE SOUTHERLY WALL OF THE HOTEL BUILDING, EXTENDED EASTERLY; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF THE SOUTHERLY WALL OF SAID HOTEL BUILDING TO A POINT IN A LINE 198 FEET WEST OF AND PARALLEL TO THE WEST LINE OF SAID SOUTH SHORE DRIVE AND 185 FEET MORE OR LESS NORTH OF THE NORTH LINE OF EAST 55TH STREET; THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT 114 FEET NORTH OF THE NORTH LINE OF SAID EAST 55TH STREET; THENCE EAST TO THE POINT OF BEGINNING.