**INTERCREDITOR AGREEMENT**

THIS INTERCREDITOR AGREEMENT (this “Agreement”) dated [\_\_\_\_\_\_\_\_\_] is executed by and between [\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] (“Lender"), and its participants, successors and assigns (the "Senior Lender"), and [\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] (the “Junior Lender”).

Recitals

A. [\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] (“Borrower”) is the owner of the property and improvements located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_], as more fully described in Exhibit A to this Agreement (the “Property”).

B. Senior Lender has made or is making a loan to Borrower in the original principal amount of [$\_\_\_\_\_\_\_\_\_\_\_] (the “Senior Loan”). The Senior Loan is secured by a [Deed of Trust/Mortgage], which may include an assignment of rents and leases (collectively, the “Senior Deed of Trust”) on the Property. Borrower’s obligation to repay the Senior Deed of Trust is evidenced by a promissory note dated [\_\_\_\_\_\_\_\_] (the “Senior Note”), which is due and payable in full on [\_\_\_\_\_\_\_\_\_\_].

C. Junior Lender has made or is making a loan to Borrower in the original principal amount of [$\_\_\_\_\_\_\_\_] (the “Junior Loan”). The Junior Loan is secured by a [Deed of Trust/Mortgage], which may include an assignment of rents and leases (collectively, the “Junior Deed of Trust”) on the Property. Borrower’s obligation to repay the Junior Loan is evidenced by a promissory note dated [\_\_\_\_\_\_\_] (the “Junior Note”), which is due and payable in full on [\_\_\_\_\_\_\_\_\_].

NOW, THEREFORE, Senior Lender and Junior Lender agree as follows:

Agreement

1. **Definitions.** In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

 “Senior Loan Default” means a default by Borrower in performing or observing any term or condition in the Senior Loan Documents that continues beyond any applicable grace, notice or cure period.

“Senior Loan Documents” means the Senior Note, the Senior Deed of Trust and all other documents evidencing or securing the Senior Loan.

 “Junior Loan Default” means a default by Borrower in performing or observing any term or condition in the Junior Loan Documents that continues beyond any applicable grace, notice or cure period.

“Junior Loan Documents” means the Junior Note, the Junior Deed of Trust and all other documents evidencing and securing the Junior Loan.

2. **Consents to Lien Recordation.** Senior Lender agrees and consents to the recording of the Junior Deed of Trust against the Property to secure Borrower’s obligation to repay the Junior Note, and Junior Lender agrees and consents to the recording of the Senior Deed of Trust to secure Borrower’s obligation to repay the Senior Note. The foregoing consents are valid and binding notwithstanding any lien limitation or other contrary provision contained in Senior Loan Documents or Junior Loan Documents.

3. Intentionally omitted.

4. **Priority of Senior Deed of Trust Loan; Additional Advances.** Senior Lender and Junior Lender agree that (a) the indebtedness evidenced by the Junior Loan Documents is hereby, and shall continue to be, subject and subordinated in priority of lien and in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (b) the Junior Deed of Trust is hereby subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Loan Documents and to all advances by Senior Lender without regard to the application of such proceeds, together with all interest, prepayment premiums and all other sums due under the Senior Deed of Trust, and the Senior Note secured thereby.

5. Intentionally omitted.

6. **Senior Lender’s Representations, Warranties and Covenants.** Senior Lender hereby represents, warrants and covenants as follows:

(a) Senior Lender is the holder of the Senior Loan, which is secured and evidenced by the Senior Loan Documents. The current outstanding principal balance of the Senior Deed of Trust Loan is [$\_\_\_\_\_\_\_\_\_\_].

(b) The interest rate for the Senior Loan on the closing date is [\_\_\_\_\_\_\_%] per annum.

(c) There is no call provision in the Senior Loan Documents, but the Senior Loan is subject to acceleration in the event of a Senior Loan Default.

(d) No Senior Loan Default exists, and to the knowledge of the Senior Lender, no facts or circumstances exist that with the passage of time or the giving of notice, or both, will constitute a Senior Loan Default.

7. **Junior Lender’s Representations, Warranties and Covenants.** Junior Lender hereby represents warrants and covenants as follows:

(a) Junior Lender is the holder of the Junior Loan, which is secured and evidenced by the Junior Loan Documents. The current outstanding principal balance on the Junior Loan is [$\_\_\_\_\_\_\_\_\_].

(b) The interest rate for the Junior Loan on the closing date is [\_\_\_\_%] per annum.

(c) There is no call provision in the Junior Loan Documents, but the Junior Loan is subject to acceleration in the event of a Junior Loan Default.

(d) There is no provision in the Junior Loan Documents for Junior Lender to make, and Junior Lender has not agreed to make, any loans or advances to Borrower of any kind whatsoever other than additional advances permitted by the Junior Loan Documents for the purposes of protecting or further securing the lien of the Junior Deed of Trust, curing defaults by Borrower under the Junior Loan Documents or under Section 8 of this Agreement, or paying any cost, tax, premium or other item that Borrower fails to pay in accordance with the requirements of the Junior Loan Documents.

(e) No Junior Loan Default exists, and to the knowledge of the Junior Deed of Trust Lender, no facts or circumstances exist that with the passage of time or the giving of notice, or both, will constitute a Junior Loan Default.

8. **Default Under Senior Loan Documents.**

(a) Notice of Default and Cure Rights. Within 15 days after the date on which Senior Lender (1) delivers notice to any other person of the existence of any Senior Loan Default, or (2) has actual knowledge of a Senior Loan Default that would entitle Senior Lender to accelerate the Senior Loan or foreclose the Senior Deed of Trust (whether or not Senior Lender elects to notify any other person or exercise any remedy), Senior Lender will deliver written notice of such Senior Loan Default to Junior Lender. Junior Lender shall have the right, but not the obligation, to cure any Senior Loan Default (whether or not covered by the first sentence of this paragraph) within the same time period for curing such default that is given to Borrower under the Senior Loan Documents, but in no event shall Junior Lender be given a cure period for any Senior Loan Default of less than 15 days, commencing on the date on which Junior Lender actually receives written notice of thereof.

(b) Cross Default. Senior Lender acknowledges, that a Senior Loan Default shall constitute a default under the Junior Loan Documents, and Junior Lender shall have the right to exercise all rights or remedies under the Junior Loan Documents in the same manner as in the case of any other default thereunder. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, any Junior Loan Default arising solely from such Senior Loan Default shall be deemed cured, and the Junior Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. **Default Under Junior Loan Documents.**

(a) Notice of Default and Cure Rights. Within 15 days after the date on which Junior Lender (1) delivers notice to any other person of the existence of any Junior Loan Default, or (2) has actual knowledge of a Junior Loan Default that would entitle Junior Lender to accelerate the Junior Loan or foreclose the Junior Deed of Trust (whether or not Junior Lender elects to notify any other person or exercise any remedy), Junior Lender will deliver written notice of such Junior Loan Default to Senior Lender. Senior Lender shall have the right, but not the obligation, to cure any Junior Loan Default (whether or not covered by the first sentence of this paragraph) within the same time period for curing such default that is given to Borrower under the Junior Loan Documents, but in no event shall Senior Lender be given a cure period for any Junior Loan Default of less than 15 days, commencing on the date on which Senior Lender actually receives written notice thereof.

(b) Cross Default. Junior Lender acknowledges, that a Junior Loan Default shall constitute a default under the Senior Loan Documents, and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other default thereunder. If at any time Borrower cures any Junior Loan Default to the satisfaction of Junior Lender, any default under the Senior Deed of Trust Loan Document arising solely from such Junior Loan Default shall be deemed cured, and the Senior Deed of Trust Loan shall be retroactively reinstated as if such Junior Loan Default had never occurred.

10. **Conflicts Among Documents.** Senior Lender and Junior Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Junior Loan Documents, and the terms of this Agreement, the terms of this Agreement shall govern and control: (a) the relative priority of the Deed of Trust liens and security interests of Senior Lender and Junior Lender in and on the Property; (ii) the timing of the exercise of remedies by Senior Lender and Junior Lender under the Senior Deed of Trust and the Junior Deed of Trust, respectively; and (iii) the notice requirements, cure rights, and the other rights and obligations to which Senior Lender and Junior Lender have agreed, as expressly provided in this Agreement.

11. **Condemnation or Casualty**. In the event of (a) a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a “Taking”), or (b) the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a “Casualty”), at any time when the Senior Deed of Trust remains a lien on the Property, the following provisions shall apply:

(a) Junior Lender hereby agrees that its rights under the Junior Loan Documents or otherwise to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents with respect thereto, and Junior Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by Senior Lender; and

(b) All proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in accordance with the terms and conditions of the Senior Loan Documents; provided, however, that if Senior Lender elects or is required to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Deed of Trust Loan, any proceeds remaining after the satisfaction in full of the principal of interest on and other amounts payable under the Senior Deed of Trust Loan shall be paid to, and may be applied by, Junior Lender in accordance with the applicable provisions of the Junior Loan Documents.

12. **Modification of Loan Documents.** As a courtesy, Senior Lender will provide notice to Junior Lender of any amendment or modification of the Senior Loan Documents. Junior Lender will provide notice to Senior Lender of any amendment or modification of the Junior Loan Documents.

13. **Default by Senior Lender or Junior Lender**. If Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by Senior Lender under this Agreement, Junior Lender shall have the right to all available legal and equitable relief. If Junior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by Junior Lender under this Agreement, Senior Lender shall have the right to all available legal and equitable relief.

14. **Notices.** Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) which a party is required or permitted to give to another party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (b) sent by Federal Express (or other similar national overnight courier) designating next day delivery (any notice so delivered shall be deemed to have been received on the next business day), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

Senior Lender: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

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

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

Junior Lender: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

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

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

Any party to this Agreement may, but notice given pursuant to this Section, change the person or persons and/or address or addresses for its notices.

15. **General.**

(a) Assignment/Successors. This Agreement shall be binding upon and shall inure to the benefits of the respective legal successors and assigns of Senior Lender and Junior Lender. As used in this Section, Senior Lender includes any subsequent holder of the Senior Note, and Junior Lender includes any subsequent holder of the Junior Note.

(b) Consents. Except where specifically provided otherwise in this Agreement, wherever Senior Lender’s or Junior Lender’s consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by such party in its sole discretion.

(c) Amendment. This Agreement may not be amended except by written instrument signed by all parties hereto.

(d) Governing Law. This Agreement shall be governed by the internal laws of the State of California.

(e) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(f) Term. The term of this Agreement shall commence of the date hereof and shall continue in full force and effect until either Senior Lender or Junior Lender records a termination and satisfaction (or its equivalent) of either the Senior Deed of Trust or the Junior Deed of Trust. Upon such recording, this Agreement shall be terminated automatically without further action by any party.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

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

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUNIOR LENDER:

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

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A