

EXECUTION VERSION

When recorded, return to:

Thomas R. Taylor
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111

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10/31/2011 1:50:00 PM \$56.00
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Gary W. Ott
Recorder, Salt Lake County, UT
DURHAM, JONES AND PINEGAR
BY: eCASH, DEPUTY - EF 24 P.

INTERCREDITOR AND SUBORDINATION AGREEMENT

This Intercreditor Agreement (this "Agreement") is made and entered into effective as of June 1, 2011, by and between KEYBANK NATIONAL ASSOCIATION, a national banking association ("Senior Lender") and C&M INVESTMENTS, LTD., a Utah limited partnership ("C&M Investments" or "Subordinate Lender").

RECITALS

A. JHD DRAPER, LLC, a Utah limited liability company ("Borrower") is indebted to Senior Lender under two separate loan transactions. The first loan is in the original principal amount of Eight Million Five Hundred Sixty Thousand and No/100 Dollars (\$8,960,000.00) (as amended from time to time, the "Mortgage Loan"). The Mortgage Loan is evidenced by that certain "Promissory Note" dated as of October 26, 2006 (as amended from time to time, the "Mortgage Note") in the original principal amount of Eight Million Five Hundred Sixty Thousand and No/100 Dollars (\$8,960,000.00), executed by C&M Investments, as maker, in favor of Senior Lender, as payee, in the amount of the Mortgage Loan. The Mortgage Loan is secured by, among other things, a certain "Deed of Trust", dated October 26, 2006, (the "Senior Trust Deed") and a certain "Assignment of Rents", dated October 26, 2006 (the "Senior Assignment of Rents", together with the Senior Trust Deed, the "Senior Mortgage"), executed by C&M Investments, as trustor, in favor of Senior Lender, as beneficiary. The Senior Mortgage encumbers the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the "Premises"). The second loan is in the original principal amount of One Million No/100 Dollars (\$1,000,000.00) (as amended from time to time, the "Business Loan", together with the Mortgage Loan, the "Senior Loan"). The Business Loan is evidenced by that certain "Business Loan Agreement" (as amended from time to time, the "Business Loan Agreement") and that certain "Promissory Note", both dated as of December 20, 2007 (as amended from time to time, the "Business Note", together with the Mortgage Note, the "Senior Notes") in the original principal amount of One Million No/100 Dollars (\$1,000,000.00), executed by C&M Investments, as maker, in favor of Senior Lender, as payee, in the amount of the Business Loan. The Business Loan is secured by, among other things, a "Commercial Security Agreement", dated December 20, 2007 (as amended, modified or extended, the "Security Agreement"), between C&M Investment and Lender and the associated UCC-1 Financing Statement filed on January 18, 2008 on the Collateral (as defined therein). The Mortgage Note, Mortgage Trust Deed, Mortgage Assignment of Rents, the Business Loan Agreement, the Business Note, the Security Agreement and all other documents and instruments given to evidence the Mortgage Loan and Business Loan, as security therefor, or otherwise in connection therewith, including all

amendments, modifications, renewals, extensions and restatements thereof (the "Senior Loan Documents").

B. Borrower, pursuant to that certain Assumption Agreement, dated as of even date herewith (the "Assumption Agreement"), assumed all of the obligations of C&M Investments under the Senior Loan Documents and was substituted as "Borrower" thereunder.

C. Pursuant to the terms, provisions and conditions set forth in that certain "Real Estate Purchase Agreement" dated as of June 1, 2011 (the "Subordinate Agreement"), between Borrower and Subordinate Lender, Borrower will purchase the Premise from Subordinate Lender and Subordinate Lender will finance the purchase of the Premises pursuant to a loan to Borrower in the original principal amount of \$2,015,266.00 (the "Subordinate Loan"). The Subordinate Loan will be evidenced by a promissory note dated June 1, 2011 (the "Subordinate Note") and will be secured by a third deed of trust (the "Subordinate Trust Deed") encumbering the Premises. The Subordinate Agreement, Subordinate Trust Deed, the Subordinate Note, and any loan agreement or other document and instrument given in connection therewith or as security therefor are collectively referred to as the "Subordinate Loan Documents."

D. Senior Lender and Subordinate Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents and the Subordinate Loan Documents on the terms and conditions hereinafter set forth, and to evidence certain agreements with respect to the relationship between the Subordinate Loan and the Subordinate Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Subordinate Lender hereby agree as follows:

Section 1. **Certain Definitions; Rules of Construction.**

(a) In addition to other terms that may be defined herein, as used in this Agreement, the following capitalized terms shall have the following meanings:

"Affiliate" means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, controlling, Controlled by or under common control with the Person or Persons in question.

"Agreement" means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof.

"Award" has the meaning provided in Section 9(b) hereof.

"Borrower" has the meaning provided in Recital A above.

"Borrower Group" has the meaning provided in Section 10(c) hereof.

“Borrower Group Equity” means any membership, stock or other equity interest in Borrower, or in any manager or member of Borrower, or in any Person who is a member of the Borrower Group.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday in the State of Utah, or any other day on which commercial banks in the State of Utah are required or are authorized to be closed for the general transaction of banking business.

“Business Loan Agreement” has the meaning provided in Recital A above.

“Business Loan Documents” has the meaning provided in Recital A above.

“Business Note” has the meaning provided in Recital A above.

“Cash Collateral” means all proceeds, product, offspring, rents and profits of the Premises that constitute cash collateral under Section 363 of the United States Bankruptcy Code, as amended from time to time.

“Control” or “control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “Controlled by,” “controlling” and “under common control with” shall have the respective correlative meaning thereto.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including without limitation the taking of possession or control of the Premises; (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts); (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises; and (iv) exercise of any right or remedy available to Subordinate Lender under the Subordinate Loan Documents, at law, in equity or otherwise with respect to Borrower, the Premises, or any Person who is also a guarantor of the Senior Loan.

“Event of Default” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default thereunder which has occurred and is continuing (*i.e.*, has not been cured by Borrower in accordance with the terms of the Senior Loan Documents) and (ii) with respect to the Subordinate Loan and the Subordinate Loan Documents, any Event of Default thereunder which has occurred and is continuing (*i.e.*, has not been cured by Borrower in accordance with the terms of the Subordinate Loan Documents).

“Lien” means any lien, claim, security interest, deed of trust, mortgage, hypothecation, pledge, charge, assignment (collateral, absolute or otherwise), encumbrance, assessment, preferential arrangement, condition, equitable interest, right of first offer or refusal,

lease, tenancy, possessory interest, deed to secure debt, option, covenant, right of way, easement, conditional sale, charge, proxy, voting trust or agreement, arrangement or restriction of any kind.

“Mortgage Loan” has the meaning provided in Recital A above.

“Mortgage Note” has the meaning provided in Recital A above.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

“Premises” has the meaning provided in the Recital A above, and as more fully described in Exhibit A hereto.

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

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises from forfeiture, casualty, loss or waste.

“Security Agreement” has the meaning provided in Recital A above.

“Senior Lender” has the meaning provided in the introductory paragraph of this Agreement, together with its successors and assigns.

“Senior Loan Documents” has the meaning provided in Recital A above, as any such document or instrument may be modified, amended, extended, renewed, supplemented, restated or replaced from time to time.

“Senior Loan Liabilities” mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Senior Loan Documents and all amounts due or to become due pursuant to the Senior Loan Documents, including without limitation interest thereon and any other amounts payable in respect thereof or in connection therewith, including without limitation any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Senior Loan Modification” has the meaning provided in Section 7(a) hereof.

“Senior Trust Deed” has the meaning provided in Recital A above.

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

“Subordinate Loan” has the meaning provided in Recital B above.

“Subordinate Loan Documents” has the meaning provided in Recital B above, as the same may be modified, amended, extended, renewed, supplemented, restated or replaced from time to time, subject to any limitations or restrictions on any amendments or modifications set forth in this Agreement.

“Subordinate Loan Liabilities” mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Subordinate Loan Documents and all amounts due or to become due pursuant to the Subordinate Loan Documents, including without limitation interest thereon and any other amounts payable in respect thereof or in connection therewith, including without limitation any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

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

“Subordinate Note” has the meaning provided in the Recital B above.

“Subordinate Trust Deed” has the meaning provided in the Recital B above.

“Transfer” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, or other disposition, either directly or indirectly, by operation of law or otherwise.

(b) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) terms not otherwise defined herein shall have the meaning assigned to them in the Senior Loan Documents;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

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

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

(vii) the words “to Subordinate Lender’s knowledge” or “to the knowledge of Subordinate Lender” (or words of similar meaning) shall mean to the actual knowledge of the managers, officers and employees of Subordinate Lender with direct oversight responsibility for the Subordinate Loan without independent investigation or inquiry and without any imputation whatsoever; and

(viii) the words “to Senior Lender’s knowledge” or “to the knowledge of Senior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever.

Section 2. **Approval of Loans and Loan Documents.**

(a) Subordinate Lender hereby acknowledges that (i) it has received the Senior Loan Documents, has reviewed the same and is familiar with the terms and conditions thereof and consents to the terms and provisions thereof; (ii) the execution, delivery and performance of the Senior Loan Documents will not constitute an event of default under the Subordinate Loan Documents or an event which, with the giving of notice or the lapse of time, or both, would constitute an event of default thereunder; (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds; and (iv) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

(b) Senior Lender hereby acknowledges that (i) it has received the Subordinate Loan Documents, has reviewed and is familiar with the terms and conditions thereof, and hereby consents to and approves of the making of the Subordinate Loan to the extent such approval is required under the terms of the Senior Loan Documents, subject to the terms, conditions, limitations and provisions of this Agreement; and (ii) the execution and delivery of the Subordinate Loan Documents will not constitute an event of default under the Senior Loan Documents or an event which, with the giving of notice or the lapse of time, or both, would constitute an event of default thereunder. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender’s consent to subordinate financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Subordinate Loan Documents or the making of the Subordinate Loan, have been either satisfied or waived.

Section 3. **Representations and Warranties.**

(a) Subordinate Lender hereby represents and warrants as follows:

(i) To Subordinate Lender’s knowledge, there currently exists no default, condition or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Subordinate Loan Documents.

(ii) Subordinate Lender is the legal and beneficial owner and holder of the entire Subordinate Loan and the Subordinate Loan Documents free and clear of any lien, security interest, option or other charge or encumbrance.

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

(iv) Subordinate Lender has, independently and without reliance upon Senior Lender or any of its directors, officers, employees or agents, and based on such documents and information as Subordinate Lender has deemed appropriate, made its own credit analysis and decision to make the Subordinate Loan and to enter into this Agreement.

(v) Subordinate Lender is a limited partnership duly organized and is validly existing under the laws of the State of Utah and has full power and authority to execute and deliver this Agreement, perform its obligations set forth herein and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of Subordinate Lender have been duly taken and all such actions continue in full force and effect as of the date hereof.

(vii) Subordinate Lender has duly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding agreement of Subordinate Lender enforceable against Subordinate Lender in accordance with its terms subject to (A) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (B) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Subordinate Lender's knowledge, no consent of any other Person, and no consent, license, approval or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency, is required in connection with the execution, delivery or performance by Subordinate Lender of this Agreement or the consummation by Subordinate Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (A) violate or conflict with any provision of the organizational or governing documents of Subordinate Lender; (B) to Subordinate Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement or other instrument to which Subordinate Lender is a party or to which any of its properties are subject; (C) to Subordinate Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest or other right or interest upon the properties or assets of Subordinate Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument; (D) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Subordinate Lender has knowledge against, or binding upon, Subordinate Lender or upon any of the securities, properties, assets or business of Subordinate Lender; or (E) to Subordinate Lender's knowledge, constitute a violation by Subordinate Lender of any statute, law or regulation that is applicable to Subordinate Lender.

(x) The Subordinate Loan is not cross-defaulted with any loan other than the Senior Loan. The Premises do not secure any loan from Subordinate Lender to Borrower or any other Affiliate of Borrower, other than the Subordinate Loan pursuant to the Subordinate Trust Deed.

(xi) The Subordinate Loan is not secured by a Lien on any Borrower Group Equity, and Subordinate Lender has not taken or received, and while any of the Senior Loan Liabilities are outstanding and unpaid and undischarged it will not, without Senior Lender's prior written consent, take or receive, a Lien on or with respect to any Borrower Group Equity.

(b) Senior Lender hereby represents and warrants as follows:

(i) To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

(ii) Senior Lender is the legal and beneficial owner and holder of the Senior Loan and the Senior Loan Documents free and clear of any lien, security interest, option or other charge or encumbrance.

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

(iv) Senior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver and perform this Agreement and consummate the transactions contemplated hereby.

(v) All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vi) Senior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (A) applicable bankruptcy, reorganization, insolvency and moratorium laws and (B) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(vii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(viii) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (A) violate or conflict with any provision of the organizational or governing documents of Senior Lender; (B) to Senior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with

the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement or other instrument to which Senior Lender is a party or to which any of its properties are subject; (C) to Senior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Senior Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument; (D) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Senior Lender has knowledge against, or binding upon, Senior Lender or upon any of the securities, properties, assets, or business of Senior Lender; or (E) to Senior Lender's knowledge, constitute a violation by Senior Lender of any statute, law or regulation that is applicable to Senior Lender.

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

(a) While the Senior Loan remains outstanding or any of the Senior Loan Liabilities remain unpaid or undischarged, Subordinate Lender shall not Transfer its legal, equitable or beneficial interest in the Subordinate Loan or any of the Senior Loan Documents without the prior written consent of the Senior Lender, which consent Senior Lender may grant, withhold, deny or make conditional in its sole discretion.

(b) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein, and notwithstanding any such Transfer or subsequent Transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Subordinate Loan and the Subordinate Loan Documents in accordance with the terms and provisions of this Agreement. Promptly following any such Transfer, Senior Lender shall give written notice to Subordinate Lender of such Transfer, including the name and address of the transferee or transferees.

Section 5. **Foreclosure and Enforcement Actions by Subordinate Lender.**

(a) If Subordinate Lender commences any Enforcement Action or takes any other action under the Subordinate Loan Documents with respect to any Lien securing the Subordinate Loan Liabilities or otherwise to collect the Subordinate Loan Liabilities from Borrower or any other Person obligated thereon, Subordinate Lender shall give Senior Lender written notice of such action, together with copies of any written demands, notices of default, notices of sale and other similar notices or documents pertaining to the Enforcement Action at the same time such demands, notices and documents are given to Borrower. While any of the Senior Loan Liabilities remain unpaid and undischarged, Subordinate Lender shall not take any action to collect on the Subordinate Loan Liabilities from Borrower or any other Person obligated thereon who is also obligated on the Senior Loan Liabilities without Senior Lender's prior written consent. For purposes of this Agreement, the Senior Loan Liabilities shall not be deemed to have been fully paid and discharged unless and until the Senior Lender shall have received payments sufficient to satisfy the Senior Loan Liabilities in full and Senior Lender's obligations under the Senior Loan Documents shall have been fully released and discharged. If any payment made in satisfaction of the Senior Loan Liabilities is subject to any claim of rescission, restoration or return, including without limitation any such claim made by an actual or hypothetical trustee in bankruptcy, then this Agreement shall be automatically reinstated until such claims have been finally resolved or adjudicated, and in such event, Subordinate Lender

shall reimburse Senior Lender for any amount Senior Lender is required to return or turn over, but only to the extent Subordinate Lender received any funds that it would not have been entitled to receive if this Agreement had remained continuously in effect.

(b) If any Enforcement Action under the Subordinate Loan Document results in funds or monies from a sale or other disposition that are excess of the Subordinate Loan Liabilities, then any such excess that would otherwise be payable to Borrower or in which Borrower has an interest shall be paid to Senior Lender for application on the Senior Loan Liabilities.

Section 6. Subordination of Subordinate Loan and Subordinate Trust Deed to Senior Loan and Senior Trust Deed.

(a) Subordinate Lender hereby agrees that the Subordinate Loan, the Subordinate Loan Documents (including without limitation any Liens granted therein), the Subordinate Loan Liabilities and any other amounts due or to become due thereunder, shall at all times be junior, inferior, subordinate and subject to the Senior Loan, the Senior Loan Documents and the Senior Loan Liabilities, including without limitation any Liens granted under the Senior Loan Documents and all amounts due or to become due under the Senior Loan Documents, as the same may be amended, modified, renewed, extended or restated from time to time as permitted in Section 7(a) hereof. Without limiting the foregoing, Subordinate Lender agrees that its right to payment of amounts due under the Subordinate Loan Documents shall at all times be and continue to be expressly subject and subordinate in right of payment to the Senior Loan Liabilities; provided, however, Subordinate Lender may “credit bid” all or any portion of the Subordinate Loan Liabilities in connection with a judicial or non-judicial foreclosure sale of all or any portion of the Premises conducted pursuant to the Subordinate Trust Deed. The rights and priorities set forth in this Section 6 shall be effective notwithstanding (i) the order of creation, attachment, recording, vesting or perfection of the rights of Senior Lender in the Senior Loan Documents or Subordinate Lender in the Subordinate Loan Documents; (ii) the validity or enforceability of the Senior Loan Documents; and (iii) whether or not Senior Lender has properly perfected any Lien granted under the Senior Loan Documents. The foregoing subordination shall have the same effect as though the Senior Loan Documents were executed, delivered and filed or placed of record prior in time to, and without actual or constructive knowledge of, the Subordinate Loan or any of the Subordinate Loan Documents.

(b) While any of the Senior Loan Liabilities are outstanding and undischarged, Subordinate Lender agrees that, in connection with a proposed sale of the Premises (or any portion thereof) pursuant to a good faith, arm’s length transaction at a price not less than ninety percent (90%) of the fair market value of the Premises (or such portion thereof being sold), with such fair market value being determined by a current appraisal made by an independent appraiser reasonably acceptable to Senior Lender, Subordinate Lender shall execute and deliver to a title company designated by Senior Lender a full or partial (as applicable) release or reconveyance of the Subordinate Trust Deed and other Subordinate Loan Documents as to the property being sold. The release and reconveyance of the Subordinate Trust Deed shall be in such form as may be reasonably required by such title company in order for Borrower to deliver good and marketable title to such property free and clear of any Lien of Subordinate Lender under the Subordinate Loan Documents. Until such time as the Senior Loan Liabilities shall have been fully paid and discharged, and the Senior Trust Deed shall have been released or

reconveyed, the entire net sales proceeds from the sale of the Premises or any part thereof, after deducting real estate commissions, tax prorations, and normal and customary closing costs, shall be delivered and applied as follows: First, to Senior Lender for application to the Senior Loan Liabilities (in such order as Senior Lender determines); second, any remaining funds shall be delivered to Subordinate Lender for application to the Subordinate Loan Liabilities; and third, the remaining funds, if any, shall be delivered to Borrower or the Person owning the property being sold at the time of such sale. If Subordinate Lender fails to execute and deliver such partial releases and reconveyances after reasonable notice, Subordinate Lender hereby irrevocably appoints Senior Lender as Subordinate Lender's attorney-in-fact (which appointment is coupled with an interest and is irrevocable) for the purpose of executing and delivering in the name of Subordinate Lender the documents required under this Section 6(b).

(c) Upon any refinancing of the Senior Loan, or any portion thereof, Subordinate Lender agrees to subordinate the Subordinate Loan and the Subordinate Loan Documents, including any Lien granted therein and any right to payment thereunder, to any such refinancing loan, together with the documents evidencing or securing the same and all Liens, claims, encumbrances and security interests granted therein; provided, however, if any such refinancing or any related or contemporaneous construction loan or other financing results in funds in excess of the normal and customary costs associated with such refinancing and any amounts needed to pay the Senior Loan Liabilities in full, then, Subordinate Lender shall be entitled to receive such excess funds for application against the Subordinate Loan Liabilities. Such subordination shall be upon substantially the same terms and conditions as set forth in this Agreement or as otherwise reasonably required by the lender providing refinancing. Subordinate Lender agrees to execute and deliver to such refinancing lender such documents and instruments as such lender may reasonably request in connection with such refinancing and subordination.

Section 7. Modifications, Amendments, Etc.

(a) Senior Lender shall have the right, without prior notice to or the consent of Subordinate Lender in each instance, to enter into any amendment, deferral, extension, modification, restatement, increase, renewal, replacement, consolidation, supplement or waiver of or with respect to the Senior Loan or the Senior Loan Documents (collectively, a "Senior Loan Modification"), including without limitation a Senior Loan Modification that increases the interest rate or principal amount; extends or shortens the term of the Senior Loan; modifies the repayment schedule; releases or discharges any collateral securing the Senior Loan or any Person obligated thereon; provides for any additional contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises; converts or exchanges the Senior Loan into or for any other indebtedness; subordinates any of the Senior Loan to any indebtedness of Borrower; amends or modifies the provisions limiting transfers of interests in the Borrower or the Premises; cross-defaults the Senior Loan with any other obligation, liability or indebtedness; or imposes any extension or other fee.

(b) Without first obtaining Senior Lender's written consent, Subordinate Lender shall not enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Subordinate Loan Modification") of the Subordinate Loan or the Subordinate Loan Documents.

(c) Senior Lender shall, upon request by Subordinate Lender, deliver to Subordinate Lender copies of any document evidencing a Senior Loan Modification.

(d) Subordinate Lender shall deliver to Senior Lender copies of any document or instrument evidencing or given in connection with a Subordinate Loan Modification.

Section 8. **Other Collateral for Subordinate Loan.** While the Senior Loan Liabilities are outstanding any undischarged, Subordinate Lender shall not take or receive any other collateral to secure the Subordinate Loan or the obligations and liabilities under the Subordinate Loan Documents, other than the Lien and security interest granted to Subordinate Lender pursuant to the Subordinate Trust Deed.

Section 9. **Payment Subordination.**

(a) All of Subordinate Lender's rights to payment of the Subordinate Loan and the obligations evidenced by the Subordinate Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Loan and the obligations secured by the Senior Loan Documents, and Subordinate Lender shall not accept or receive payments (including without limitation whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower and/or from the Premises prior to the date that the Senior Loan Liabilities and other obligations of Borrower to Senior Lender under the Senior Loan Documents are paid. If a Proceeding shall have occurred or a Continuing Senior Loan Event of Default shall have occurred and be continuing, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender before Subordinate Lender is entitled to receive any payment from Borrower or any other Person, including, but not limited to, any guarantor on account of the Subordinate Loan. All payments or distributions upon or with respect to the Subordinate Loan which are received by Subordinate Lender contrary to the provisions of this Agreement shall be received and held in trust by the Subordinate Lender for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan Liabilities in accordance with the terms of the Senior Loan Documents. Nothing contained herein shall prohibit the Subordinate Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Subordinate Loan) notwithstanding the existence of a default under the Senior Loan at such time.

(b) Provided that no Event of Default shall then exist under the Senior Loan Documents, Subordinate Lender may accept payments of any amounts due and payable from time to time which Borrower is obligated to pay Subordinate Lender in accordance with the terms and conditions of the Subordinate Loan Documents as the same exist as of the date of this Agreement and without regard to any amendment or modification thereof, provided such payments are pursuant to a modification of the Subordinate Loan Documents made with Senior Lender's written consent, and Subordinate Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Except as otherwise expressly permitted in this Agreement, Subordinate Lender shall not at any time, without the prior written consent of the Senior Lender, exercise any

rights against or accept payments from any guarantor of the Senior Loan, or take any Enforcement Action against any collateral securing the guaranty or any such guarantor, while any of the Senior Loan Liabilities remain unpaid or outstanding.

(d) In the event of a casualty to any building or improvement constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions or consideration arising from any such event (the "Award"). If the amount of the Award is in excess of all amounts owed to Senior Lender under the Senior Loan Documents, however, and either the Senior Loan Liabilities have been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Subordinate Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Subordinate Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Subordinate Lender, and Subordinate Lender hereby waives and releases any claim it may now or hereafter have against Senior Lender with respect thereto.

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

(a) Each of Subordinate Lender and Senior Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Subordinate Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Subordinate Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Subordinate Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Subordinate Lender agrees that Senior Lender owes no fiduciary duty to Subordinate Lender in connection with the administration of the Senior Loan and the Senior Loan Documents, and Subordinate Lender hereby waives and agrees not to assert any such claim.

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Subordinate Lender shall entitle Subordinate Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Subordinate Lender agrees that, except with respect to the

enforcement of its remedies under the Subordinate Loan Documents permitted hereunder, prior to the satisfaction and discharge of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

(c) Subject to Section 30 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a "Proceeding"). For as long as the Senior Loan shall remain outstanding and undischarged, Subordinate Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower to direct or cause either the Borrower or any entity which controls Borrower (collectively, the "Borrower Group") to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower; (vii) seek to consolidate the Premises or any other assets of the Borrower with the assets of the Borrower or any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

(d) Subordinate Lender hereby grants and assigns to Senior Lender a Lien in any claims, distributions or payments that Subordinate Lender may have against Borrower in any Proceeding as security for the payment of the Senior Loan Liabilities.

(e) In any Proceeding: (i) Subordinate Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against the Borrower without the prior consent of Senior Lender; (ii) Senior Lender shall be entitled to receive payment in full of the Senior Loan Liabilities prior to the payment of all or any part of the indebtedness under the Subordinate Loan; (iii) Senior Lender may vote in any such Proceeding in connection with any and all claims of Subordinate Lender, and Subordinate Lender hereby appoints Senior Lender as its agent, and grants to Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to Subordinate Lender in connection with any Proceeding by or against Borrower (in the name of Senior Lender or in the name of Subordinate Lender), including without limitation the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code and to receive and collect any and all dividends, distributions or other payments or disbursements made thereon in whatever form the same may be paid or issued, and to apply the same to the Senior Loan Liabilities; (iv) Subordinate Lender shall promptly execute and deliver to Senior Lender upon demand such assignments or other instruments as may be required by Senior Lender in order to

enable Senior Lender to enforce any and all claims and to collect any and all payments or disbursements that may be made on account of all or any of the indebtedness under the Subordinate Loan; and (v) Subordinate Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith and based on a current appraisal made by an independent appraiser reasonably acceptable to Senior Lender in such Proceeding or take any other action in such Proceeding which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). Notwithstanding the rights granted to Senior Lender in Section 10(e)(iii) above, if it is finally determined by a court of competent jurisdiction that Senior Lender may not exercise the voting rights of Subordinate Lender, Subordinate Lender hereby agrees that it shall not have the right to vote affirmatively in favor of any plan of reorganization unless Senior Lender votes to accept such plan. In no event shall Subordinate Lender object to any request or motion by Senior Lender for an order establishing that proceeds, product, offspring, rents and profits of the Property constitute Cash Collateral. Subordinate Lender hereby consents to any application by Senior Lender to have such Cash Collateral applied to the payment of the Senior Loan prior to the application of any such sums to the related Subordinate Loan until such Senior Loan is paid in full. If Senior Lender consents to any use of the Cash Collateral, Subordinate Lender shall also consent, and if Senior Lender objects to any such use, Subordinate Lender shall also object.

(f) To the extent any payment under any of the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of set off or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to the trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Loan Liabilities or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

(g) Subordinate Lender covenants and agrees that it shall not contest in any manner or forum (including in any Proceeding), and hereby waives any right to contest: (i) any amount owed under or secured by the Senior Loan Documents or any payment made on the Senior Loan Liabilities; or (ii) the validity, legality enforceability, priority or perfection of the Senior Loan Documents.

(h) Subordinate Lender hereby further agrees to consent to any motion made by or on behalf of Senior Lender in any Proceeding for relief against any stay or injunction therein against collection of Senior Loan Liabilities, including any motion made by or on behalf of Senior Lender therein to lift such stay or injunction for the purposes of foreclosing the Senior Trust Deed.

Section 11. Notices of Transfer; Consent. Senior Lender shall have no duty to notify Subordinate Lender if Borrower seeks or requests a release of the Lien of the Senior Loan or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by the Borrower for Senior Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the

granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender may grant such consent without giving notice to or obtaining the consent of Subordinate Lender.

Section 12. **Obligations Hereunder Not Affected.**

(a) All rights, interests, agreements and obligations of Senior Lender and Subordinate Lender under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or the Subordinate Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Subordinate Loan;

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

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

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower or a subordinated creditor or a Senior Lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Subordinate Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

Section 13. **Notices.** All notices, demands, requests, consents, approvals or other communications required, permitted or desired to be given hereunder shall be in writing and shall be either sent by facsimile (with answer back acknowledged); or by registered or certified mail, postage prepaid, return receipt requested; or delivered by hand; or delivered by reputable overnight commercial courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 13. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) if sent by registered or certified mail, on the earlier of the date delivery was first attempted or the date that is three (3) Business Days after the date such notice was deposited with or delivered to the United States Postal Service; (b) if sent by facsimile transmission, on the date of transmission if transmitted prior to 3:00 p.m. Salt Lake City time on a Business Day (of if transmitted thereafter, on the next Business Day), provided that the party transmitting the notice retains evidence that such facsimile transmission was successfully completed and sends a duplicate copy of such notice by the next Business Day using another method for giving notice permitted in this Section 18; (c) if delivered by hand, on

the date of delivery if delivered during business hours on a Business Day (otherwise on the next Business Day); and (d) if sent by overnight commercial courier, on the next Business Day after depositing the same with such overnight commercial courier, provided such deposit is made in time to permit next Business Day delivery. In each case, notices shall be addressed and sent to the parties as follows:

If to Subordinate Lender: C&M Investments, Ltd.
3500 South 400 West
West Valley City, UT 84119

If to Senior Lender: Key AutoFinance
4910 Tiedeman Road
Brooklyn, Ohio 44144
M/S OH-01-51-0650

and with a copy to: Thomas R. Taylor
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Facsimile No.: (801) 415-3500

Any party may change the address for giving notice by sending notice of such change as provided in this Section 13.

Section 14. **Estoppel.**

(a) Subordinate Lender shall, within ten (10) days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Subordinate Loan, the aggregate accrued and unpaid interest under the Subordinate Loan, and stating whether to Subordinate Lender's knowledge any default or Event of Default exists under the Subordinate Loan.

(b) Senior Lender shall, within ten (10) days following a request from Subordinate Lender, provide Subordinate Lender with a written statement setting forth the then current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or Event of Default exists under the Senior Loan.

Section 15. **Further Assurances.** So long as all or any portion of the Senior Loan and the Subordinate Loan remains unpaid and the Senior Trust Deed encumbers the Premises, Subordinate Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

Section 16. **No Third Party Beneficiaries; No Modification.** The parties hereto do not intend the benefits of this Agreement to inure to Borrower, Borrower or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

Section 17. **Successors and Assigns.** This Agreement shall bind all successors and permitted assigns of Subordinate Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Subordinate Lender.

Section 18. **Counterpart Originals; Execution by Electronic Transmission.** This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement. Either party may remove the signature page(s) from any counterpart and attach the same to any other counterpart for the purpose of creating a single instrument bearing the signatures of all parties. Any party may effect the execution and delivery of this Agreement by sending a signed copy hereof to the other party by facsimile, e-mail, or other form of electronic transmission (each an "Electronic Transmission"). Any document sent by Electronic Transmission, including the signatures thereon, shall be treated in all respects as original documents bearing original signatures. Any party sending a signed copy of this Agreement by Electronic Transmission agrees to send the original thereof to the other party within five (5) Business Days thereafter, but failure to do so shall not invalidate or otherwise adversely affect the validity or enforceability of the document sent by Electronic Transmission.

Section 19. **Legal Construction.** In all respects, including without limitation matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Utah applicable to agreements intended to be wholly performed within the State of Utah.

Section 20. **No Waiver; Remedies.** No failure on the part of the Senior Lender or Subordinate Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 21. **No Joint Venture.** Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

Section 22. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

Section 23. **Conflicts.** In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Subordinate Loan Documents, the terms and conditions of this Agreement shall control.

Section 24. **No Release.** Nothing herein contained shall operate to release Borrower from (a) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower under the Senior Loan Documents or to release Borrower from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Subordinate Loan Documents or (y) any liability of Borrower under the Subordinate Loan Documents.

Section 25. **Continuing Agreement.** This Agreement is a continuing agreement and shall remain in full force and effect until the earliest of (a) payment in full of the Senior Loan Liabilities, (b) transfer of the Premises by foreclosure of the Senior Trust Deed or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, or (c) payment in full of the Subordinate Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

Section 26. **Severability.** In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

Section 27. **Expenses.**

(a) To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is realized by Senior Lender, Subordinate Lender agrees upon demand to pay to Senior Lender the amount of any and all reasonable expenses, including without limitation the reasonable fees and expenses of its counsel and of any experts or agents, which Senior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Senior Lender against Subordinate Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Subordinate Lender to perform or observe any of the provisions hereof.

(b) To the extent not paid by Borrower out of or from any collateral securing the Subordinate Loan which is realized by Subordinate Lender, Senior Lender agrees upon demand to pay to Subordinate Lender the amount of any and all reasonable expenses, including without limitation the reasonable fees and expenses of its counsel and of any experts or agents, which Subordinate Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Subordinate Lender against Senior Lender hereunder to the extent that Subordinate Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Senior Lender to perform or observe any of the provisions hereof.

Section 28. **Injunction.** Senior Lender and Subordinate Lender each acknowledge (and waive any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by either Senior Lender or Subordinate Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Subordinate Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party.

Section 29. **Mutual Disclaimer.**

(a) Each of Senior Lender and Subordinate Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Subordinate Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Subordinate Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Subordinate Lender deem relevant. Each of Senior Lender and Subordinate Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Subordinate Loan or the Subordinate Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of Senior Lender and Subordinate Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Subordinate Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Subordinate Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Subordinate Loan or the Premises (including without limitation the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Subordinate Loan).

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

Section 30. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties thereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions and understandings with respect thereto. This Agreement may not be contradicted by evidence of any alleged oral agreement or understanding to the contrary. This Agreement may not be amended or modified in any manner except by written agreement signed by the parties hereto.

Section 31. **Waiver of Jury Trial.** EACH OF SENIOR LENDER AND SUBORDINATE LENDER AGREES TO WAIVE THE RIGHT TO HAVE A JURY HEAR, DETERMINE, OR MAKE ANY RECOMMENDATION WITH RESPECT TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREIN, THE PURSUIT OF ANY RIGHT OR REMEDY HEREUNDER, AND ANY CLAIMS ARISING IN CONNECTION HERewith OR WITH ANY OF THE FOREGOING, WHETHER SUCH CLAIMS ARE BASED ON PRINCIPLES OF STATUTORY, CONTRACT, OR TORT LAW. THE PARTIES AGREE THAT ALL SUCH MATTERS SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER WAS A MATERIAL FACTOR IN THEIR DECISION TO EXECUTE AND DELIVER THIS AGREEMENT AND UNDERTAKE THE TRANSACTIONS DESCRIBED HEREIN.

[Remainder of page intentionally left blank.
Signature page follows immediately.]

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

SENIOR LENDER: KEYBANK NATIONAL ASSOCIATION, a national banking association

By: [Signature]
Dan Ranger, Vice President

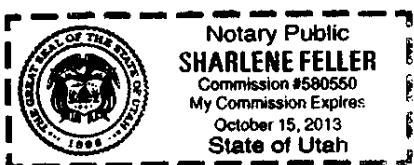
SUBORDINATE LENDER: C&M INVESTMENTS, LTD., a Utah limited partnership

By: [Signature]
Name: Michael H. Day
Title: General Partner

STATE OF UTAH)
: ss.
County of Salt Lake)

On June 1, 2011, before me, the undersigned notary public, personally appeared Dan Ranger, the Vice President of KEYBANK NATIONAL ASSOCIATION, a national banking association, who duly acknowledged to and before me that she signed the foregoing instrument for and on behalf of said bank, having all requisite authority to so act.

[seal]

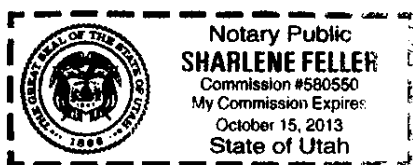


[Signature]
Notary Public

STATE OF UTAH)
: ss.
County of Salt Lake)

On June 1, 2011, before me, the undersigned notary public, personally appeared Michael Henry Day, as Trustee of The Michael Henry Day Family Living Trust, dated July 16, 1981, the General Partner of C&M INVESTMENTS, LTD., a Utah limited partnership, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.

[seal]



[Signature]
Notary Public

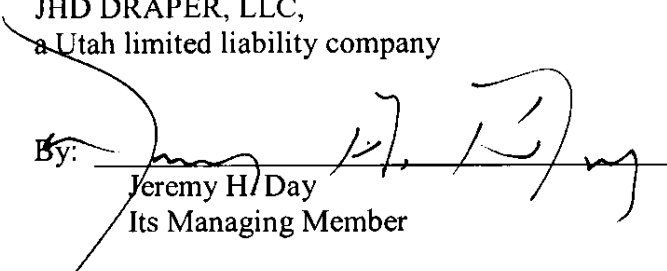
JOINDER BY BORROWER

JHD DRAPER, LLC a Utah limited liability company, as the Borrower named above, hereby joins in the execution of this Agreement for the purpose of acknowledging receipt of a copy of this Agreement and consenting to any term, condition or provision thereof that is applicable to Borrower or to its rights under the Senior Loan Documents or the Subordinate Loan Documents.

Borrower hereby assigns and transfers to Senior Lender as collateral, and grants Lender a Lien and security interest in, any right, title, claim or interest that Borrower has or may hereafter have or acquire in any funds or monies payable to it, or in which it may have any claim or right, as a result of an Enforcement Action under the Subordinate Loan Documents, including without limitation any funds from any sale or disposition of the Premises in excess of the Subordinate Loan Amount that would otherwise be payable to Borrower. Such assignment and security interest are given to secure the Senior Loan Liabilities. Any monies received by Lender with respect to the foregoing assignment and security interest shall be applied to reduce the Senior Loan Liabilities.

Dated as of June 1, 2011.

JHD DRAPER, LLC,
a Utah limited liability company

By: 
Jeremy H. Day
Its Managing Member

STATE OF UTAH)
 : ss.
County of Salt Lake)

On June 1, 2011, before me, the undersigned notary, personally appeared Jeremy H. Day, the Managing Member of JHD DRAPER, LLC, a Utah limited liability company, who whom duly acknowledged to and before me that he signed the forgoing instrument for and on behalf of said limited liability company, and that he had all requisite authority to so act.


Notary Public



EXHIBIT A

Legal Description of Premises

The following real property is located in Salt Lake County, Utah:

All of Lot 1A of the GARFF-DAY SUBDIVISION according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder. (Old Parcel Nos. 1531226, 1531015, 1531028, 1531029. New Parcel No. not available.)