



ICSC+LAW SYMPOSIUM OH/KY/IN/MI/PA
Hilton Columbus/Polaris, Columbus, OH
February 29 - March 1, 2024

ICSC+LAW SYMPOSIUM OH/KY/IN/MI/PA

Hilton Columbus/Polaris
Columbus, OH
Friday, March 1, 2024
11:00 am - 12:00 pm

**Session 2A: My, How Things Have Changed - Building Your Knowledge on
Capital Financing Structures**

Panelists

Shawn Dorsey
Director of Finance
Kaufman Development
Columbus, OH

Christopher Ellis
Senior Director, Originations
Nuveen Green Capital
Columbus, OH

Harlan W. Robins, Esq.
Equity Partner
Frost Brown Todd LLP
Columbus, OH



OUTLINE

My How Things Have Changed – Building Your Knowledge on Capital Financing Structures

This session will focus on the complicated nature of financing structures in today's highly regulated and challenging economic environment. From capital contributions, preferred equity, mezzanine financing, PACE, bond structures and conventional bank financing, developers need to be creative in order to commence a new ground up project.

- I. Acquisition Financing
 - a. Buyer Equity
 - i. actual out-of-pocket
 - ii. equity (cash)
 - iii. 1031/OZ issues
 - b. Bank bridge loan
- II. Vertical Financing
 - a. Developer equity
 - i. Actual out-of-pocket
 - ii. Sponsor equity
 - iii. Deferred or contributed fees
 - iv. OZ & Carried Interest considerations
 - b. Preferred Equity
 - i. EB-5
 - ii. Insurance Company Equity
 - iii. Control issues
 - c. Mezzanine Financing
 - d. PACE
 - e. City contributions
 - i. Grants
 - ii. Loans
 - iii. Infrastructure assistance
 - f. Enterprise Zones
 - g. Capital Lease Structure
 - i. Sales tax abatement
 - h. TIFs/Pilots
 - i. Bond Financing



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- i. Leasehold fiction
 - ii. Fee joinder
 - iii. Condominium structures
 - j. NCA charges
 - k. Conventional bank financing
 - l. TMUD
- III. Post Closing
- a. Adding land
 - b. DSCR covenants
 - c. Lease up requirements
 - d. Curtailments
 - e. Recognition agreements
 - f. SNDAs



SESSION MATERIALS

ESTOPPEL CERTIFICATE AND AGREEMENT

[_____, 20__]

To: [_____] (in its capacity as "Administrative Agent" for the "Holders")

From: [_____] (the "Ground Lessor")

and

From: [_____] (the "Ground Lessee")

Property: See Exhibit "A" attached hereto for description of property located in [_____] County, [_____]

Ground Lease: Ground Lease from Ground Lessor, as lessor to Ground Lessee, as lessee

Dated: [_____, 20__]

Memo Recorded: Instrument Number _____, Recorder's Office, [_____] County, [_____]

Ladies and Gentlemen:

The undersigned, Ground Lessor, as the owner of a leasehold interest of the Property and holder of the lessor's interest under the above-referenced Ground Lease, and the undersigned, Ground Lessee, as the holder of the lessee's interest under the above referenced Ground Lease, hereby represent to you that as of the date hereof:

1. The Ground Lease attached hereto as Exhibit "B" constitutes the entire agreement between the Ground Lessor and the Ground Lessee as to the subject matter thereof. Ground Lessor is the current landlord under the Ground Lease and Ground Lessee is the current tenant under the Ground Lease.
2. The Ground Lease is in full force and effect, and the Ground Lease has not been modified, changed, altered or amended in any respect. There are no other agreements, other than the Capital Lease, or understandings in existence between the Ground Lessor and Ground Lessee pertaining to the Property. Neither the Ground Lessor nor the Ground Lessee will be a party to any cancellation, termination, amendment or modification of the Ground Lease without the prior written consent of the Administrative Agent.



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3. The term of the Ground Lease commenced on the [__th] day of [____], 20[___], and terminated on the Scheduled Lease Termination Date as defined therein.
4. Neither the Ground Lessor nor the Ground Lessee has commenced any action or given or received any notice for the purpose of terminating the Ground Lease, nor does the Ground Lessor have any right to terminate the Ground Lease.
5. The Ground Lessor has not mortgaged, assigned or hypothecated or otherwise transferred or encumbered all or any portion of the Ground Lessor's interest in the Property or in the Ground Lease. The Ground Lessor shall not voluntarily convey its leasehold interest in the Property to the Ground Lessee, and shall not allow a merger of title, without the prior written consent of the Administrative Agent, the Bonds (as defined below) having been paid in full, or in accordance with the terms of the Ground Lease.
6. All of the Ground Lessee's obligations which have accrued prior to the date hereof have been performed. Neither the Ground Lessor nor the Ground Lessee is in default under any of the terms, covenants or provision of the Ground Lease, and the Ground Lessor knows of no event, circumstances or condition which, but for the passage of time or the giving of notice, or both, would give rise to any obligation on the part of the Ground Lessor or the Ground Lessee which, if not performed, would constitute a default or an event of default under the Ground Lease by the Ground Lessee or the Ground Lessor thereunder, or would constitute a defense to the enforcement of the Ground Lease by the Ground Lessee, or would otherwise constitute the basis for a claim or cause of action against the Ground Lessee.
7. Ground Lessor acknowledges that the Ground Lessor has received notice that the Ground Lessee's leasehold interest in the Property and under the Ground Lease will be mortgaged and assigned to the Administrative Agent in connection with the purchase of the Bonds being made by the Original Purchasers ("Bonds"). The mortgage to Administrative Agent from Ground Lessee is not prohibited by the Ground Lease. Ground Lessor consents to such mortgage.
8. Ground Lessor agrees that, upon Administrative Agent's receipt of written notice of default by Ground Lessee (a "Default Notice"), Administrative Agent shall have the right, but not the obligation, to cure such default on behalf of Ground Lessee, and Ground Lessor shall not have the right to terminate the Ground Lease or take other action under the Ground Lease in the event that Administrative Agent completes the cure of such default with forty-five (45) days after its receipt of the Default Notice, or if the nature of such default is that such that it cannot be cured within such forty-five (45) day-period, Administrative Agent has initiated such cure and is diligently pursuing the same. Ground Lessor agrees to accept Administrative Agent's cure of a default by Ground Lessee. Ground Lessor acknowledges that Administrative Agent is relying upon Ground Lessee's interest in the Ground Lease as collateral, so Ground Lessor agrees to give Administrative Agent the opportunity to realize on such collateral before any termination of the Ground Lease due to a default by Ground Lessee. In furtherance of the foregoing, Ground Lessor further agrees that it shall not terminate the Ground Lease due to the occurrence of any Ground Lessee default so long as



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Administrative Agent commences the foreclosure of its lien on the Leasehold Estate within (90) days after its receipt of the Default Notice (subject to extension of time in the event such filing of foreclosure or prosecution of the same is prevented or stayed through a bankruptcy proceeding or otherwise), completes such foreclosure with reasonable diligence.

9. Ground Lessor shall simultaneously deliver to Administrative Agent copies of any Default Notice or any notice of termination of the Ground Lease. No such notice given by Ground Lessor to Ground Lessee shall be binding or affect Administrative Agent unless a copy of the same shall have simultaneously been delivered to Administrative Agent. All notices to Administrative Agent shall be addressed as set forth in the notice provision of this Certificate, or at such other addresses as Administrative Agent shall provide in writing to Ground Lessor, and shall be given in writing and shall be deemed to have been duly given and to be effective to the extent delivered in accordance with the Ground Lease.
10. Ground Lessor shall enter into a new lease with Administrative Agent (or Administrative Agent's nominee) if the Ground Lease is terminated for any reason (including any rejection of the Ground Lease pursuant to the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect) substantially similar in form and content to the Ground Lease.
11. Administrative Agent may, without affecting the validity of this Certificate, extend the time for payment of the Bonds or alter the terms and conditions of any agreement between Ground Lessee and Administrative Agent relating to the Bonds, without the consent of, or notice to, Ground Lessor and without in any manner impairing or otherwise affecting Administrative Agent's rights under this Certificate, the documents evidencing the Bonds, or the Ground Lease.
12. All written notices and other communications from the Ground Lessor to the Administrative Agent shall be addressed to the Administrative Agent at:

[]

With a copy to:

[]

or such other addresses that the Administrative Agent shall furnish to the Ground Lessor in writing. Ground Lessor acknowledges that the foregoing has been provided in full compliance with the requirements of the Ground Lease. All notices shall otherwise be provided in accordance with the Ground Lease.

13. Ground Lessor and Ground Lessee acknowledge that Administrative Agent has given adequate and complete written notice that Administrative Agent has a leasehold mortgage on the Property and that Administrative Agent shall be entitled to (and Ground Lessor and Ground Lessee agree to provide) copies of all notices to be provided by either Ground



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Lessor or Ground Lessee in accordance with the Ground Lease at the same time such notices are provided to either Ground Lessor or Ground Lessee.

14. Ground Lessor and Ground Lessee acknowledge that Original Purchasers are relying upon this estoppel certificate and the accuracy of the information contained herein in purchasing the Bonds secured by the Ground Lessee's leasehold interest in the Property and the improvements to be constructed thereon.
15. This Certificate shall inure to the benefit of and be binding upon the parties named herein, and their successors and assigns. Ground Lessor and Ground Lessee each agree to execute an estoppel certificate from time to time, subject to any changes required by changes in factual circumstances, in substantially the form of this estoppel certificate (in connection with subsequent financing by Ground Lessee or a sale of the Property by foreclosure, deed in lieu of foreclosure or otherwise). This provision is intended to benefit Administrative Agent, its successors and assigns and subsequent transferees of Ground Lessor's and Ground Lessee's respective interests (and their respective successors and assigns) in the Property will be bound by these provisions.
16. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to such term in the Disbursing, Payment and Collateral Agreement of even date herewith by and among Administrative Agent, Original Purchasers, Ground Lessor and Ground Lessee.

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Exhibit "A"

Property



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Exhibit "B"

Ground Lease



INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (as amended, restated or modified from time to time, this "Agreement") is dated as of the ___ day of _____, 20__, and made by and between [_____, _____], as administrative agent ("Senior Lender") and [_____, a(n) _____] ("Junior Lender").

RECITALS

A. Senior Lender has entered into the "Senior Loan Documents" (as defined below) with [_____, a(n) _____] ("Borrower") which provide for a construction loan of up to [\$_____] to Borrower (the "Senior Loan") to finance the construction of a[± _____] square foot distribution center project in [_____, _____] (the "Project"). Pursuant to the Senior Loan Documents, Borrower has granted to the Senior Lender rights, liens, and security interests (collectively, the "Senior Liens") in the Project and the other Collateral described in the Senior Loan Documents.

B. [_____, a(n) _____] ("Junior Borrower"), which is the owner of [___%] of the membership interests in Borrower, has requested that Junior Lender make an equity loan of up to [\$_____] to Junior Borrower (the "Junior Loan") to finance development and construction costs relating to the Project that will not be paid with proceeds of the Senior Loan and Borrower's equity contributions. Junior Lender has agreed to make the Junior Loan subject to the terms and conditions of the "Junior Loan Documents" (as defined below).

C. Among the conditions set forth in both the Senior Loan Documents and the Junior Loan Documents are that Senior Lender and Junior Lender execute this Agreement to document certain agreements about the priority of their respective "Liens" (as defined below) and certain other rights, priorities and interests, between them.

AGREEMENTS

In consideration of the foregoing, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Senior Lender and Junior Lender hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 The following terms shall have the meanings indicated below:



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"Affiliate" of Junior Lender or Senior Lender, as the case may be, means any Person that directly or indirectly controls, is controlled by, or is under control with Junior Lender or Senior Lender, as the case may be, and has the financial ability to complete, own, and operate the Project. The term "control" means to possess, directly or indirectly, the power to direct the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.

"Business Day" means any day other than Saturday, Sunday, or a day that is a legal holiday under the laws of the State of [_____] or on which banking institutions in the State of [_____] are required by law or other governmental action to close.

"Claim" means a right to payment, including without limitation, indebtedness of Borrower or Junior Borrower payable directly or indirectly to the holder of such Claim and/or a right to an equitable remedy for breach of performance, in either case, as against Borrower or any of Borrower's property, or Junior Borrower or any of Junior Borrower's Property.

"Collateral" means all assets of Borrower, Junior Borrower or any other Person, whether real or personal (including, without limitation, plans, construction contracts, improvements, land, fixtures, equipment, rents and membership interests) in which either Senior Lender or Junior Lender, as the case may be, hold a Lien to secure payment of the Senior Loan or the Junior Loan, as applicable.

"Enforcement" means, with respect to either of Senior Lender or Junior Lender, as the context requires, the exercise of any right or remedy upon default under its loan documents.

"Guarantor" or "Guarantors" means any Person or Persons who has/have guaranteed repayment of the Senior Loan and/or the Junior Loan, which on the date hereof the parties acknowledge [_____, a(n) _____], and [_____, a(n) _____].

"Junior Collateral" means the membership interests owned by Junior Borrower in Borrower.

"Junior Claims" means all rights, remedies, demands, causes of action and Claims of every type and description at any time held or asserted by, or arising in favor of, Junior Lender under the Junior Loan Documents or secured by the Junior Liens.

"Junior Liens" means, collectively, the rights, liens, and security interests granted to Junior Lender in the Collateral described in the Junior Loan Documents.

"Junior Loan Documents" means, collectively, the documents (as each may be amended, modified or restated from time to time in accordance with Article 4 hereof) listed on Schedule 1 to this Agreement.



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"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or other and including without limitation, any attachment, levy, or judgment lien), preference, priority, or other security agreement or other preferential arrangement whatsoever, including, without limitation, any right of setoff (statutory or otherwise), any conditional sale or other title retention agreement, the interest of a lessor under a lease, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement (other than a financing statement filed by a "true" lessor pursuant to Section 9-408 of the Uniform Commercial Code) naming the owner of the asset to which such Lien relates as debtor.

"Person" means any person, individual, sole proprietorship, partnership, joint venture, corporation, unincorporated organization, association, institution, entity, party, including any government and any political subdivision, agency, or instrumentality thereof.

"Proceedings" means any bankruptcy, reorganization, readjustment or arrangement of debt, suspension of payments, receivership, liquidation or insolvency or similar law or statute now or hereafter in effect.

"Protective Advances" means all sums expended as determined by Senior Lender or Junior Lender, as the case may be, to be necessary or appropriate to: (a) protect the priority, validity and enforceability of the Liens on, and security interests in, any Collateral and the instruments evidencing the indebtedness and obligations of Borrower to Senior Lender or Junior Lender in respect of the Senior Loan or Junior Loan, as the case may be; or (b) (1) prevent the value of any Collateral from being materially diminished (assuming the lack of such a payment within the necessary time frame could potentially cause such Collateral to lose value), or (2) protect any of the Collateral from being damaged, impaired, mismanaged or taken, or (3) complete the Project in accordance with the Senior Loan Documents or the Junior Loan Documents.

"Senior Claims" means all rights, remedies, demands, causes of action, and Claims of every type and description at any time held or asserted by, or arising in favor of, Senior Lender under the Senior Loan Documents or secured by a Lien in favor of Senior Lender in any of the Collateral.

"Senior Loan Agreement" means that certain Syndicated Construction Loan Agreement dated of even date herewith, executed by and among Senior Lender, the other lenders who are a party thereto and Borrower.

"Senior Loan Documents" means, collectively, the documents (as each may be amended, modified or restated from time to time in accordance with Article 4 hereof) listed on Schedule 2 to this Agreement, including but not limited to the Senior Loan Agreement.



ARTICLE 2

PAYMENTS AND LIENS

Section 2.1 Consent to Liens. Notwithstanding anything to the contrary in any Senior Loan Document, Senior Lender consents to the Liens created and granted to Junior Lender in the Junior Collateral pursuant to the Junior Loan Documents and, subject to the terms of this Agreement, to the remedies granted to Junior Lender thereby. Notwithstanding anything to the contrary in any Junior Loan Document, Junior Lender consents to the Liens created and granted to Senior Lender in the Collateral pursuant to the Senior Loan Documents, and to the remedies granted to Senior Lender thereby. Senior Lender and Junior Lender acknowledge and agree that Junior Lender's Liens will not extend to, or encumber, any Collateral which includes the land or improvements comprising part of the Project, it being the agreement of Senior Lender and Junior Lender that Junior Lender's Liens are limited to the Junior Collateral described in the Junior Loan Documents as of the date of this Agreement, including, but not limited to, a first priority security interest in the membership interests in Borrower.

Section 2.2 Payment Subordination. The payment of the Junior Claims is and shall be expressly subordinate and junior in right of payment and exercise of remedies to the prior payment in full in cash of the Senior Claims, except that Junior Lender may exercise its remedies to the extent and in the manner provided herein. So long as no Event of Default (as defined in the Senior Loan Documents) has occurred and is continuing under the Senior Loan Documents, Junior Lender shall be entitled to receive such payments under the Junior Loan Documents as may be due Junior Lender, except as set forth in Section 4.12 hereof, including payment of principal and interest. Junior Lender agrees that no payments shall be made to Junior Lender if Junior Lender has received written notice that an Event of Default (as defined in the Senior Loan Documents) has occurred and is continuing under the Senior Loan Documents.

Junior Lender, hereby acknowledges that (i) Borrower will not ever have any liability or obligation whatsoever with respect to the Junior Loan or otherwise in connection with the payment of the Junior Claims, (ii) the Junior Loan Documents do not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Project, the Collateral encumbered by the Senior Loan Documents or any other collateral owned by Borrower securing the Senior Loan or otherwise grant to Junior Lender the status of a creditor of Borrower, (iii) Junior Lender shall not assert, claim or raise as a defense, any such lien, encumbrance or security interest in the Project or any status as a creditor of Borrower in any action or proceeding, including any Proceeding commenced by or against Borrower, and (iv) Junior Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Junior Loan as having conferred upon Junior Lender any lien or encumbrance upon, or security interest in, the Project or any portion thereof or as having conferred upon any Junior Lender the status of a creditor of Borrower.



Section 2.3 Lien Subordination. Junior Lender hereby acknowledges and agrees that all rights, Liens, and privileges, vested in it as the owner and legal holder of the Junior Loan Documents (including, without limitation, rights to insurance and condemnation proceeds) in and to the Collateral shall be and are subordinate and inferior to the rights, Liens and privileges vested in Senior Lender, as the owner and legal holder of the Senior Loan Documents, all advances to be made thereunder and all Liens created thereby in and to the Collateral, and agrees that the rights, Liens and privileges set forth in the Senior Loan Documents are prior and superior to the rights, Liens and privileges set forth in the Junior Loan Documents.

ARTICLE 3

ENFORCEMENT OF CLAIMS

Section 3.1 Senior Claims. If a default occurs under any Senior Loan Document, then Senior Lender shall provide Junior Lender with a copy of any written notice thereof (a "Senior Lender's Default Notice") sent to Borrower contemporaneously with the giving of such notice to Borrower and if such default is curable, shall permit Junior Lender the option (but not the obligation) to cure the default within the time period, if any, specified for cure in such Senior Loan Document; provided, however, Junior Lender shall have fifteen (15) additional days, beyond the time period, if any, specified for cure in such Senior Loan Documents within which to effect a cure of such default (the "Junior Lender's Additional Cure Period"). Subject to Section 4.6, if Junior Lender so pays the Senior Claims, then Junior Lender shall be subrogated to the rights of Senior Lender under the Senior Loan Documents.

Section 3.2 Junior Claims. If a default occurs under any Junior Loan Document, then Junior Lender shall provide Senior Lender and Guarantor with a copy of any written notice thereof sent to Junior Borrower contemporaneously with the service of such notice to Borrower and the option (but not the obligation) to cure said default within the time period, if any, specified for cure in the Junior Loan Documents; provided, however, Senior Lender shall have fifteen (15) additional days beyond the time period, if any, specified for cure in such Junior Loan Documents within which to effect a cure of such default (the "Senior Lender's Additional Cure Period"). If Senior Lender so pays the Junior Claims, then Senior Lender shall be subrogated to the rights of Junior Lender under the Junior Loan Documents. If such default is not cured, then Junior Lender may (i) sue for collection under the Junior Loan Documents and/or (ii) pursue foreclosure of the Junior Liens; provided, however, it is understood that if the purchaser or other transferee of any of the Collateral is other than Junior Lender or its Affiliate as provided in Section 3.3, then such purchaser or transferee will not be a permitted successor or assign of Junior Lender under this Agreement and such acquisition will be a default under the Senior Loan Documents.

Notwithstanding the foregoing, Junior Lender agrees that it shall not pursue the enforcement of any judgments against a Guarantor (but shall not be precluded from



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obtaining a judgment in any event) pursuant to this Section unless (i) it has delivered to Senior Lender prior written notice thereof, and (ii) if any indebtedness, obligations and liabilities are then outstanding under the Senior Loan Documents, the proceeds of any such enforcement are promptly turned over to Senior Lender (to be held in trust for the Junior Lender and to be returned or applied by Senior Lender to the indebtedness, obligations and liabilities under the Senior Loan Documents as described in this paragraph below) if (A) Senior Lender is simultaneously exercising any rights and remedies that it may have against such Guarantor under any guaranty granted to Senior Lender as additional collateral to secure the obligations under the Senior Loan Documents with respect to a claim against such Guarantor based on the same action, omission, event or occurrence which such Junior Lender's claim against such Guarantor is based and Junior Lender has received notice thereof in writing from Senior Lender as required under the terms of this Agreement, or (B) Senior Lender has notified Junior Lender that Senior Lender has a claim against such Guarantor based on the same action, omission, event or occurrence which such Junior Lender's claim against such Guarantor is based and Senior Lender commences litigation of such claim within forty-five (45) days of such notice to such Junior Lender (and if Senior Lender is successful in its claim against such Guarantor and fails to recover the amount of such claim from Guarantor, then Senior Lender shall have the right to apply any amounts held pursuant to this paragraph to the indebtedness, obligations and liabilities under the Senior Loan Documents provided if such claim is unsuccessful or paid by such Guarantor, Senior Lender shall promptly return any amounts held to the Junior Lender for the application against the Junior Claims. Further, notwithstanding anything contained to the contrary hereinabove, if the Project has not yet been substantially completed in accordance with the Senior Loan Documents, Junior Lender shall wait 90 days after the date of any Senior Lender's Default Notice (as defined below) prior to pursuing its remedies against any Guarantor or accepting payments made by any Guarantor.

Section 3.3 Acquisition of Membership Interests in Borrower. Senior Lender agrees that after completed construction of the Project in accordance with the Senior Loan Documents, if Junior Lender or its Affiliate cures all defaults under the Senior Loan Documents within the grace periods provided in Section 3.1, then acquisition of title to any or all of the membership interests of Borrower (i.e., the Junior Collateral) by Junior Lender or any Affiliate (but not by any other party), by foreclosure of the Junior Liens within ninety (90) days after the expiration of Junior Lender's Additional Cure Period (subject to extension for up to ninety (90) additional days if Junior Lender is enjoined or legally restrained from foreclosing), will not constitute a default under the Senior Loan Documents or entitle Senior Lender to commence Enforcement of its rights and remedies under the Senior Loan Documents based solely on such transfer of title to the membership interests in Borrower provided that Junior Lender promptly enters into a property management agreement in form and substance and with a property manager selected by Junior Lender and reasonably acceptable to Senior Lender.

In addition, Senior Lender agrees that if the Project has not yet been substantially completed in accordance with the Senior Loan Documents and if (i) Junior Lender (or its



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Affiliate) cures all defaults under the Senior Loan Documents within the grace periods provided in Section 3.1, (ii) Junior Lender or its Affiliate acquires title to the membership interests of Borrower (i.e., the Junior Collateral) by foreclosure of the Junior Liens within ninety (90) days after the expiration of Junior Lender's Additional Cure Period (subject to extension for up to ninety (90) additional days if Junior Lender is enjoined or legally restrained from foreclosing), and (iii) within three (3) Business Days after acquiring title to the Project by virtue of its acquisition of all of the membership interests of Borrower, Junior Lender or such Affiliate acquiring the such membership interests, agrees with Senior Lender that Junior Lender or such acquiring Affiliate will complete the Project in accordance with the Senior Loan Documents, utilizing a construction manager selected by Junior Lender and acceptable to Senior Lender, then acquisition of the membership interests by Junior Lender or such Affiliate will not constitute a default under the Senior Loan Documents or entitle Senior Lender to commence Enforcement of its rights and remedies under the Senior Loan Documents based solely on a transfer of title to the membership interests; provided that Junior Lender or such Affiliate promptly enters into a construction services agreement for completion of the Project acceptable to Senior Lender with such construction manager and enters into a management agreement in form and substance and with a property manager selected by Junior Lender and reasonably acceptable to Senior Lender.

Junior Lender agrees for itself and any acquiring Affiliate that if Junior Lender or an acquiring Affiliate acquires title to the membership interests in Borrower, as provided in this Section 3.3, then, except as otherwise expressly provided in this Section 3.3, Senior Lender shall have an absolute right to exercise any of its rights and remedies of Enforcement under the Senior Loan Documents, if Junior Lender or such acquiring Affiliate fails to satisfy any of Borrower's obligations under the Senior Loan Documents (including any uncured default) in accordance with their respective terms.

Section 3.4 Acquisition of Senior Loan. Senior Lender agrees that Junior Lender, in lieu of exercising Junior Lender's right to cure any default under the Senior Loan Documents as provided in Section 3.1 (provided that such default, if curable, has not been cured by Borrower within the applicable cure period, if any), may elect to acquire the Senior Loan as herein provided. If Junior Lender determines to acquire the Senior Loan, it must do so by giving written notice thereof to Senior Lender before the expiration of Junior Lender's Additional Cure Period. Thereafter, Junior Lender shall purchase and Senior Lender shall sell (without recourse), the Senior Loan and the Senior Loan Documents to Junior Lender (or its nominee) upon payment by Junior Lender to Senior Lender of all amounts then outstanding under the Senior Loan, including but not limited to all principal, including Protective Advances, if any, interest, fees and expenses. The documentation conveying and assigning the Senior Loan Documents to Junior Lender shall be customary for non-recourse loan sales by institutional lenders, shall be prepared by counsel to Senior Lender and shall be reasonably acceptable to Junior Lender and its counsel. Such closing shall take place no later than fifteen (15) days following the expiration of Junior Lender's Additional Cure Period. In the event that Junior Lender fails to either (a) give notice to Senior Lender before the expiration of Junior Lender's



Additional Cure Period of its election to purchase the Senior Loan or (b) close the purchase of the Senior Loan within fifteen (15) days following the expiration of Junior Lender's Additional Cure Period, then Junior Lender's right to acquire the Senior Loan as provided in this Section 3.4 shall be deemed void and of no further force or effect.

ARTICLE 4

OTHER AGREEMENTS

Section 4.1 Modification of Senior Loan Documents. Senior Lender at any time, without the consent of, or notice to, Junior Lender, may do any one of the following:

(a) change the manner or place of payment of, or change, renew, exchange, amend, surrender, release, compromise or alter, the terms of any of the Senior Claims or any Lien in any of the Collateral securing any Senior Claim or any guaranty of any Senior Claim or any liability of Borrower or any guarantor, or any liability incurred directly or indirectly in respect thereof (including, without limitation, any extension of the Senior Claims), or otherwise amend, renew, exchange, extend, modify, supplement in any manner the Senior Claims or any Senior Loan Documents and generally deal with Borrower and its successors and assigns and any Collateral as Senior Lender in its sole discretion may determine; provided, however, that Senior Lender shall not, without the consent of Junior Lender, which consent shall not be unreasonably withheld or denied, (1) increase the maximum principal amount of the Senior Loan other than by the amount of (i) any Protective Advances made pursuant to the terms of the Senior Loan Documents or (ii) additional principal advances in an amount deemed reasonably necessary by Senior Lender to complete construction of the Project, including adequate interest reserves, or (2) modify or amend any provisions of the Senior Loan Documents which pertain to the timing, amount, or terms of payment of the Senior Loan.

(b) subject to the terms of this Agreement, settle or compromise any Senior Claim or any security therefor or any liability directly or indirectly incurred in respect thereof after the occurrence of an Event of Default under the Senior Loan Documents which is not cured by Borrower or Junior Lender within any applicable grace period and apply any sums by whomsoever paid and however realized to the Senior Claims in accordance with the terms of the Senior Loan Documents.

(c) exercise (subject to the terms of this Agreement including, but not limited to Section 3.1 hereof) or refrain from exercising any rights against Borrower or Guarantor and waive any default under the Senior Loan Documents, without limiting or diminishing any rights or interests of Senior Lender under this Agreement.

Section 4.2 Modification of Junior Loan Documents. Junior Lender at any time, without the consent of, or notice to, Senior Lender, may do any one of the following:



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(a) change the manner or place of payment of, or change, renew, exchange, amend, surrender, release, compromise or alter, the terms of any of the Junior Claims or any Lien in any of the Junior Collateral securing any Junior Claim or any guaranty of any Junior Claim or any liability of Junior Borrower or Guarantor, or any liability incurred directly or indirectly in respect thereof (including, without limitation, any extension of the Junior Claims), or otherwise amend, renew, exchange, extend, modify, supplement in any manner the Junior Claims or any Junior Loan Documents and generally deal with Junior Borrower and its successors and assigns and any Junior Collateral as Junior Lender in its sole discretion may determine; provided, however, that Junior Lender shall not, without the consent of Senior Lender, which consent shall not be unreasonably withheld or denied, (1) increase the maximum principal amount of the Junior Loan other than by the amount of (i) any Protective Advances made pursuant to the terms of the Junior Loan Documents or (ii) additional principal advances in an amount deemed necessary by Junior Lender to complete construction of the Project, including adequate interest reserves, or (2) modify or amend any provisions of the Junior Loan Documents which pertain to the timing, amount, or terms of payment of the Junior Loan or the payment of any other amounts to Junior Lender (or its successors or assigns) in connection with the Project.

(b) subject to the terms of this Agreement, settle or compromise any Junior Claim or any security therefor or any liability directly or indirectly incurred in respect thereof after the occurrence of an Event of Default under the Junior Loan Documents which is not cured by Junior Borrower or Senior Lender within any applicable grace period and apply any sums by whomsoever paid and however realized to the Junior Claims in accordance with the terms of the Junior Loan Documents.

(c) exercise (subject to the terms of this Agreement including, but not limited to, Sections 2.2 and 3.2 hereof) or refrain from exercising any rights against Junior Borrower or Guarantor and waive any default under the Junior Loan Documents, without limiting or diminishing any rights or interests of Junior Lender under this Agreement.

Section 4.3 Cross-Default. Unless the situation or occurrence otherwise constitutes a default or Event of Default under the Senior Loan Documents, Senior Lender acknowledges that (i) a default or Event of Default under the Junior Loan Documents shall not be a default or Event of Default under the Senior Loan Documents, unless the act or omission giving rise to such default or Event of Default under the Junior Loan Documents is expressly provided as an Event of Default under the Senior Loan Documents; and (ii) a change in the management and control of Borrower resulting from the foreclosure by Junior Lender of its collateral security in accordance with this Agreement will not constitute a default or an Event of Default under the Senior Loan Documents.

Section 4.4 Conflicts. With respect to the matters expressly set forth herein, in the event of any conflict between (a) the provisions of this Agreement and (b) the provisions of either of the Junior Loan Documents or the Senior Loan Documents, the provisions of this Agreement shall govern.



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Section 4.5 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement by Senior Lender or Junior Lender shall be deemed to be made unless the same shall be in writing signed on behalf of the party making such waiver and any such waiver shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the party making such waiver or, unless otherwise agreed, the obligations of the other party to such party in any other respect or at any other time.

Section 4.6 Subrogation. No payment or distribution to Senior Lender shall entitle Junior Lender to exercise any right of subrogation until all Senior Claims have been paid in full and all Senior Loan Documents terminated.

Section 4.7 Governing Law. This Agreement shall be governed by the laws of the State of [_____].

Section 4.8 Notices. All notices to Senior Lender or Junior Lender required under this Agreement shall be sent to Senior Lender or Junior Lender at the address given beneath its signature to this Agreement. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, telexed, or sent by recognized commercial overnight courier service or U.S. mail and shall be deemed to have been given when delivered in person, upon receipt of a telecopy or telex or three (3) days after addressed and one (1) Business Day after delivery to such courier service with charges prepaid and properly addressed.

Section 4.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same document.

Section 4.10 Authorization. By his or her signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that he or she is duly authorized to do so.

Section 4.11 Successors and Assigns. The terms of this Agreement shall apply to, be binding upon, and inure to the benefit of the parties hereto, their successors, assigns and legal representatives, and all other Persons claiming by, through, and under them; provided, however, that (i) no consent or approval of Senior Lender shall be required for any transfer, participation or assignment of any portion of the Junior Claims provided that Junior Lender or any Affiliate of Junior Lender retains a majority interest in the Junior Claims and Junior Lender or an Affiliate of Junior Lender retains the right to act on behalf of all transferees, participants, or assignees of the Junior Claims; except for this instance any refinancing, sale, transfer, participation, or assignment or all or any portion of the Junior Claims shall require the prior written consent of Senior Lender, and (ii) no consent or approval of Junior Lender shall be required for any transfer, participation



or assignment of any portion of the Senior Claims provided that Senior Lender or any Affiliate or Senior Lender retains a majority interest in the Senior Claims and Senior Lender or an Affiliate of Senior Lender retains the right to act on behalf of all transferees, participants, or assignees of the Senior Claims; except during the construction phase only of the Senior Loan, any refinancing, sale, transfer, participation or assignment of all or any portion of the Senior Claims shall require the prior written consent of Junior Lender, except as set forth in Section 4.13 herein.

Section 4.12 Payments.

(a) Upon any distribution of the assets of Borrower in connection with any dissolution, winding up, liquidation, bankruptcy, or reorganization of Borrower (whether in Proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of Borrower or otherwise), Senior Lender shall first be entitled to receive payment in full of all Senior Claims before Junior Lender shall be entitled to receive any payment in respect of the Junior Claims. Upon any such dissolution, winding up, liquidation, bankruptcy, or reorganization, any payment or distribution of assets of Borrower of any kind or character, whether in cash, property or securities, to which Senior Lender is entitled shall be made directly to Senior Lender by the liquidating trustee or agent or other persons making such payment or distribution (whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise) (a "Paying Party"). If the aggregate amount of such payments or distributions on the Senior Claims is insufficient to pay the Senior Claims in full, then Junior Lender hereby authorizes the Paying Party to remit promptly to Senior Lender the lesser of (1) the proceeds Junior Lender is entitled to receive by reason of any payment or distribution on the Junior Claims, or (2) the difference between the aggregate amount of the Senior Claims and the proceeds Senior Lender is entitled to receive by reason of any payment or distribution on the Senior Claims. In furtherance of the foregoing, but not by way of limitation thereof, if Borrower is subject to any Proceeding, with the result that Borrower is excused from the obligation to pay all or part of the interest otherwise payable in respect of the Senior Claims during the period subsequent to the commencement of any such Proceedings, Junior Lender agrees that such interest (calculated at the non-default rate of interest set forth in the Senior Loan Documents) shall be payable out of payments or distributions made by the Paying Party in respect of the Junior Claims.

(b) Junior Lender hereby irrevocably authorizes and empowers Senior Lender, after the occurrence of an Event of Default (as defined in the Senior Loan Documents) which continues after the expiration of Junior Lender's Additional Cure Period, to demand, sue for, collect and receive every such payment or distribution in respect of the Junior Claims and give acquittance therefor, to execute, sign, endorse, transfer and deliver any and all receipts and instruments, and to file claims and take such other action, all in the name of Junior Lender, or otherwise, as Senior Lender may deem necessary or advisable for the enforcement of this Agreement, but Senior Lender has no obligation to do so. In connection with any dissolution, winding up, liquidation, bankruptcy, or reorganization of Borrower, Junior Lender hereby (A) agrees to promptly take such action as may be



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required by Senior Lender to collect the Junior Claims for the account of Senior Lender and/or to file appropriate proofs of claim in respect of the Junior Claims; (B) authorizes and empowers Senior Lender to vote the full amount of the Junior Claims in any bankruptcy, reorganization or similar proceedings affecting Borrower and in any meeting of creditors of Borrower; provided that Senior Lender sends Junior Lender written notice of Senior Lender's intention to vote the Junior Claims; (C) agrees to execute and deliver to Senior Lender or its representatives on demand such powers of attorney, proofs of claim and other instruments without recourse as may be requested by Senior Lender or its representatives in order to enable Senior Lender to enforce any and all claims upon or with respect to the Junior Claims, to collect and receive any and all such payments or distributions which may be payable or deliverable at any time upon or with respect to the Junior Claims, and to vote the full amount of the Junior Claims in any proceeding or meeting referred to in clause (B) of this subparagraph (b). If Senior Lender receives any payment or distribution on the Junior Claims in excess of the difference between the aggregate amount of the Senior Claims and the proceeds Senior Lender receives by reason of any payment or distribution on the Senior Claims, then Senior Lender agrees to remit promptly to Junior Lender such excess amount, which amount shall be applied to the Junior Claims in accordance with the terms of the Junior Loan Documents.

(c) If any payment or distribution of assets of Borrower or Junior Borrower of any kind or character, whether in cash, property or securities, and whether or not pursuant to any dissolution, winding up, liquidation or reorganization, not permitted by or in accordance with the provisions of this Agreement shall be received by Junior Lender in connection with the Junior Claims, such payment or distribution to Junior Lender shall be held in trust for the benefit of, and shall be paid over or delivered to, Senior Lender, or to its representative, in precisely the form received (except for the endorsement or assignment of Junior Lender where necessary).

Section 4.13 Sale of Senior Loan. In addition to the rights granted to Junior Lender in Section 3.4 hereof, subject to Section 4.11 above, Senior Lender grants to Junior Lender a right of first offer with respect to any sale by Senior Lender of all of its interest in the Senior Loan, such right to be subject to the terms and conditions contained herein. If Senior Lender determines to sell all of its interest in the Senior Loan, it shall give Junior Lender written notice thereof, such notice to include the terms of such sale which Senior Lender will accept and offering to sell the Senior Loan to Junior Lender on such terms. If Junior Lender wishes to purchase the Senior Loan, it shall give written notice to Senior Lender within five (5) Business Days after receipt of such notice from Senior Lender and a closing shall take place not later than thirty (30) days after Junior Lender gives such notice, such closing to be held as provided in Section 3.4 hereof. In the event that Junior Lender fails to either (a) give notice to Senior Lender within such five (5) Business Day period of its intention to purchase the Senior Loan or (b) close the purchase of the Senior Loan within such thirty (30)-day period, then Junior Lender's right to acquire the Senior Loan as provided in this Section 4.13 shall be deemed void and of no further force or effect.



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Notwithstanding the foregoing, Senior Lender may at any time sell or offer to sell interests in the Senior Loan to one or more participants and such sale(s) shall not be subject to the provisions of this Section 4.13 or Section 4.11.

Section 4.14 Subsequent Changes. Subject to Section 4.11 Junior Lender shall provide prior written notice to Senior Lender of any sale, assignment or transfer of the Junior Loan Documents and shall provide to Senior Lender an acknowledgment by such transferee that it is bound by the terms of this Agreement.

Section 4.15 Marshalling. Junior Lender waives any rights it may have to require Senior Lender to marshal assets.

Section 4.16 Consultation. Senior Lender and Junior Lender, upon the request of either, agree to reasonably consult with the other concerning the status of either the Junior Loan or the Senior Loan, including but not limited to all matters relating to any workout, forbearance, or enforcement matters and/or the administration of any of the Collateral for either the Senior Loan or the Junior Loan. The foregoing is not intended to supersede or modify the rights and obligations otherwise set forth in this Agreement. By execution hereof, Borrower, Junior Borrower and Guarantor have specifically consented to the foregoing and waive any and all rights to object to the sharing between Senior Lender and Junior Lender of information concerning Borrower, Guarantor, the Senior Loan, the Junior Loan, Junior Borrower, the Junior Collateral, the Collateral, and/or any matters relating to the same.

[Signature pages follow.]



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EXECUTED as of the date first above written.

SIGNATURE PAGE
TO
INTERCREDITOR AGREEMENT
BY AND BETWEEN []
AND []

"SENIOR LENDER":

[]

By: _____
Name: _____
Its: _____

Address for Notice:

[]



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SIGNATURE PAGE
TO
INTERCREDITOR AGREEMENT
BY AND BETWEEN [] AND
[]

"JUNIOR LENDER":

[]

By: _____

Name: _____

Its: _____

Address for Notice:

[]



**SIGNATURE PAGE
TO
INTERCREDITOR AGREEMENT
BY AND BETWEEN [] AND
[]**

Borrower, Junior Borrower and Guarantor join in the execution hereof for the limited purposes of acknowledging and consenting to the provisions of Section 4.16 above.

WITNESS the execution and delivery hereof as an instrument under seal as of _____, 20__.

BORROWER:

[]

By: _____
Name: _____
Its: _____

JUNIOR BORROWER:

[]

By: _____
Name: _____
Its: _____

GUARANTOR:

[]

By: _____
Name: _____
Its: _____



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SCHEDULE 1

Junior Loan Documents



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SCHEDULE 2

Senior Loan Documents



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(ABOVE LINE FOR RECORDER'S USE ONLY)

RECOGNITION AND ATTORNMENT AGREEMENT

This Recognition and Attornment Agreement ("Agreement") is executed as of [_____, 20[___]] by and among the [_____] (the "[_____]"), [_____, a [_____] ("_____"), [_____, a [_____] ("_____"), [_____] and [_____] are collectively referred to as "Developer"), [_____, a [_____] ("_____"), [_____, a [_____] ("_____") ([_____] and [_____] may hereinafter be collectively referred to as the "Lenders"), [_____, a [_____] (the "Finance Authority Trustee"), and the [_____, a [_____] (the "New Community Authority"). The Developer has determined to acquire, construct and install a mixed-use project (the "Project"), a portion of which Project will include a residential tower component, as described on Exhibit A attached hereto (the "Tower Component") which Tower Component will be developed and owned by [_____] and financed by [_____] an office component (the "Office Component") as described on Exhibit B attached hereto which Office Component will be developed and owned by [_____] and financed by [_____] a residential midrise component (the "Midrise Component") as described on Exhibit C attached hereto which Midrise Component will be developed and owned by [_____] and financed by [_____] and a structured parking garage (the "Garage Component") as described on Exhibit D attached hereto to be developed and owned by [_____] and financed by the Finance Authority, all of which is to be located within the [_____] neighborhood in the City of [_____] County of [_____] State of [_____] as is more particularly described in Exhibit E attached hereto (the "Premises").

The Garage Component and the Tower Component will be constructed on a portion of the Premises (the "Garage/Tower Parcel") owned by the Garage Holder. The Garage Lot is owned in fee simple by Garage Holder. Garage Holder has executed a Ground Lease, as lessor to Tower, as lessee (the "Tower Ground Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [_____] County, [_____] Recorder with respect to a portion of the Garage/Tower Parcel as described therein ("Tower Lot"). Garage Holder has also executed a Ground Lease, as lessor to Garage, as lessee (the "Garage Ground Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [_____] County, [_____] Recorder with respect to a portion of the Garage/Tower Parcel as described therein ("Garage Lot"). Tower has executed a Ground Lease, as sublessor to the Finance Authority, as sublessee (the "FA Tower Ground Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [_____] County, [_____] Recorder. The Finance Authority has executed a Capital Lease, as



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sub-sublessor to Tower, as sub-sublessee (the "FA Tower Capital Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [] County, [] Recorder. Tower and the Finance Authority have granted a mortgage on their respective leasehold interests in the Tower Component to [] pursuant to a certain Open-End Mortgage (Leasehold Interests), Assignment of Lease and Rents and Security Agreement of even date herewith recorded with the [] County Recorder (the "[] Mortgage", which term shall include any amendments, revisions, modifications, renewals, extensions, or replacements thereof).

Office has executed a Ground Lease, as lessor to the Finance Authority, as lessee (the "FA Office Ground Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [] County, [] Recorder. The Finance Authority has executed a Capital Lease, as sublessor to Office, as sublessee (the "FA Office Capital Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [] County, [] Recorder. The Finance Authority and Office have granted a mortgage on the fee and leasehold interests in the Office Component to [] pursuant to a certain Open-End Mortgage (Leasehold and Fee Interest), Assignment of Lease and Rents and Security Agreement of even date herewith recorded with the [] County Recorder (the "[] Office Mortgage"). Midrise has executed a Ground Lease, as lessor to the Finance Authority, as lessee (the "FA Midrise Ground Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [] County, [] Recorder. The Finance Authority has executed a Capital Lease, as sublessor to Midrise, as sublessee (the "FA Midrise Capital Lease") of even date herewith as evidenced by Memorandum of Lease of even date herewith recorded with the [] County, [] Recorder. The Finance Authority and Midrise have granted a mortgage on the fee and leasehold interests in the Midrise Component to [] pursuant to a certain Open-End Mortgage (Leasehold and Fee Interest), Assignment of Lease and Rents and Security Agreement of even date herewith recorded with the [] County Recorder (the "[] Midrise Mortgage", (which term shall include an amendments, revisions, modification, renewals, extensions, or replacements thereof; the [] Mortgage, the [] Office Mortgage, and the [] Midrise Mortgage may hereinafter be collectively, referred to as the "Mortgages").

Garage has also executed (i) that certain Construction Manager At-Risk Agreement of event date herewith (the "Construction Manager Agreement") by and between itself and the Finance Authority, and (ii) that certain Cooperative Agreement of even date herewith by and among itself, the Finance Authority, the City of [], [] (the "City"), and the New Community Authority (the "Cooperative Agreement"), the joint intent of which is for the Garage to construct the Garage Component for the Finance Authority on the Garage Lot as a port authority facility in connection with the Project.



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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Garage Ground Lease.** Until all obligations of Tower to [] (the "[] Obligations"), the obligations of Office to [] (the "[] Office Obligations"), and the obligations of Midrise to [] (the "[] Midrise Obligations"; the [] Obligations, the [] Office Obligation and the [] Midrise Obligations are collectively referred to as the "Obligations") have been completely paid and performed and the Mortgages have been discharged, neither the Garage Holder nor the Garage will take any action to terminate the Garage Ground Lease, whether or not the Garage Ground Lease is in default. Each of Garage Holder and Garage agree that it will not transfer or otherwise mortgage or place a lien upon the Garage Lot without the prior written consent of Lenders. Until the Obligations have been completely paid and performed and the Mortgages have been discharged, neither the Garage Holder nor Garage will terminate, amend, modify, or exclude any parcel from the Garage Ground Lease without the Lenders' prior written consent.
2. **Cooperative Agreement.** Until all Obligations have been completely paid and performed and the Mortgages have been discharged, the parties to the Cooperative Agreement will take no action to terminate the Cooperative Agreement, whether or not a default exists thereunder. Until the Obligations have been completely paid and performed and the Mortgages have been discharged, the parties to this Agreement will not terminate, amend, or modify the Cooperative Agreement without the Lenders' prior written consent.
3. **Construction Manager Agreement.** Until all Obligations have been completely paid and performed and the Mortgages have been discharged, neither the parties to the Construction Manager Agreement will take no action to terminate the Construction Manager Agreement, whether or not a default exists thereunder. Until the Obligations have been completely paid and performed and the Mortgages have been discharged, the parties to the Construction Manager Agreement will not terminate, amend, or modify without the Lenders' prior written consent.
4. **No Merger.** If title to the Garage Holder's estate and to Garage's estate will be acquired by the same person, firm, or entity, then as long as either of the Mortgages will remain outstanding no merger will occur.
5. **Additional Lender Protection Provisions.** The terms and conditions set forth below in this Section 5 will be binding upon the parties to this Agreement and to the extent of any inconsistency between the terms and provisions contained in the Garage Ground Lease, the Construction Manager Agreement and/or the Cooperative Agreement and the terms and conditions set forth below in this Section 5, the terms and conditions set forth below in this Section 5 will govern and control:



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5.1 Notices to Lenders. Upon any default under the Garage Ground Lease, the Construction Manager Agreement and/or the Cooperative Agreement, the parties to such agreements will send to the Lenders, by certified or registered mail or by recognized overnight carrier, a true, correct, and complete copy of any notice of a default at the same time as and whenever any such notice of default will be given by such party under such agreements, addressed to the Lenders at the addresses specified in Section 7 hereof or, if different, the address, if any, last furnished by such Lenders as provided in Section 7 hereof. No notices will be deemed to have been given unless and until a copy thereof will have been so given to the Lenders.

5.2 Liability of Finance Authority and Finance Authority Trustee. Notwithstanding anything contained herein to the contrary, neither the Finance Authority nor the Finance Authority Trustee shall be liable to the Lenders under the Obligation, and the Obligations and this Agreement do not and shall not constitute a debt, or a pledge of the faith and credit, of the State of [_____] or any political subdivision of the State of [_____] , including the Finance Authority, and nothing herein gives the Lenders, the Developer, or any other party, and they do not and shall not have the right to have excises or taxes levied by the General Assembly or the taxing authority of any political subdivision of the State of [_____] , including the Finance Authority, for the payment of any amount due under the Obligations or this Agreement. If and to the extent that either of the Lenders incur any costs or expenses to require the Finance Authority to meet its obligations to the Lenders under this Agreement, the Lenders agree to seek payment of those costs or expenses (i) directly from the Office, Midrise or the Tower, as applicable, and the Office, Midrise and the Tower, as applicable agree to pay such costs and expenses, or (ii) by foreclosing on the lien of the applicable Mortgage.

5.3 Finance Authority's Consents. The Finance Authority hereby consents to, and agrees that the Mortgages may contain provisions for any or all of the following:

5.3.1 An assignment of the proceeds from available insurance coverage relating to the Garage Component or from any award or other compensation resulting from a total or partial taking of the Garage Lot by condemnation;

5.3.2 The entry by the Lenders upon the Garage Lot during business hours, without notice to the Garage Holder, Finance Authority or the Developer, to view the state of the Garage Lot, including, but not limited to, the progress of construction thereon;



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- 5.3.3 A default under the Garage Ground Lease, the Construction Manager Agreement and/or the Cooperative Agreement being deemed to constitute a default under the Mortgages; and
 - 5.3.4 The following rights and remedies (among others) to be available to the Lenders upon the failure of Garage to timely complete construction of the Garage Component (a "Garage Construction Default") in accordance with the Construction Manager Agreement and/or the Cooperative Agreement:
 - 5.3.4.1 The appointment of a receiver, irrespective of whether the Lenders accelerate the maturity of all indebtedness secured by the Mortgages;
 - 5.3.4.2 The right of the Lenders or the receiver appointed under Section 5.3.4.1 above to enter and take possession of the Garage Component, to construct the same, and to receive any and all payments due under the Construction Manager Agreement and/or the Cooperative Agreement; or
 - 5.3.4.3 An assignment of Garage's right, title, and interest under the Construction Manager Agreement and/or the Cooperative Agreement, as elected by the Lenders.
 - 5.4 **Estoppel Certificates.** The parties will, upon request, promptly execute and/or deliver to any person, firm, or entity that is a party hereto an estoppel certificate on terms and conditions reasonably satisfactory to the parties.
6. **Lenders' Right to Assume Garage's Obligations Under Construction Manager Agreement and Cooperative Agreement and to Receive Payments Thereunder.** In the event that a Garage Construction Default occurs, each of the Lenders shall have the option, but not the obligation, to assume the Garage's rights and obligations under the Construction Manager Agreement and/or the Cooperative Agreement by giving prior written notice of its intention to assume such rights and obligations to the parties to this Agreement (such notice being a "Notice of Assumption of Construction Obligations"). Upon receipt of a Notice of Assumption of Construction Obligations, the parties shall recognize the Lender(s) named therein as the "Construction Manager" for all intents and purposes of the Construction Manager Agreement and/or the Cooperative Agreement from and after the date of such Notice of Assumption of Construction Obligations. If a Garage Construction Default exists, Lenders



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agree to consult with one another concerning the actions to be taken. If the Lenders agree to jointly assume the rights and obligations of Garage under the Construction Manager Agreement and/or the Cooperative Agreement, they will take such action. If the Lenders do not agree, then [____], at its election, will have the first right to proceed on that basis, provided [____] will continue to consult with [____] regarding, and keep [____] comprised of, the progress of construction of the Garage Component. If [____] declines or fails to act, [____] will have such rights, provided [____] will continue to consult with [____] regarding, and keep [____] comprised of, the progress of construction of the Garage Component. In furtherance of the foregoing, both Lenders agree to cooperate with one another to see to the completion of the Garage Component. Both or either of the Lenders shall be entitled to take such actions through the appointment of a receiver.

7. **Notices.** All notices, demands, requests, consents or approvals and other communications required or permitted hereunder will be in writing, and, to the extent required by applicable law, will comply with the requirements of the Uniform Commercial Code then in effect, and will be addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

If to Garage:

[____]

With a copy to:

[____]

And to:

[____]

If to Finance Authority:

[____]



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If to the Finance Authority Trustee:

If to Garage Holder:

If to Tower:

If to New Community Authority:

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered; if given by mail, on the fourth business day after such communication is deposited in the mail with first-class postage prepaid, return receipt requested; or if sent by overnight courier service, on the day after deposit thereof with such service; or if sent by certified or registered mail, on the third business day after the day on which deposited in the mail.



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8. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns.
9. **Continued Effectiveness of this Agreement.** The terms of this Agreement and the rights and obligations of the parties hereto arising hereunder will not be affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or termination of or any of the Obligations; (b) the validity or enforceability of any document evidencing or securing the Obligations; (c) the release, sale, exchange for surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Obligations; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Obligations; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Obligations, all whether or not the Finance Authority had notice or knowledge of any of the foregoing and whether or not it will have consented thereto.
10. **Counterpart.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement.
11. **Personal Liability Limited.** Nothing in this Agreement is meant to be an obligation of any present or future member, officer, agent or employee of the Finance Authority in other than his or her official capacity, and neither the members of the legislative authority of the Finance Authority nor any officer, agent or employee of the Finance Authority will be subject to any personal liability or accountability by reason of any obligations contained in this Agreement. All obligations of the Finance Authority contained in this Agreement will be effective to the extent authorized and permitted by applicable law.
12. **Recordation.** It is the intention of the parties that this Agreement be placed of with the [_____] County Recorder.



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Executed in and to be governed by the laws of the State of [_____] as of the date first above written.

FINANCE AUTHORITY:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____], the duly authorized [_____] of the [_____], a(n) [_____], acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public



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GARAGE:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____], the duly authorized [_____] of the [_____], a(n) [_____], acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public



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GARAGE HOLDER:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____], the duly authorized [_____] of the [_____], a(n) [_____], acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public



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TOWER:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____], the duly authorized [_____] of the [_____], a(n) [_____], acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public



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OFFICE:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____], the duly authorized [_____] of the [_____], a(n) [_____], acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

Signature Page to Recognition Agreement



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MIDRISE:

[_____]

By: _____

Name: _____

Its: _____

STATE OF [_____])

) SS:

COUNTY OF [_____])

On _____, 20__, _____, [_____] the duly authorized [_____] of the [_____] a(n) [_____] acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

Signature Page to Recognition Agreement



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COMMUNITY AUTHORITY:

[_____]

By: _____
Name: _____
Its: _____

STATE OF [_____])
) SS:
COUNTY OF [_____])

On _____, 20____, _____, [_____] the duly authorized [_____] of the [_____] a(n) [_____] acknowledged before me _____ signing of the foregoing instrument for and in the name and on behalf of such port authority. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public



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This Instrument Prepared By: [_____]

Signature Page to Recognition Agreement



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EXHIBIT A

DESCRIPTION OF TOWER COMPONENT



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EXHIBIT B

DESCRIPTION OF OFFICE COMPONENT



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EXHIBIT C

DESCRIPTION OF MIDRISE COMPONENT



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EXHIBIT D

DESCRIPTION OF PARKING GARAGE COMPONENT



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EXHIBIT E
DESCRIPTION OF PREMISES



SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT (“Agreement”) is made as of the ___ day of [____], 20[___], by and among [_____, a _____], with an address at [_____] (“Ground Lessee”), [_____, a _____], with an address at [_____] (“Ground Lessor”), and [_____, a _____], with an address at [_____] (“Mortgagee”) to induce Mortgagee to offer a mortgage loan to Ground Lessor.

WITNESSETH:

WHEREAS, Ground Lessor and Ground Lessee have entered into a Ground Lease dated [_____, 20__] (the “_____ Lease”), pursuant to which Ground Lessor has leased to Ground Lessee the real property located [_____] (“[Property]”), as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Site”);

WHEREAS, pursuant to a certain Cooperative Agreement dated [_____, 20__] (“Cooperative Agreement”), among Ground Lessor and Ground Lessee, a Disbursing Agreement (as defined in the Cooperative Agreement) and a Construction Manager At-Risk Agreement (as defined in the Cooperative Agreement), Ground Lessor is to construct a parking facility on the Parking Facility Project Site (as defined below) for and on behalf of the Ground Lessee;

WHEREAS, Ground Lessor desires to obtain from Mortgagee a mortgage loan (“Loan”) to finance certain commercial improvements on the Commercial Facility Project Site (as defined below). The Loan is being made by Mortgagee to Ground Lessor pursuant to the Disbursing, Payment and Collateral Agreement dated [_____, 20__], by and between Mortgagee and Ground Lessor, together with [_____] () Term Notes of even date herewith aggregating in the maximum principal amount of [\$_____], executed by Ground Lessor and made payable to Mortgagee and its participant, [TBD BANK], respectively (collectively, the “Note”), and all agreements, instruments and documents executed or delivered in connection with the foregoing



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or otherwise related thereto (together with any amendments, modifications, or restatements thereof, the "Loan Documents");

WHEREAS, Mortgagee requires, as a condition of making said Loan, that said Loan be secured by an Open-End Mortgage, Assignment of Leases and Security Agreement (Fee and Leasehold) (the "Mortgage"), pursuant to which Ground Lessor is granting a mortgage lien in favor of Mortgagee in and to all of the real estate located at the Site as security for all Obligations (as defined in the Loan Agreement) owed by Ground Lessor to Mortgagee;

WHEREAS, the Site includes that portion of [_____] which will be developed with the Parking Facility Project (the "Parking Facility Project Site") and that portion of [_____] which will be developed with commercial improvements (the "Commercial Facility Project Site"). Mortgagee also requires, as a condition of making the Loan, that the lien of said Mortgage initially cover the entirety of the Parking Facility Project Site, Commercial Facility Site and all other portions of the real estate and improvements making up the Site, that the rights and estate of Ground Lessee and Ground Lessor in and to the Site be junior to and subordinate to the lien of said Mortgage, and that the lien of the Mortgage be superior and prior to the Parking Facility Ground Lease. The Mortgage is a part of the Loan Documents;

WHEREAS, Prior to the date hereof, Ground Lessor has executed and recorded a condominium declaration encumbering the entire Site and creating separate condominium units comprising substantially all of each of the Parking Facility Project and the Commercial Facility Project and associated common areas (the "Condominium Declaration");

WHEREAS, Ground Lessee is willing to subject and subordinate its right, title, interest and claim in the Parking Facility Project Site to the lien of the Mortgage provided that Mortgagee makes to Ground Lessee the non-disturbance covenants contained herein;

WHEREAS, Mortgagee requires as a condition of making said Loan that Ground Lessee make certain representations, and certify thereto, with respect to particular provisions of the Parking Facility Ground Lease and the rights, title, interests and claims thereunder of Ground Lessor and Ground Lessee, respectively; and

WHEREAS, initially capitalized terms not otherwise defined herein shall have the meanings given such terms in the Cooperative Agreement.

NOW, THEREFORE, Mortgagee, Ground Lessor and Ground Lessee hereby undertake and agree as follows:

1. Ground Lessee, in consideration of the foregoing recitations and with the purpose of inducing Mortgagee to offer said Mortgage to Ground Lessor, does hereby:



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- a) covenant and agree with Mortgagee, its successors and assigns, that all of the right, title, interest and claim of Ground Lessee (including, but not limited to, its rights, options, interests, title, claim and privileges under the Parking Facility Ground Lease, and all renewals and extensions thereof) is and shall be, and remain at all times, subject and subordinate to the rights and estate of Mortgagee under the Mortgage and the lien, operation, and effect of the Mortgage in and to the Site, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage;
 - b) covenant and agree with Mortgagee, that, at Mortgagee's expense, Ground Lessee shall execute and deliver such further or other instruments subordinating the Parking Facility Ground Lease, and all renewals and extensions thereof, to the lien of any mortgage which replaces the Mortgage described above and that the right, title, interest and claim of Ground Lessee shall be and remain at all times subject and subordinate to the rights and estate of Lender in and to the Site and the lien, operation and effect of any mortgage which replaces the above described Mortgage, subject, however, to the holder of the replacement mortgage executing a non-disturbance agreement in substantially the same form as hereinafter provided; and
 - c) covenant and agree with Mortgagee, that all condemnation awards and insurance proceeds paid or payable to either of them with respect to improvements now or hereafter located on the Site shall be applied and paid subject to the applicable terms set forth in the Mortgage; provided that all condemnation awards and insurance proceeds paid or payable with respect to Parking Facility Project shall be applied and paid in the manner set forth in the Condominium Declaration and the Cooperative Agreement, subject to the terms of that certain [Recognition Agreement] by and amongst Ground Lessee, Ground Lessor, Mortgagee and Cuyahoga River Capital, LLC ("Bond Purchaser") under the Bonds for the Parking Facility Project.
2. Mortgagee, in consideration of the foregoing recitations, does hereby:
- a) covenant and agree with Ground Lessee that in the event Mortgagee shall file one or more suits to foreclose the Mortgage, Mortgagee will not join Ground Lessee in the foreclosure proceedings, except as may be necessary to subject the Site described in the Mortgage to the Obligations (as defined in the Loan Agreement) secured thereby; covenant and agree with Ground Lessee that the foreclosure of the Mortgage or the exercise of any other remedies provided therein by Mortgagee, or provided in any other instrument securing the Obligations secured by the Mortgage, or the delivery of a deed to the Site in lieu of foreclosure, shall not result in the termination of the Parking Facility Ground Lease, but that any purchaser or other grantee upon foreclosure of the Mortgage or a conveyance in lieu of foreclosure shall thereby automatically succeed to the position of the Ground Lessor under the Parking Facility Ground Lease, and as amended, including provisions pertaining to renewals and options to purchase, if any;



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- b) covenant and agree with Ground Lessee that if, by dispossession, foreclosure, deed in lieu or foreclosure, or otherwise, the Mortgagee or any of its successors or assigns, or any purchaser at a foreclosure sale or otherwise shall come into possession or become the owner of the Site, such person shall automatically, with notice to Ground Lessee, succeed to the interest of the Ground Lessor under the Parking Facility Ground Lease. In such event, the new owner and Ground Lessee have the same remedies against one another for breach of any covenant contained in the Parking Facility Ground Lease that Ground Lessee and Ground Lessor might have had against one another under the Parking Facility Ground Lease if the new owner had not succeeded to the interests of Ground Lessor; provided, however, that the new owner (and all of its rights, including, but not limited to, the right to collect the rents under the Parking Facility Ground Lease) shall not be (i) liable or responsible for any act or omission of Ground Lessor, its successors and assigns, or any prior lessor under the Parking Facility Ground Lease; (ii) subject to, or affected by, any offsets, defenses, causes of action, credits or counterclaims which Ground Lessee might now or may hereafter have against Ground Lessor, its successors and assigns, or any other person or persons; or (iii) bound by any amendment or modification of the Parking Facility Ground Lease made without first obtaining the new owner's written consent thereto (other than an amendment to change the premises leased pursuant to the Parking Facility Ground Lease to be the unit created under the Condominium Declaration for the parking facility).
3. If, by dispossession, foreclosure, deed in lieu or foreclosure, or otherwise, the Mortgagee or any of its successors or assigns, or any purchaser at a foreclosure sale or otherwise shall come into possession or become the owner of the Site and such Mortgagee or other third-party purchaser succeeds to the interest of Ground Lessor under the Parking Facility Ground Lease, Ground Lessee shall be bound to Mortgagee or any applicable third-party purchaser, or their respective successors and assigns, under all of the terms, covenants and conditions of the Parking Facility Ground Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option thereof in the Parking Facility Ground Lease, with the same changes and effect as if Mortgagee, or applicable third-party purchaser, were the lessor under the Parking Facility Ground Lease, and Ground Lessee hereby does attorn to Mortgagee or any applicable third-party purchaser, or their respective successors and assigns, as its lessor, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee's or the third-party purchaser's succeeding to such interest. Notwithstanding the same, at the request of Mortgagee or any applicable third-party purchaser, or their respective successors and assigns, or any other person acquiring the interest of Ground Lessor, Ground Lessee agrees to execute and deliver at any time and from time to time, upon such request any instrument which in the sole judgment of the party making such request



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may be necessary or appropriate to evidence such attornment at the cost and expense of the requesting party.

4. Ground Lessee, with respect to the Parking Facility Ground Lease, hereby certifies, warrants, and agrees as follows:
 - a) The Parking Facility Ground Lease evidences the valid, binding, enforceable obligations of the undersigned and is presently in full force and effect and unmodified except as set forth in the attachments thereto;
 - b) As of this date, neither Ground Lessor nor Ground Lessee is in default under any of the terms or provisions of the Parking Facility Ground Lease; and
 - c) Ground Lessee understands and agrees that Mortgagee will rely on this certificate in providing financing to Ground Lessor.
5. Except as hereinafter limited, all parties hereto, and their respective legal representatives, heirs, successors and assigns, are bound by all of the covenants, terms, conditions, subordinations and other matters contained herein.
6. Mortgagee, in the event it succeeds to the interest of Ground Lessor, whether through foreclosure proceedings or otherwise, shall be entitled to convey and/or assign its right, title and interest, or any part thereof, in and to the Parking Facility Site and/or the Parking Facility Ground Lease to a nominee, agent, independent contractor or any other person. Upon sale, conveyance and assignment of the Parking Facility Site and its interest in the Parking Facility Ground Lease, Mortgagee shall be automatically, and without further consent, written agreement or acknowledgment by Ground Lessee, released, discharged and relieved of any and all liabilities and obligations of every kind, nature and type whatsoever accruing or arising under the Parking Facility Ground Lease and this Agreement on and after the date Mortgagee shall have sold, assigned and transferred its interest in and to the Parking Facility Site and the Parking Facility Ground Lease to the purchaser(s).
7. The provisions of this Agreement are not intended to, and shall not, release Ground Lessor, its successors and assigns, from its obligations under the Parking Facility Ground Lease, but are solely for the benefit of Mortgagee and Ground Lessee.
8. To the extent that the Parking Facility Ground Lease shall entitle Ground Lessee to notice of any mortgage of the Parking Facility Site, this Agreement shall constitute such notice to Ground Lessee with respect to the Mortgage. Ground Lessee shall provide to Mortgagee written notice of any default of Ground Lessor under the Parking Facility Ground Lease, Cooperative Agreement, Construction Manager At Risk Agreement or Disbursing Agreement and shall allow Mortgagee sixty (60) days to cure said default, and a reasonable period of time in addition thereto if circumstances are such that Mortgagee cannot gain possession of the Parking Facility Site or said default cannot otherwise reasonably be cured within said sixty (60) day period, before exercising any remedies or



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rights to terminate said Parking Facility Ground Lease, Cooperative Agreement, Construction Manager At Risk Agreement or Disbursing Agreement.

9. Ground Lessee covenants not to enter into any amendments or modifications of the Parking Facility Ground Lease without the prior written consent of Mortgagee, which consent may not be unreasonably withheld.
10. Mortgagee hereby agrees to release the lien of the Mortgage from the condominium unit created for the Parking Facility Project pursuant to the Condominium Declaration upon satisfaction of all of the following condition:
 - The Parking Facility Project and the Commercial Facility Project have been substantially completed.
11. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate set forth in the preamble hereof. The parties hereto, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the sender that shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.
12. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.
13. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
14. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained



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herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

15. The parties agree that this Agreement shall be recorded with the [_____] County, [____], Recorder's Office.

[Remainder of Page Intentionally Left Blank]



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GROUND LESSOR:

[]

By: _____

Name: _____

Its: _____

STATE OF _____ :

: ss

COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, the _____ of [_____], a(n) _____. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

Commission

Expiration: _____



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EXHIBIT "A"

Site