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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/07/2014 11:25 AM Pg: 1 of 14

This Instrument Prepared By
and After Recording Mail to:

Alvin J. Helfgot, Esq.
Deutsch, Levy & Engel, Chtd.
225 W. Washington Street
17th Floor
Chicago, Illinois 60606

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (the "Agreement") is dated as of February 25, 2014 by and among ALLIANT CREDIT UNION ("Senior Lender"), FARM AMERICAN BANK ("Junior Lender"), and RP FOX 2, LLC and CARLETON HOTEL, LLC, each of which is an Illinois limited liability company, (individually and collectively referred to herein as "Borrower").

WITNESSETH:

A. Pursuant to a Loan Agreement dated of even date herewith (as supplemented, amended or modified from time to time, the "Loan Agreement") between Senior Lender and Borrower, Borrower is becoming indebted to Senior Lender in the amount of Eleven Million and 00/100 Dollars (\$11,000,000.00), exclusive of accrued interest, charges, expenses, attorneys' fees, other sums chargeable to Borrower by Senior Lender and all other Borrower's obligations (all such indebtedness now or hereafter arising, along with any modification, amendment, refinancing or supplement thereto and any guarantees thereof, being hereinafter referred to as the "Senior Debt").

B. As security for the payment of all liabilities and obligations due under the Senior Debt, Borrower, pursuant to the Loan Agreement and the Mortgages and Security Agreement and Collateral Assignments of Leases and Rents of even date herewith (the "Senior Mortgage") has granted to Senior Lender a first lien and continuing unconditional security interest in and upon, among other things, the real property described on Exhibit A attached hereto and all personal property and appurtenances thereto (the "Mortgaged Property") (said lien and security interest of Senior Lender in the Mortgaged Property is referred to herein as the "Senior Lien"). Pursuant to the Loan Agreement, Borrower is executing and delivering to Lender certain other documents, agreements, and certificates and as additional security for the payment of the Senior Debt (the "Senior Collateral

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Documents") (hereinafter the Senior Collateral Documents, the Loan Agreement and the Senior Mortgages are collectively referred to as the "Senior Loan Documents").

C. Borrower has executed and delivered to Junior Lender one or more promissory notes in the aggregate maximum principal amount of \$4,000,000.00 dated as of February 25, 2014 and made payable to the order of Junior Lender (the "Junior Lender Note" and any amendment, supplement or restatement thereof and any guaranties thereof, are referred to herein as the "Junior Loan Debt").

D. To secure the payment of all liabilities and obligations due under the Junior Loan Debt, Borrower has granted to Junior Lender a second lien on the Mortgaged Property under the terms of the Junior Mortgage of even date herewith (the "Junior Mortgage") and Borrower has executed and delivered to Junior Lender additional loan documents including, without limitation, a Loan Agreement dated as of February 25, 2014 (collectively with the Junior Mortgage, the "Junior Loan Documents").

E. Junior Lender has agreed, among other things, (i) to subordinate the Junior Loan Debt to the Senior Debt, (ii) to subordinate the lien of the Junior Mortgage to the Senior Lien, the Senior Mortgages, and all of the other Senior Loan Documents (iii) to forebear for the time period set forth herein from foreclosing upon the Junior Mortgage upon Borrower's default until all conditions set forth in this Agreement have been satisfied in full.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Priority of Liens. Notwithstanding the date, time, manner or order of perfection or attachment of the security interests and liens of the Senior Mortgage and Junior Mortgage granted by Borrower to Senior Lender or to the Junior Lender, and notwithstanding the usual application of the priority provisions of the Uniform Commercial Code in effect in any jurisdiction or any other applicable law or judicial decision of any jurisdiction, or whether Junior Lender holds possession of all or any part of the Mortgaged Property, or if Senior Lender is perfected without filing or possession in any part of the Mortgaged Property, the Senior Lien, the Senior Mortgage, and all of the other Senior Loan Documents shall be a first, senior and prior security interest in and lien on the Mortgaged Property superior to the Junior Mortgage and all of the other Junior Loan Documents.

2. Subordination of Junior Loan Debt.

a. Junior Lender hereby subordinates any and all claims now or hereafter owing to it by Borrower under the Junior Mortgage

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and all of the other Junior Loan Documents to any and all claims of Senior Lender under the Senior Mortgage, the Loan Agreement and all of the other Senior Loan Documents.

b. Junior Lender agrees, if Junior Lender has received from Senior Lender notice of any Event of Default or circumstances that with the passage of time would result in an Event of Default under the Senior Loan Documents, not to accept any payment in respect of the Junior Loan Debt, except for regular scheduled payments due under the Junior Loan Documents.

c. Junior Lender further agrees not to sell, assign, transfer or endorse any claim or claims against Borrower to anyone, except subject to the terms and conditions of this Agreement.

d. Junior Lender agrees that the priority of the Senior Debt set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against Borrower under any bankruptcy or insolvency law or laws relating to the relief of debtors of any jurisdiction, whether now or hereafter in effect, and in any out-of-court composition, assignment for the benefit of Junior Lender or other arrangement of any kind ("Bankruptcy Proceeding").

3. Proceedings Affecting the Mortgaged Property. As long as the Senior Debt has not been paid in full and discharged, Junior Lender agrees that in the event of any proceeding affecting the Mortgaged Property whether brought by the Senior Lender, Junior Lender or any third party or a Bankruptcy Proceeding (a) all Senior Debt shall be paid in full before any payment of or with respect to the Junior Debt, shall be made, and (b) any payment which, but for the terms hereof would otherwise be payable or delivered in respect of the Junior Debt, shall be paid or delivered directly to the Senior Lender until all Senior Debt is paid in full. Junior Lender understands and agrees that Senior Lender shall have the right, but shall have no obligation, to cure any default under the Junior Loan Debt.

4. Proceeds. The order of priority of liens set forth in Section 1 hereof shall apply to all proceeds of the Mortgaged Property, including, without limitation, any insurance proceeds payable in the event of loss of, or damage to, the Mortgaged Property.

5. Perfection and Release of Liens. Upon payment and satisfaction in full of the Junior Loan Debt, Junior Lender shall release the Junior Lender Lien, if in existence at such time, as soon as practicable upon the request of the Senior Lender.

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6. Voided Payments. To the extent that Borrower or any Guarantor makes any payment on the Senior Debt, which, within one (1) year of the date of such payment, is subsequently invalidated, declared to be fraudulent or preferential, set aside or is required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or Federal law, common law or equitable cause (such payment being hereinafter referred to as a "Voided Payment"), then to the extent of such Voided Payment that portion of the Senior Debt which had been previously satisfied by such Voided Payment shall be revived and continue in full force and effect as if such Voided Payment had never been made. In the event that a Voided Payment is recovered from the Senior Lender, an Event of Default (as defined in the Loan Agreement) shall be deemed to have occurred and to be continuing from the date of such recovery from Senior Lender of such voided Payment until the full amount of such Voided Payment is fully and finally restored to Senior Lender and until such time as the provisions of this Agreement shall be in full force and effect.

7. Violation of Agreement by Borrower. Except as provided in Section 2 hereof, Borrower agrees to make no payment whatsoever on the Junior Loan Debt nor consent to or participate in any act which is in violation of the provisions of this Agreement.

8. Immediate Effect. This Agreement shall be effective immediately upon its execution by each of the parties hereto, and there are no conditions precedent or subsequent to the effectiveness of this Agreement.

9. Successors and Assigns; Continuing Effect, Etc. This Agreement is being entered into for the benefit of, and shall be binding upon, each of the Senior Lender, the Junior Lender, Borrower, and their respective permitted successors, assigns, heirs and personal representatives, as applicable. Senior Lender may participate out to other parties any portion of its interest under the Senior Debt and no such participant shall be required to become a signatory hereto. Any assignee or transferee shall execute and deliver to the other parties hereto an agreement pursuant to which they become parties hereto as fully as if they were signatories hereto and providing for the effectiveness of this Agreement as to such transferee or assignee and other parties, and the lien and debt priority of such party shall be that of such party's assignor and transferor. This Agreement shall be a continuing agreement, shall be irrevocable and shall remain in full force and effect so long as any of the Senior Debt or the Junior Loan Debt is outstanding and so long as the Loan Agreement has not been terminated.

10. Notification of Default. Senior Lender and Junior Lender shall give written notice to the other of an Event of Default by Borrower under Senior Debt or a breach or default by Borrower under the Junior Loan Debt, respectively; *provided, however,* that the failure to give such notice absent gross negligence shall not be deemed to be a breach of this Agreement and shall not affect the

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effectiveness or any declaration of such breach, default or Event of Default, as the case may be. Junior Lender understands that, subject to any grace or cure period under its agreements with Borrower, any default by Borrower under the Junior Loan Debt is, automatically, an Event of Default of Borrower under the Senior Debt. Nothing in this Agreement shall be interpreted to limit or restrict the right of Senior Lender and Junior Lender to waive any default under their respective documents, and the Senior Lender, and Junior Lender agrees that any waiver will be in writing and to provide the other parties hereto with a copy of any such waiver.

11. Notices. Except as otherwise provided herein, any notice required hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered:

- (a) if delivered by messenger, when delivered;
- (b) if mailed in the United States mail, registered or certified, postage prepaid, return receipt requested, on the third business day after deposit in the mail;
- (c) if delivered by reputable overnight courier, freight prepaid, the business day following delivery to the courier.

If to Senior Lender: Alliant Credit Union
11545 W. Touhy Avenue
Chicago Illinois 60666
Attn: Mark Trevor

With a copy to: Deutsch, Levy & Engel, Chtd.
225 West Washington St., Suite 1700
Chicago IL 60606
Attn: Alvin J. Helfgot

If to Junior Lender: Pan American Bank
1440 W. North Avenue
Melrose Park, Illinois 60160
Attn: Nicholas Dizunno

With a copy to: Much Shelist, P.C.
191 N. Wacker Drive, Suite 1800
Chicago Illinois 60606
Attn: Steven L. DeGraff

If to Borrower: c/o Fox Partners, L.P.
1110 Pleasant Street
Oak Park, Illinois 60302
Attn: Michael M. Fox

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With a copy to: Pellegrini & Cristano
6817 W. North Avenue
Oak Park, Illinois 60302
Attn: Maria Cristano

The parties hereto may designate such other address or telecopier number by written notice in the aforesaid manner.

12. Amendments; Modifications. This Agreement may not be modified, altered or amended except by an agreement in writing executed by all of the parties hereto.

13. Amendment of Junior Lender Note. Junior Lender and Borrower agree to forbear from modifying, altering or amending any payment amount or payment term of the Junior Lender Note without the prior written consent of the Senior Lender.

14. Amendment of Senior Lender Note. Junior Lender agrees that, with the consent of the Borrower, the payment amount, payment term and interest rate of the Senior Lender Note, may be modified, amended or altered without the prior consent of the Junior Lender.

15. Cost and Expenses of Enforcement. The defaulting party agrees to pay all reasonable costs, legal expenses and attorneys' and paralegals' fees of every kind, paid or incurred by the non-defaulting party in enforcing its rights hereunder, including, but not limited to, litigation instituted in a State or Federal Court, as hereinafter provided (including proceedings under the United States Bankruptcy Code) enforcing obligations of the defaulting party under this Agreement.

16. FORUM; AGENT; VENUE; JURY TRIAL WAIVER. TO INDUCE SENIOR LENDER TO ACCEPT THIS AGREEMENT, EACH OF BORROWER AND JUNIOR LENDER IRREVOCABLY AGREES THAT, SUBJECT TO THE SENIOR LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEED IS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. EACH OF BORROWER AND THE JUNIOR LENDER HEREBY CONSENTS AND AGREES THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR, AT THE SENIOR LENDER'S OPTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE SENIOR LENDER AND ANY OTHER PARTY HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH OF BORROWER AND

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THE JUNIOR LENDER HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH IT IS A PARTY.

17. Governing Law. This Agreement shall be governed and controlled by the laws of the State of Illinois without regard to principles of conflict of laws.

18. Severability. In the event any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed one original and all of which taken together shall constitute one and the same instrument.

20. Definitions. All capitalized terms used in this Agreement which are not specifically defined herein shall have the meaning set forth in the Loan Agreement.

21. Patriot Act. Borrower represents and warrants to Senior Lender and Junior Lender that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of any such person or entity. Borrower further represents and warrants to Senior Lender and Junior Lender that Borrower and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, nor facilitating, the transactions contemplated by this agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Borrower hereby agrees to defend, indemnify and hold harmless Senior Lender and Junior Lender from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representations and warranties.

22. Borrower's Acknowledgment. Borrower hereby consents to this Agreement and agrees to abide by the terms hereof.

[SIGNATURE PAGE FOLLOWS]

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In witness whereof the parties hereto have executed this Intercreditor Lender and Subordination Agreement the day and year first above written.

SENIOR LENDER:

ALLIANT CREDIT UNION

By: _____
Its: _____

JUNIOR LENDER

PAN AMERICAN BANK

By: Tom DELIS
Its: AVP - Senior Credit Analyst

BORROWER:

R.P. FOX 2, LLC, an Illinois limited liability company

By: Fox Investment Management, LLC,
its manager

By: [Signature]
Its: Member/Manager

CARLETON HOTEL, LLC, an Illinois limited liability company

By: Fox Investment Management, LLC,
its manager

By: [Signature]
Its: Member/Manager

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In witness whereof the parties hereto have executed this Intercreditor Lender and Subordination Agreement the day and year first above written.

SENIOR LENDER:

JUNIOR LENDER

ALLIANT CREDIT UNION

PAN AMERICAN BANK

By: *Madeline Green*
Its: *Vice President*

By: _____
Its: _____

BORROWER:

RP FOX 2, LLC, an Illinois limited liability company

By: Fox Investment Management, LLC,
its manager

By: _____
Its: _____

CARLETON HOTEL, LLC, an Illinois limited liability company

By: Fox Investment Management, LLC,
its manager

By: _____
Its: _____

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UNOFFICIAL COPY**EXHIBIT A**

Legal Description

PARCEL 1: LOT 10 IN BLOCK 1 IN SCOVILLE AND NILES ADDITION TO OAK PARK, SAID ADDITION BEING A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 9 AND NORTH 2 FEET OF LOT 12 IN BLOCK 4 OF SCOVILLE AND NILES ADDITION TO OAK PARK, SAID ADDITION BEING A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT 9 IN BLOCK 1 IN SCOVILLE AND NILES ADDITION TO OAK PARK, A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: LOT 2 IN PEASES COURT ADDITION TO OAK PARK IN THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: LOTS 12, 13, 14 AND 15 IN BLOCK 1 AND LOT 5 IN BLOCK 2 IN SCOVILLE AND NILES ADDITION TO OAK PARK, BEING A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

SUB-PARCEL A: THE NORTH 80 FEET OF LOT 1 AND ALL OF LOTS 2 AND 3 IN MARK'S SUBDIVISION OF LOT 2 IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SUB-PARCEL B: THE NORTH AND SOUTH VACATED ALLEY LYING BETWEEN LOTS 1 AND 2 IN MARK'S SUBDIVISION HEREINABOVE DESCRIBED AND THE PART OF THE EAST AND WEST VACATED ALLEY LYING SOUTH OF LOT 2 AND LYING NORTH OF A LINE 80 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF LAKE STREET AND SOUTH OF LOT 2 AFORESAID, IN COOK C COUNTY, ILLINOIS.

UNOFFICIAL COPY**EXHIBIT A****Legal Description
(continued)**

SUB-PARCEL C: LOT 1 OF NILES SUBDIVISION OF LOTS 1, 2 AND 3, IN AUSTIN'S SUBDIVISION OF THE EAST 57.7 FEET OF LOT 17 AND ALL OF LOTS 18, 19 AND 20 IN SKINNER'S SUBDIVISION IN THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 7:

SUB-PARCEL A: THE WEST 130 FEET OF LOT 6 AND THE WEST 130 FEET OF THE SOUTH 55 FEET OF LOT 7 IN SUBDIVISION OF BLOCK 1 IN JAMES W. SCOVILLE'S SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 1 ABOVE DESCRIBED; RUNNING THENCE NORTH 150 FEET ALONG THE WEST LINE OF SAID BLOCK 1 TO A POINT 45 FEET SOUTH OF THE NORTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE EAST 130 FEET ALONG A LINE 45 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 7; THENCE SOUTH 157 98/100 FEET ALONG A LINE 130 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID BLOCK 1 TO THE SOUTH LINE OF SAID BLOCK; THENCE WESTERLY ALONG SAID SOUTH LINE 130 23/100 FEET TO THE PLACE OF BEGINNING, BEING IN OAK PARK, COOK COUNTY, ILLINOIS, FRONTING 130 23/100 FEET ON LAKE STREET AND 150 FEET ON NORTH OAK PARK AVENUE, BEING THE SAME PROPERTY CONVEYED TO THE UNITED STATES BY CHARLES BURTON SCOVILLE, ET ASSIGNMENT OF LEASE, BY DEED DATED SEPTEMBER 10, 1902 RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY AFORESAID MARCH 20, 1903, IN BOOK, 8197 OF RECORD, PAGE 267 AND BY MARY A. SCOVILLE BY DEED DATED SEPTEMBER 10, 1902 RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, AFORESAID, MARCH 20, 1903, BOOK 8164 OF RECORDS PAGE 488 TOGETHER WITH THE IMPROVEMENTS THEREON.

SUB-PARCEL B: THE NORTH 16 FEET OF THE FOLLOWING DESCRIBED TRACT OF GROUND, TO WIT: THE SOUTH 55 FEET EXCEPT THE WEST 130 FEET THEREOF) OF LOT 7, BLOCK 1 OF JAMES W. SCOVILLE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.