

INTERCREDITOR AGREEMENT

by and between

[ \_\_\_\_\_ ]

as Senior Lender

and

CIC Mezzanine Investors, LLC

as Subordinate Lender

Dated as of \_\_\_\_\_, 20\_\_

Premises: \_\_\_\_\_  
\_\_\_\_\_

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_, ("Senior Lender"), and CIC Mezzanine Investors, LLC (the "Subordinate Lender").

### RECITALS

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement dated as of even date herewith between \_\_\_\_\_, a \_\_\_\_\_ ("Borrower") and Senior Lender (the "Senior Loan Agreement"), Senior Lender has made or is about to make a loan to Borrower in the original principal amount of \$ \_\_\_\_\_ (the "Senior Loan"), which Senior Loan is evidenced by a certain Promissory Note dated as of even date herewith between made by Borrower to Senior Lender in the amount of the Senior Loan (the "Senior Note"), and secured by, among other things, a mortgage and assignment of rents dated as of \_\_\_\_\_ made by Borrower in favor of Senior Lender (the "Senior Mortgage"), which Senior Mortgage encumbers the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the "Premises"); and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Subordinate Loan Agreement dated as of even date herewith between Borrower and Subordinate Lender (the "Subordinate Loan Agreement"), Subordinate Lender is the owner and holder of a loan to Borrower in the original principal amount of [\$\_\_\_\_\_\_] (the "Subordinate Loan"), which Subordinate Loan is evidenced by a certain Promissory Note dated as of \_\_\_\_\_ made by Borrower in favor of Subordinate Lender in the amount of the Subordinate Loan (the "Subordinate Note"), and secured by, among other things, a second mortgage and assignment of rents dated as of even date herewith from Borrower pursuant to which Subordinate Lender is granted a second mortgage on the Premise (the "Second Mortgage"); and

WHEREAS, Senior Lender and Subordinate 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 Subordinate 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 relationship between the Subordinate Loan and the Subordinate 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 Subordinate Lender hereby agree as follows:

Section 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.

“Annex” means the annex to the Executive Order.

“Anti-Terrorism Laws” means any federal, state and/or local laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time.

“Award” has the meaning provided in Section 9(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 that national banks are generally open to conduct business.

“CDO” has the meaning provided in the definition of the term “Qualified Transferee.”

“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 Subordinate Lender in accordance with Section 11(a) of this Agreement and (ii) the cure period provided to Subordinate Lender in Section 11(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 Subordinate Lender” has the meaning provided in Section 4(c) hereof.

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 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.

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

“Executive Order” means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and related to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.

“Loan Purchase Price” has the meaning provided in Section 13(a) hereof.

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

“Second Mortgage Enforcement Action” means any action or proceeding or other exercise of Subordinate Lender’s rights and remedies commenced by Subordinate Lender, in law or in equity, or otherwise, in order to foreclose on Borrower’s interest in the Premises, subject to the Senior Mortgage.

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

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

“Subordinate Loan Agreement” has the meaning provided in the Recitals hereto.

“Subordinate Loan Cash Management Agreement” means any cash management agreement executed in connection with, or the cash management provisions of, the Subordinate Loan Documents.

“Subordinate Loan Documents” means the Subordinate Loan Agreement, the Subordinate Note and the Second Mortgage, 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.

“Subordinate Loan Modification” has the meaning provided in Section 7(b) hereof.

“Subordinate Note” has the meaning provided in the Recitals hereto.

“Monetary Cure Period” has the meaning provided in Section 11(a) hereof.

“Patriot Act” means the USA PATRIOT Act of 2001, Pub. L. No. 107-56, as it may from time to time be amended, modified, extended, renewed, substituted and/or supplemented.

“Permitted Fund Manager” means Community Investment Corporation, an Illinois not for profit corporation, and any Person that on the date of determination is (i) a 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.

“Second Mortgage” has the meaning provided in the Recitals hereto.

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

“Proceeding” has the meaning provided in Section 10(c) hereof.

“Prohibited Person” shall mean any of the following: (a) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Orders; (b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Orders; (c) a Person or government with whom Senior Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that supports, engages in, or conspires to or intends to engage in, “terrorism” as defined in any Executive Order, or engages in or conspires, attempts or intends to engage in any transaction that violates, evades or avoids, or has the purpose of violating, evading or avoiding, or attempts or intends to violate, evade or avoid, any of the prohibitions set forth in any Anti-Terrorism Laws; (e) a Person that is named as a “specially designated national or blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (f) a Person who is an Affiliate of or associated with a Person or entity listed above.

“Property Manager” means \_\_\_\_\_ or any successor thereto as property manager of the Premises.

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Subordinate Loan, amounts advanced by Subordinate Lender pursuant to Section 11 hereof.

“Purchase Option Notice” has the meaning provided in Section 13(a) hereof.

“Qualified Manager” shall mean a property manager of the Premises which (A) is a reputable management company having at least five (5) years’ experience in the management of properties with similar uses as the Premises and in the jurisdiction in which the Premises are located, (B) 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, and (C) is not the subject of a bankruptcy or similar insolvency proceeding.

“Qualified Transferee” means (i) Subordinate 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;

(E) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, the Subordinate Loan (collectively, “Securitization Vehicles”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (E), such Person must be replaced by a Person meeting the requirements of this clause (E) within thirty (30) days; or

(F) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager, an Affiliate thereof, or an entity that is otherwise a Qualified Transferee under clauses (ii)(A), (B), (C) or (D) of this

definition acts as a 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.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“Rating Agencies” shall mean, prior to a Securitization, each of S&P, Moody’s Investors Service, Inc., and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been designated by Senior Lender and, after a Securitization, shall mean any of the foregoing that have rated any of the Certificates.

“Redirection Notice” has the meaning provided in Section 15 hereof.

“Restricted Person” means any Guarantor, Borrower, any Affiliate of Borrower or Guarantor, or any direct or indirect owner of Borrower or Guarantor.

“S&P” means Standard & Poors Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Securitization” means the sale or securitization of the Senior Loan (or any portion thereof) in one or more transactions through the issuance of securities, which securities may be assigned ratings by the Rating Agencies.

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

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

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

“Senior Loan Cash Management Agreement” means any cash management agreement or agreements executed in connection with, or cash management provisions of, the Senior Loan Documents.

“Senior Loan Default Notice” has the meaning provided in Section 11(a) hereof.

“Senior Loan Documents” means the Senior Loan Agreement, the Senior Note 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 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 Modification” has the meaning provided in Section 7(a) hereof.

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

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

“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.

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

(ii) 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;

(iii) 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;

(iv) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

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

(vi) the words “to Subordinate Lender’s knowledge” or “to the knowledge of Subordinate Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Subordinate Lender with direct oversight responsibility

for the Subordinate Loan without independent investigation or inquiry and without any imputation whatsoever; and

(vii) 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.

Section 2. Approval of Loans and Loan Documents.

(a) Subordinate 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 Subordinate 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 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 Subordinate Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Subordinate Loan Documents, (ii) the execution, delivery and performance of the Subordinate 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) Subordinate Lender is under no obligation or duty to, nor has Subordinate Lender represented that it will, see to the application of the proceeds of the Subordinate Loan by Borrower or any other Person to whom Subordinate Lender disburses such proceeds and (iv) any application or use of the proceeds of the Subordinate Loan for purposes other than those provided in the Subordinate Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Subordinate Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender’s consent to second mortgage financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Subordinate Loan Documents or the making of the Subordinate Loan, have been either satisfied or waived.

Section 3. Representations and Warranties.

(a) Subordinate 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 Subordinate Loan Documents as of the date hereof. To Subordinate 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 Subordinate Loan Documents.

(ii) Subordinate Lender is the legal and beneficial owner of the entire Subordinate 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) Subordinate 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) Subordinate 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 Subordinate Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Subordinate Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Subordinate Lender enforceable against Subordinate 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 Subordinate 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 Subordinate Lender of this Agreement or consummation by Subordinate 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 Subordinate Lender, (w) to Subordinate 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 Subordinate Lender is a party or to which any of its properties are subject, (x) to Subordinate 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 Subordinate 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 Subordinate Lender has knowledge against, or binding upon, Subordinate Lender or upon any of the securities, properties, assets, or business of Subordinate Lender or (z) to Subordinate Lender's knowledge, constitute a violation by Subordinate Lender of any statute, law or regulation that is applicable to Subordinate Lender.

(x) The Subordinate Loan is not cross-defaulted with any loan other than the Senior Loan. The Premises do not secure any loan from Subordinate Lender to 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.

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

(iv) Senior Lender has, independently and without reliance upon Subordinate 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 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, Borrower or any other Affiliate of Borrower.

#### Section 4. Transfer of Subordinate Loan or Senior Loan.

(a) Subordinate Lender shall not Transfer more than 49% of its beneficial interest in the Subordinate Loan without the prior written consent of Senior Lender (such consent not to be unreasonably withheld or delayed) unless such Transfer is to a Qualified Transferee. Any transferee must assume in writing the obligations of Subordinate Lender hereunder and agree to be bound by the terms and provisions hereof. Such Transferee shall also remake each of the representations and warranties contained herein for the benefit of the Senior Lender.

(b) At least five (5) days prior to a transfer to a Qualified Transferee acquiring more than a 49% direct interest in the Subordinate Loan, Subordinate 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.

(c) If more than one Person shall hold a direct interest in the Subordinate Loan, the holder(s) of more than 50% of the principal amount of the Subordinate Loan shall designate by written notice to Senior Lender one of such Persons (the "Directing Subordinate Lender") to act on behalf of all such Persons holding an interest in the Subordinate Loan. The Directing Subordinate Lender shall have the sole right to receive any notices which are required to be given or which may be given to Subordinate Lender pursuant to this Agreement and to exercise the rights and power given to Subordinate Lender hereunder, including any approval

rights of Subordinate Lender; provided, that until the Directing Subordinate Lender has been so designated, the last Person known to the Senior Lender to hold more than a 50% direct interest in the Subordinate Loan shall be deemed to be the Directing Subordinate Lender. Once the Directing Subordinate Lender 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 Subordinate Loan of the designation of a different Person to act as the Directing Subordinate Lender.

(d) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein, 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 Subordinate Loan and the Subordinate Loan Documents in accordance with the terms and provisions of this Agreement. Notwithstanding anything to the contrary contained herein, including this Section 4(c), Senior Lender shall not Transfer all or any of the Senior Loan or any interest therein to a Restricted Person and/or a Prohibited Person. Senior Lender agrees that money damages would not be a sufficient remedy for breach of the foregoing covenant and that, in addition to all other remedies available at law or in equity, the Subordinate Lender shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages.

#### Section 5. Foreclosure.

(a) Subordinate Lender shall not exercise any rights it may have under the Second Mortgage and the other Subordinate Loan Documents or applicable law with respect to a foreclosure or other realization upon the Premises (including, without limitation, obtaining title to the Premises or selling or otherwise transferring the Premises) without the prior written consent of Senior Lender (such consent not to be unreasonably withheld or delayed) unless (i) the transferee of title to the Premises is a Qualified Transferee, (ii) the Premises will be managed by a Qualified Manager promptly after the transfer of title to the Premises, and (iii) if not in place prior to the transfer of title to the Premises, hard cash management and adequate reserves for taxes, insurance, debt service, ground rents, capital repair and improvement expenses, tenant improvement expenses and leasing commissions and operating expenses will be implemented under the Senior Loan to the extent required under the Senior Loan Documents promptly after the transfer of title to the Premises. Prior to consummation of any transfer of the Premises pursuant to this Section 5(a), the Subordinate Lender shall provide to Senior Lender notice of the potential transfer. Upon consummation of any such transfer of the Premises pursuant to this Section 5(a), Subordinate Lender shall provide to the Senior Lender an officer's certificate from an officer of Subordinate Lender certifying that all conditions set forth in this Section 5(a) have been satisfied. Senior Lender may request reasonable evidence that the foregoing requirements have been satisfied.

(b) Nothing contained herein shall limit or restrict the right of Subordinate Lender to exercise its rights and remedies, in law or in equity, or otherwise, in order to realize on its second lien on the Premises.

(c) In the event Subordinate Lender or any purchaser at a foreclosure sale obtains title to the Premises, 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, any such transfer shall not constitute a breach or default under the Senior Loan Documents, provided the conditions in Section 5(a) are met. Senior Lender also acknowledges and agrees that it will not impose any unreasonable fees or delays in connection with such Transfer.

Section 6. [Intentionally deleted.]

Section 7. Modifications, Amendments, Etc.

(a) Senior Lender shall have the right without the consent of Subordinate 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, (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, (vii) cross default the Senior Loan with any other indebtedness, (viii) consent to a higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with an extended term of the Senior Loan, (ix) obtain any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises, (or other similar equity participation), (x) 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, or (xi) modify, amend or waive any conditions precedent to a disbursement of proceeds of the Senior Loan, except to the extent necessary to complete the Project; provided, however, in no event shall Senior Lender be obligated to obtain Subordinate 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 (x) be modified without the written consent of Subordinate Lender. In addition and notwithstanding the foregoing provisions of this Section 7, any amounts funded by the Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective 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 7(a).

(b) Subordinate 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 “Subordinate Loan Modification”) of the Subordinate Loan or the Subordinate Loan Documents provided that no

such Subordinate Loan Modification shall (i) increase the interest rate or principal amount of the Subordinate Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Subordinate Loan Documents, (iii) extend or shorten the scheduled maturity date of the Subordinate Loan (except that Subordinate Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Subordinate Loan Documents), (iv) convert or exchange the Subordinate Loan into or for any other indebtedness or subordinate any of the Subordinate Loan to any indebtedness of 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 Subordinate Loan with any other indebtedness. Notwithstanding anything to the contrary contained herein, if an Event of Default exists under the Subordinate Loan Documents, Subordinate Lender shall be permitted to modify or amend the Subordinate Loan Documents in connection with a work-out or other surrender, compromise, release, renewal or modification of the Subordinate 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 7(b), any amounts funded by the Subordinate Lender under the Subordinate Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Subordinate Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(b).

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

#### Section 8. Subordination of Subordinate Loan and Subordinate Loan Documents.

(a) Subordinate Lender hereby subordinates and makes junior the Subordinate Loan, the Subordinate 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 8(a).

(b) Every document and instrument included within the Subordinate 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 impair Subordinate Lender's second lien priority right, estate and interest in and to the Premises and the exercise of remedies and realization upon the Premises by Subordinate 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.

Section 9. Payment Subordination.

(a) Except (i) as otherwise expressly provided in this Agreement and (ii) in connection with the exercise by Subordinate Lender of its rights and remedies with respect to the Premises in accordance with the terms of this Agreement, all of Subordinate Lender's rights to payment of the Subordinate Loan and the obligations evidenced by the Subordinate Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Loan and the obligations secured by the Senior Loan Documents, and Subordinate Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower 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 Subordinate Lender is entitled to receive any payment on account of the Subordinate Loan. All payments or distributions upon or with respect to the Subordinate Loan which are received by Subordinate Lender contrary to the provisions of this Agreement shall be received and held in trust by the Subordinate 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 Subordinate Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Subordinate 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 9(a), provided that no Continuing Senior Loan Event of Default shall then exist under the Senior Loan Documents, Subordinate Lender may accept payments of any amounts due and payable from time to time which Borrower is obligated to pay Subordinate Lender in accordance with the terms and conditions of the Subordinate Loan Documents and Subordinate Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Subordinate Lender may take any Second Mortgage Enforcement Action which is permitted under Section 5 hereof; provided, however, that (i) Subordinate Lender shall, prior to commencing any Second Mortgage Enforcement Action, give the Senior Lender written notice of the default which would permit Subordinate Lender to commence such Second Mortgage Enforcement Action and (ii) Subordinate 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 Second Mortgage Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Second Mortgage 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 Subordinate Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Subordinate 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 Subordinate Lender.

#### Section 10. Rights of Subrogation; Bankruptcy.

(a) Each of Subordinate 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 Subordinate Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Subordinate Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, Borrower, 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 Subordinate 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. Subordinate Lender agrees that Senior Lender owes no fiduciary duty to Subordinate Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Subordinate Lender agrees not to assert any such claim. Senior Lender agrees that Subordinate Lender owes no fiduciary duty to Senior Lender in

connection with the administration of the Subordinate Loan and the Subordinate 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 Subordinate Lender shall entitle Subordinate Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Subordinate Lender agrees that, except with respect to the enforcement of its remedies under the Subordinate 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 30 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, Subordinate Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause 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 adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (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; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, 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; (vii) seek to consolidate the Premises or any other assets of the Borrower with the assets of the 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.

(d) (i) Subordinate 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 without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Subordinate Lender's interest in the Premises; (ii) Senior Lender may vote in any such Proceeding any and all claims of Subordinate Lender, and Subordinate 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 Subordinate Lender as a creditor in connection with any case by or against the Borrower in any Proceeding, including without limitation, the right to file and/or prosecute any creditor claims, to vote to accept or reject a plan, to make any election under Section 1111(b) 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 Subordinate 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) Subordinate 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 as a creditor 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).

Section 11. 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 Subordinate Lender, whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a “Senior Loan Default Notice”) and shall permit Subordinate Lender an opportunity to cure such default in accordance with the provisions of this Section 11(a).

(1) If the default is a monetary default relating to a liquidated sum of money, Subordinate 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, Subordinate Lender shall 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. Subordinate 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 Subordinate Lender has commenced and is continuing to diligently pursue its rights against the Premises.

(2) If the default is of a non-monetary nature, Subordinate 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 Subordinate Lender, Subordinate Lender shall be given an additional period of time as is reasonably necessary for Subordinate Lender in the exercise of due diligence to cure such non-monetary default for so long as (i) Subordinate 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 cannot be cured within such thirty (30) days, in which case, Subordinate Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower and (iv) during such non-monetary cure period, there is no material impairment to the value, use or operation of the Premises. Any additional cure period granted to the Subordinate Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of the Borrower. Notwithstanding anything to the

contrary contained herein, if Subordinate Lender determines that in order to cure any non-monetary default it must effectuate an Second Mortgage Enforcement Action, Subordinate Lender shall have such time as may be reasonably necessary to effectuate such Second Mortgage Enforcement Action.

(3) Subordinate Lender shall not be required, in order to effect a cure (whether monetary or non-monetary) hereunder (other than the cure by Subordinate Lender of a default in the payment of the Senior Loan in full on the maturity date thereof or the reimbursement of interest on advances for monthly payment of principal and/or interest and/or on any Protective Advances, as aforesaid), to pay any interest calculated at the default rate under the Senior Loan Documents to the extent the same is in excess of the rate of interest which would have been payable by Borrower in the absence of such default (and irrespective of any cure of such default by Subordinate Lender pursuant to the provisions of this Agreement), and no interest shall accrue at the default rate as against Subordinate Lender for such period.

(b) To the extent that any Qualified Transferee acquires the Premises in accordance with the provisions and conditions of this Agreement, such Qualified Transferee shall acquire the same subject to the Senior Loan and the terms, conditions and provisions of the Senior Loan Documents for the balance of the term thereof, which shall not be accelerated or otherwise enforced by Senior Lender solely due to such acquisition and shall remain in full force and effect; provided that such Qualified Transferee shall have caused Borrower to reaffirm in writing, subject to such exculpatory provisions as shall be set forth in the Senior Loan Documents, all of the terms, conditions and provisions of the Senior Loan Documents on Borrower's part to be performed. As a result of a Qualified Transferee's acquisition of the Premises done in accordance with the provisions and conditions of this Agreement, the Borrower shall remain subject to all defaults under the Senior Loan which remain uncured as of the date of such acquisition unless such defaults have been cured by such Qualified Transferee within the applicable cure periods described herein or waived by Senior Lender, except for defaults that are not susceptible of being cured by such Qualified Transferee; provided, that such defaults which are not susceptible of being cured do not materially impair the value, use or operation of the Premises. Notwithstanding any contrary or inconsistent provision of this Agreement, the Senior Loan Documents or the Subordinate Loan Documents, no acquisition or other fee or similar charge shall be due in connection with such Qualified Transferee's acquisition of any interest in Borrower or the Premises as the result of a Second Mortgage Enforcement Action or assignment in lieu of foreclosure or other negotiated settlement in lieu of any of the foregoing.

(c) So long as no Event of Default shall have occurred and be continuing under the Senior Loan Documents, all funds held and applied pursuant to the Senior Loan Cash Management Agreement and any other terms of the Senior Loan Documents pertaining to escrows and reserves, shall continue to be applied pursuant thereto and shall not be applied by Senior Lender to prepay outstanding principal balance of the Senior Loan or released to the Borrower.

Section 12. No Actions; Restrictive Provisions. Senior Lender consents to Subordinate Lender's right, pursuant to the Subordinate Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event both Subordinate

Lender and Senior Lender shall have such rights at any time, and Senior Lender shall fail to exercise such rights, Subordinate 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 Subordinate Lender to cause the termination of the Property Manager pursuant to the Subordinate Loan Documents, Subordinate 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 12 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 Subordinate Lender.

Section 13. Right to Purchase Senior Loan.

(a) If (1) there occurs any Proceeding of Borrower, (2) the Senior Loan has been accelerated, (3) any Enforcement Action has been commenced, (4) the Senior Loan has become a "specially serviced mortgage loan" under the applicable pooling and servicing agreement, or (5) the Senior Loan is not repaid in full on the then-current Stated Maturity Date thereof (each of the foregoing, a "Purchase Option Event"), Senior Lender shall provide prompt written notice thereof to Subordinate Lender and upon ten (10) Business Days prior written notice to Senior Lender (the "Purchase Notice"), Subordinate Lender shall have the right to purchase, in whole but not in part, the Senior Loan for a price equal to the sum of, without duplication (collectively, the "Loan Purchase Price"): (i) the outstanding principal balance thereof, together with all accrued interest and other amounts due thereon, including, without limitation, default interest and late charges, (ii) any Protective Advances, monthly advances of principal and interest or "servicing advances" made by Senior Lender or the Senior Loan servicer 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), (iii) any workout fee or liquidation fee payable under any applicable pooling and servicing agreement, (iv) post-petition interest, (v) exit fees and (vi) all reasonable costs and expenses (including special servicing fees and reasonable legal fees and expenses) actually incurred by Senior Lender or any servicer in enforcing the terms of the Senior Loan Documents, any fees and expenses payable or reimbursable to any servicer, trustee, fiscal agent or special servicer, including, without limitation, interest on any advances made by any of them and any workout, securitization, liquidation, special servicing or similar fees paid or payable to any of them, but specifically excluding (x) any prepayment fees or premiums, yield or spread maintenance premiums or fees, liquidated damages amount and (y) in the event that Subordinate Lender purchases the Senior Loan within ninety (90) days of the date it receives notice of the applicable Purchase Option Event, any workout or liquidation fees (notwithstanding clause (iii) above), and default interest (other than interest on advances as set forth in clause (ii) above) and late charges (notwithstanding clause (i) above). Concurrently with payment to Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered to Subordinate Lender all Senior Loan Documents held by or on behalf of Senior Lender and all amounts then held in any

reserve or escrow account controlled by or held on account of Senior Lender and will execute or cause to be executed in favor of Subordinate Lender or its designee assignment documentation, in form and substance reasonably acceptable to Subordinate Lender, at the sole cost and expense of Subordinate Lender, to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations and warranties as to the outstanding balance of the Senior Loan and as to Senior Lender's no having assigned or encumbered its rights in the Loan). The right of Subordinate 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 in respect of the Senior Loan or (II) with respect to a specific Purchase Option Event, if such Purchase Option Event ceases to exist, provided, however, that, with respect to clause (I), in no event shall Subordinate Lender have less than ten (10) days to deliver a Purchase Notice following receipt of notice by Senior Lender of the occurrence of a Purchase Option Event.

(b) Subordinate 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.

Section 14. Additional Understandings. For as long as the Subordinate Loan remains outstanding:

(a) Notices of Transfer; Consent. Senior Lender promptly shall notify Subordinate 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 Subordinate Lender prior to Senior Lender's granting of its consent or agreement thereto.

(b) Annual Budget. The Subordinate Lender shall have the right to approve the annual operating budget of Borrower in accordance with the terms of the Subordinate Loan Documents. Notwithstanding anything contained herein, in the Senior Loan Documents or in the Subordinate Loan Documents, the Subordinate Lender may require Borrower to submit the annual budget to the Subordinate Lender for approval prior to any submission to the Senior Lender. Upon Subordinate Lender's approval, the Subordinate Lender shall submit the approved budget to the Senior Lender for its approval. The Subordinate Lender shall consent to any changes in the budget reasonably requested by the Senior Lender. In the event that the approval of the Subordinate Lender is not obtained on a timely basis, the then current existing operating budget shall remain in effect with an increase in any non-discretionary expense item to either (i) the prior budgeted expense amount with a 5% increase or (ii) the actual expense incurred as evidenced by the applicable bill or invoice.

Section 15. Intentionally Omitted.

Section 16. Intentionally Omitted.

Section 17. Obligations Hereunder Not Affected.

(a) All rights, interests, agreements and obligations of Senior Lender and Subordinate 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 Subordinate 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 Subordinate Loan;

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

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

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, 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 Subordinate Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

Section 18. 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 email 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 18. 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 sending by email if sent during business hours on a Business Day (otherwise on the next Business Day) upon receipt by sender of a reply email evidencing receipt or upon electronic confirmation thereof, (d) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (e) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Subordinate Lender:

c/o Community Investment Corporation  
222 S. Riverside Plaza, Suite 2200  
Chicago, IL 60606-6109  
Attention:  
Email:

With a copy (which shall not constitute notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

To Senior Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Section 19. Estoppel.

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

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

Section 20. Further Assurances. So long as all or any portion of the Senior Loan and the Subordinate Loan remains unpaid and the Senior Mortgage encumbers the Premises, Subordinate 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.

Section 21. No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower, 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. If any Certificates are outstanding, this Agreement shall not be amended unless a Rating Agency Confirmation has been obtained with respect to such amendment.

Section 22. Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Subordinate Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Subordinate Lender.

Section 23. 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.

Section 24. 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.

Section 25. 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.

Section 26. 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.

Section 27. 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.

Section 28. 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 Subordinate Loan Documents, the terms and conditions of this Agreement shall control.

Section 29. No Release. Nothing herein contained shall operate to release Borrower 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 under

the Senior Loan Documents or to release Borrower from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Subordinate Loan Documents or (y) any liability of Borrower under the Subordinate Loan Documents.

Section 30. 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 Subordinate Lender of the Premises or (d) payment in full of the Subordinate 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.

Section 31. 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.

Section 32. 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, Subordinate Lender agrees upon demand to pay to Senior 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 Senior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Senior Lender against Subordinate Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Subordinate Lender to perform or observe any of the provisions hereof.

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

Section 33. Injunction. Senior Lender and Subordinate 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 Subordinate Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Subordinate 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 non-breaching party.

Section 34. Mutual Disclaimer.

(a) Each of Senior Lender and Subordinate Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Subordinate Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Subordinate Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Subordinate Lender deem relevant. Each of Senior Lender and Subordinate Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Subordinate Loan or the Subordinate 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 Subordinate Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Subordinate 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 Subordinate Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Subordinate 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 Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Subordinate Loan).

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

[NO FURTHER TEXT ON THIS PAGE]

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

**SENIOR LENDER:**

[\_\_\_\_\_]

**SUBORDINATE LENDER:**

**CIC MEZZANINE INVESTORS,  
LLC**, an Illinois limited liability  
company

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

EXHIBIT A

[Attach Legal Description of Premises]

EXHIBIT B

Senior Loan Documents

EXHIBIT C

Subordinate Loan Documents

