

**LOAN PAYOFF AGREEMENT**  
(M&B JUNIOR MEZZANINE LOAN)

THIS LOAN PAYOFF AGREEMENT (“Agreement”) is made as of the \_\_\_\_ day of May, 2009 (the “**Effective Date**”), by and among M&B MEZZ LLC, a Delaware limited liability company (“**Borrower**”), M&B REALTY DEVELOPMENT LLC, a Delaware limited liability company (“**Principal Pledgor**”), BENJAMIN SHAOUL, an individual (“**Shaoul**”), MARC RAVNER, an individual (“**Ravner**”, and together with Shaoul, each a “**Guarantor**” and collectively, the “**Guarantors**”), LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation (“**LBHI**”), LEHMAN COMMERCIAL PAPER INC., a New York corporation (“**LCPI**”) and LEHMAN RE LTD., a Bermuda corporation (“**Lehman Re**”). LBHI, LCPI and Lehman Re are hereinafter collectively referred to from time to time as “**Lender Parties**”.

R E C I T A L S

A. Subject to the terms and conditions of that certain Junior Mezzanine Construction Loan Agreement (the “**Loan Agreement**”), dated August 15, 2007, by and between Borrower and LBHI, LBHI made a loan to Borrower in the amount of up to \$7,200,000 (the “**Loan**”). All capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Loan Agreement.

B. The Loan is evidenced by that certain Consolidated Secured Promissory Note (Junior Mezzanine Loan) dated as of August 15, 2007 in the principal amount of \$7,200,000 given by Borrower to LBHI and evidencing the Advances under the Loan (the “**Note**”), which Note further evidences Borrower’s assumption of the obligations of Senior Mezzanine Borrower under a certain Severed Note dated as of August 15, 2007 in the principal amount of \$888,230.83 given by Senior Mezzanine Borrower (as hereinafter defined) to LBHI (the “**Severed Note**”).

C. The Loan is secured by, among other things, (1) that certain Pledge and Security Agreement (Interests in Senior Mezzanine Borrower) given by Borrower to LBHI constituting a perfected pledge and assignment of Borrower’s 100% interest in Senior Mezzanine Borrower, together with the Consent of Senior Mezzanine Borrower thereto and the Control Agreement thereto (collectively, the “**Pledge and Security Agreement (Interests in Senior Mezzanine Borrower)**”), and (2) that certain Pledge and Security Agreement (Interests in Junior Mezzanine Borrower) given by Principal Pledgor to LBHI constituting a perfected pledge and assignment of 100% of all interests in Borrower, together with the Consent of Junior Mezzanine Borrower thereto and the Control Agreement thereto (collectively, the “**Pledge and Security Agreement (Interests in Borrower)**” and together with the Pledge and Security Agreement (Interests in Senior Mezzanine Borrower), collectively, the “**Pledge Agreements**”).

D. Certain of Borrower’s obligations under the Loan are guaranteed by Guarantors pursuant to (1) that certain Guaranty of Recourse Obligations (Junior Mezzanine Loan), dated as of August 15, 2007 (the “**Recourse Guaranty**”), (2) that certain Guaranty of Completion (Junior Mezzanine Loan), dated as of August 15, 2007 (the “**Completion Guaranty**”) and (3) that certain Environmental and Hazardous Substance Indemnification Agreement (Junior Mezzanine Loan), dated as of August 15, 2007 (the “**Environmental Indemnity**”).

E. The Loan Agreement, the Note, the Severed Note, the Pledge Agreements, the Recourse Guaranty, the Completion Guaranty, the Environmental Indemnity and the other documents and instruments executed by Borrower and/or the Guarantors evidencing, securing or otherwise relating to the

Loan are hereinafter collectively referred to as the "**Loan Documents**." A complete list of the Loan Documents is set forth on Exhibit A attached hereto and incorporated herein by reference.

F. LBHI and LCPI are debtors under a pending bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") being jointly administered under Case No. 08-13555.

G. LBHI made a loan to LeMadre Mezz LLC (the "**Senior Mezzanine Borrower**") in the amount of up to \$7,270,000 (the "**Senior Mezzanine Loan**") pursuant to that certain Mezzanine Construction Loan Agreement dated July 12, 2006 as modified by Omnibus Modification and Ratification Agreement dated August 15, 2007. Simultaneously upon the execution of this Agreement, the Lender Parties, Senior Mezzanine Borrower, and Guarantors are entering into that certain Loan Payoff Agreement (M&B Senior Mezzanine Loan) providing for the payoff of the Senior Mezzanine Loan on the terms provided therein (the "**Senior Mezzanine Loan Payoff Agreement**").

H. Lender Parties advise that pursuant to the terms of that certain Master Repurchase Agreement dated as of July 9, 1999 (the "**Repurchase Agreement**") by and among Lehman Re, LCPI and Lehman Brothers Inc., Lehman Re and LCPI entered into certain agreements with respect to certain loans and other assets originated by LBHI and/or certain affiliates of LBHI, including the Loan.

I. Lender Parties advise that they have had certain disputes regarding the actual ownership status of the Loan and/or the Senior Mezzanine Loan and, subject to Paragraph 12T hereof, have resolved such disputes as evidenced by their agreements herein and in the Senior Mezzanine Loan Payoff Agreement.

J. Subject to obtaining Bankruptcy Court approval of this Agreement and the Senior Mezzanine Loan Payoff Agreement and subject to the terms hereof including, without limitation, Paragraph 12T hereof, Lender Parties have agreed that Lehman Re is the owner and holder of the Loan and Lehman Re has agreed to accept the Payoff Amount (as hereinafter defined) as full repayment of the Loan.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantors and the Lender Parties hereby agree as follows:

1. **Repayment of Loan.**

A. **Amount of Repayment.** Lehman Re shall accept, in full repayment of the Loan (including principal, interest and all other amounts payable by Borrower under the Loan Documents), the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (the "**Payoff Amount**") payable on the Closing Date (as hereinafter defined). Borrower and Guarantors acknowledge that Lehman Re's agreement to accept a discounted payoff of the Loan as provided above is conditioned upon obtaining Bankruptcy Court approval of this Agreement and the Senior Mezzanine Loan Payoff Agreement.

B. **Manner of Payment.** The Payoff Amount shall be paid as follows:

1. Borrower shall deposit the Payoff Amount and the Closing Costs (as hereinafter defined) with Commonwealth Land Title Insurance Company ("**Escrow Holder**"), having an address c/o New York Land Services, 630 Third Avenue, New York, New York 10017, Attn: Counsel at least one (1) Business Day prior to the Closing Date.

2. All sums required to be delivered by Borrower hereunder on or before the Closing Date shall be delivered by wire transfer or in other immediately available funds.

2. Escrow. This Agreement shall constitute both an agreement between the Lender Parties and the Borrower Parties (as hereinafter defined) and formal joint escrow instructions to Escrow Holder, which instructions shall be binding upon such parties and Escrow Holder. Lehman Re and Borrower have established an escrow ("Escrow") with Escrow Holder by delivery to Escrow Holder of a fully-executed copy of this Agreement. Any and all amounts delivered to the Escrow Holder by the Borrower pursuant to the terms of this Agreement (collectively, the "Escrowed Funds") as well as all documents received by the Escrow Holder pursuant to this Agreement (collectively, the "Escrowed Documents") shall be held by Escrow Holder in escrow in accordance with the provisions of Exhibit B attached hereto and incorporated herein by reference. Escrow Holder has executed this Agreement for the sole and exclusive purpose of evidencing its agreement to the provisions of Paragraphs 2 through 5 hereof and Exhibit B attached hereto.

A. Tax Identification Numbers. Lehman Re represents and warrants that Lehman Re's tax identification number is 98-0190817. Borrower represents and warrants that Borrower's tax identification number is 20-4960067.

B. Close of Escrow. Provided that all conditions precedent to the close of Escrow have been satisfied, Escrow Holder shall close the Escrow ("Close of Escrow") on the date which is 30 days after the date hereof (the "Initially Scheduled Closing Date") or such earlier date agreed upon by Lehman Re and Borrower; provided, however, that Borrower, on written notice to the Lender Parties, shall have the one-time right given at any time on or before the Initially Scheduled Closing Date, to adjourn the Close of Escrow to a date (such adjourned date being referred to herein as the "Rescheduled Closing Date"), not later than the date which is 30 days from the Initially Scheduled Closing Date (such Initially Scheduled Closing Date or, if Borrower elects to adjourn the Close of Escrow as hereinabove provided, the Rescheduled Closing Date is referred to as the "Closing Date"). If the Escrow is not closed on or before the Closing Date, or if any condition set forth in Paragraph 4A is not satisfied on or before the date set forth therein for the satisfaction of such condition, then any Lender Party shall have the right (in addition to Lehman Re's rights under the Loan Documents), by written notice to Borrower, the other Lender Parties and Escrow Holder, to terminate this Agreement and the obligations of the parties hereunder, but such termination shall not release Borrower from liability for any breach of this Agreement occurring prior to the termination of this Agreement. Borrower and each Guarantor acknowledge and agree that the agreement of Lehman Re to accept the Payoff Amount contained in Paragraph 1 in full satisfaction of the Loan shall be null and void if the Close of Escrow does not occur on or before the Closing Date.

C. Closing Costs. Borrower shall pay for the following fees and expenses (the "Closing Costs"): (i) any and all escrow fees, filing and recording charges, recording taxes (if any), and any other similar costs and expenses incurred in connection with the transactions contemplated by this Agreement, and (ii) Lender Parties' reasonable attorneys' fees of Paul, Hastings, Janofsky & Walker LLP only incurred in connection with the preparation and negotiation of all documentation for, and the consummation of, the transactions contemplated by this Agreement.

3. Deliveries To Escrow. Borrower and Lehman Re shall deliver or cause to be delivered to Escrow Holder to be held in escrow pending satisfaction of the conditions to closing provided herein, the following items at least one (1) Business Day prior to the Closing Date:

A. By Borrower.

(i) Borrower shall deliver or cause to be deposited with Escrow Holder the sum of (x) the Payoff Amount, (y) the Closing Costs, and (z) all other amounts to be paid by Borrower hereunder by wire transfer to Escrow Holder.

(ii) Borrower shall deliver to Escrow Holder five (5) duly executed and acknowledged releases (each, a "**Release**") in the form attached hereto as Exhibit C.

B. By Lehman Re. Lehman Re shall deliver to Escrow Holder (i) one original loan payoff letter (the "**Loan Payoff Letter**") stating that upon the Close of Escrow and receipt by Lehman Re of the Payoff Amount and all other amounts to be paid by Borrower hereunder, but subject to the terms and conditions of this Agreement, the liens of the Pledge Agreements will be automatically released and Borrower shall be authorized to file terminations of any and all UCC financing statements in favor of Lehman RE in connection with the Loan, (ii) the original Note with an instruction to Escrow Holder to mark such original Note "cancelled" upon the Close of Escrow, (iii) the original Severed Note with an instruction to Escrow Holder to mark such original Severed Note "cancelled" upon the Close of Escrow or a lost note affidavit in the form attached hereto as Exhibit E and (iv) five (5) duly executed and acknowledged releases executed by each of the Lender Parties in the form attached hereto as Exhibit D.

4. Conditions to Close of Escrow.

A. Conditions Precedent to Lehman Re's Obligation to Close Escrow. The obligation of Lehman Re to close Escrow shall be subject to the satisfaction of all of the following conditions precedent:

1. Borrower's Performance. Subject to Paragraph 6 of this Agreement, no further Event of Default under the Loan Documents shall have occurred.

2. Simultaneous Payoff of the Senior Loan and the Senior Mezzanine Loan. The Senior Lender and the Senior Mezzanine Lender shall have simultaneously received payment in full satisfaction of all amounts outstanding under, respectively, the Senior Loan (or, if the Senior Lender is not simultaneously paid in full, the Senior Lender shall have consented to the receipt by Lehman Re and the Senior Mezzanine Lender of the payments contemplated by, respectively, this Agreement and the Senior Mezzanine Loan Payoff Agreement, which consent shall be pursuant to a written agreement in form and substance satisfactory to the Lender Parties) and the Senior Mezzanine Loan, in the case of Senior Mezzanine Lender, pursuant to the Senior Mezzanine Loan Payoff Agreement being entered into concurrently herewith.

B. Conditions Precedent to Borrower's Obligation to Close Escrow. The obligation of Borrower to close Escrow shall be subject to (1) Lender Parties performing, satisfying and complying with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Lender Parties hereunder on or before the Closing Date and (2) Lender Parties' performing, satisfying and complying with all covenants, agreements and conditions required by the Senior Mezzanine Loan Payoff Agreement to be performed or complied with by Lender Parties thereunder on or before the Closing Date.

5. Close of Escrow. At the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the order set forth below:

A. Funds. Disburse the Escrowed Funds deposited with Escrow Holder by Borrower as follows:

1. Wire funds in the amount of the Payoff Amount to one or more accounts directed in writing by Lehman Re and provided to Escrow Holder by Lehman Re prior to the Close of Escrow.

2. Wire the Closing Costs in accordance with the written instruction of Lehman Re delivered to the Escrow Holder prior to the Close of Escrow.

3. Wire all other amounts deposited by Borrower with Escrow Holder to pay the amounts owed by Borrower hereunder at the Close of Escrow, which amounts shall be wired to one or more accounts directed in writing by Lehman Re and provided to Escrow Holder by Lehman Re prior to the Close of Escrow.

B. Delivery of Documents to Lehman Re and the other Lender Parties. Deliver to each of the Lender Parties one fully executed original of the Release.

C. Delivery of Documents To Borrower. Deliver to Borrower (1) the original Loan Payoff Letter, (2) the original Note marked "cancelled", (3) the original Severed Note marked "cancelled" or a lost note affidavit in the form attached hereto as Exhibit E and (4) five (5) duly executed and acknowledged releases executed by each of the Lender Parties in the form attached hereto as Exhibit D.

6. Default under the Loan Documents. Provided that no Event of Default (which, for the avoidance of doubt includes an Event of Default contemplated by Paragraph 9 of this Agreement) under the Loan Documents (other than the failure of Senior Mezzanine Borrower to make (i) full payment of all interest due on December 9, 2008 under the Note (as defined in the Senior Mezzanine Loan Payoff Agreement) and (ii) all subsequent monthly payments due under the Note (as defined in the Senior Mezzanine Loan Payoff Agreement), which failures continue after the expiration of all applicable grace or cure periods therefor) has occurred, Lehman Re agrees not to exercise any remedies under the Loan Documents which Lehman Re may have resulting solely from such defaults during the period (the "Forbearance Period") from the Effective Date through and including the earlier of (x) the Closing Date and (y) the termination of this Agreement. Nothing contained in the foregoing, however, shall limit or restrict Lehman Re from taking any action during the Forbearance Period that Lehman Re may take under the Loan Documents or at law or in equity necessary or appropriate in Lehman Re's discretion to preserve, protect or defend any of the collateral described in the Loan Documents including, without limitation (i) defending, intervening in or filing of any legal proceedings relating to any such collateral; (ii) the sending of any notices to any persons or entities concerning the existence of security interests or liens in favor of Lehman Re relating to such collateral; or (iii) otherwise preserving any of Lehman Re's rights, remedies or positions.

7. Representations and Warranties. As a material inducement to Lender Parties' execution of this Agreement, Borrower hereby represents and warrants to Lender Parties as follows:

A. Consents. Borrower has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, law or regulation.

B. Due Authorization, Execution, and Organization. This Agreement and all agreements, instruments and documents herein provided to be executed by Borrower and/or the Guarantors are and on the Closing Date will be duly authorized, executed and delivered by and are and will be binding upon Borrower. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and duly authorized and qualified to do all

things required of it under this Agreement. Borrower has the capacity and authority to enter into this Agreement and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of Borrower to close the transactions contemplated hereunder and carry out the terms hereof.

C. Value of Project. In Borrower's judgment, after subtracting the amount of the Senior Loan and the Senior Mezzanine Loan, the fair market value of the Project is greater than the Payoff Amount.

D. Solvency. Borrower and each of the Guarantors is solvent, and will not become insolvent by reason of their entry into this Agreement or the payment of the Payoff Amount or the other sums required to be paid by Borrower pursuant to this Agreement.

The provisions of this Paragraph 7 shall survive the Close of Escrow or the termination of this Agreement.

8. Release.

A. Release. As further consideration for Lender Parties' execution of this Agreement, each of Borrower, Principal Pledgor and each of the Guarantors for itself and its respective affiliates, successors and assigns (collectively, the "**Borrower Parties**"), as of the Effective Date and as of the Closing Date, hereby absolutely and irrevocably waives, releases, and forever discharges each of the Lender Parties and their respective partners, officers, creditors, shareholders, directors, agents, attorneys, servants, contractors, employees, parent and subsidiary corporations and predecessors-in-interest (collectively, the "**Released Parties**") from any and all claims, rights, demands, actions, suits, causes of actions, damages, counterclaims, defenses, losses, costs, obligations, liabilities and expenses of every kind or nature (collectively, "**Claims**"), known or unknown, suspected or unsuspected, fixed or contingent, foreseen or unforeseen, arising out of or relating directly or indirectly to any circumstances or state of facts pertaining to the Loan, the Loan Documents or the Project, including claims related to the actions of Lender Parties or their respective predecessors in administering the Loan or negotiating the Loan Documents and claims of lender liability, duress, illegality, usury, waiver, bad faith, interference in the business of the Borrower Parties, or any nonperformance of any agreement or obligation related thereto, or any statements, representations, acts or omissions, intentional, willful, negligent or innocent, by any of the Released Parties in any way connected with, relating to or affecting, directly or indirectly, the Loan, the Loan Documents, or the Project; provided, however, that the foregoing shall not constitute a release of any of any Lender Party's obligations under this Agreement or any claim against such Lender Party based on fraud committed by such Lender Party.

B. Non-Reliance. Each of the Borrower Parties hereby acknowledges that it has not relied upon any representation of any kind made by any of the Lender Parties in making the foregoing release.

C. No Transfer of Claims. Each of the Borrower Parties represents and warrants that it has not heretofore assigned, or transferred, or purported to assign or to transfer, to any person or entity, any Claims released hereunder or any portion thereof or interest therein, and each of the Borrower Parties agrees to indemnify, defend and hold the Released Parties harmless from and against any and all such Claims based on or arising out of any such assignment or transfer or purported assignment or transfer.

D. No Admission of Liability. It is understood and agreed that this Paragraph 8 shall not be deemed or construed as an admission by Lender Parties of liability of any nature whatsoever arising from or related to the subject of this Paragraph 8.

E. Advice of Counsel. Each of the Borrower Parties hereby agrees, represents and warrants that it has had advice of counsel of its own choosing in negotiations for and the preparation of this Agreement, including the foregoing release, that it has read the provisions of this Agreement, including the foregoing release, and that it is fully aware of its contents and legal effect.

F. Damages and Attorneys' Fees. Each of the Borrower Parties agrees that if it hereafter commences, joins in, or in any manner seeks, relief through any suit arising out of, based upon, or relating to any of the Claims or in any manner asserts against such Released Parties, or any of them, any of the Claims, then the undersigned will pay to such Released Parties, and each of them, in addition to any other damages caused to such Released Parties thereby, all attorneys' fees incurred by such Released Parties in defending or otherwise responding to said suit or claim.

G. Survival. The provisions of this Paragraph 8 shall survive the Close of Escrow or termination of this Agreement.

9. Default. Any breach by Borrower or any Guarantor of this Agreement that continues after the expiration of any applicable notice or grace period expressly provided herein shall be an automatic Event of Default under the Loan Agreement (with no further notice, cure or grace period).

10. Relief from Stay.

A. Agreement. As additional consideration for Lender Parties' execution of this Agreement, each of the Borrower Parties agrees that: (i) in the event of a bankruptcy filing by or against it, it shall not reject this Agreement, nor contest any claim or assertion by any Lender Party that this Agreement is binding between the parties, and that valuable consideration has been received by Borrower for same; (ii) Lender Parties shall receive immediate relief from the automatic stay provisions of the United States Bankruptcy Code following any bankruptcy petition which any of the Borrower Parties may file or which may be filed against any of the Borrower Parties and that it shall in no event contest a motion to lift the automatic stay filed by Lender Parties; and (iii) any contrary action taken by any of the Borrower Parties with respect to the matters set forth above shall be deemed to be in bad faith and are agreed to constitute violations of Federal Rules of Civil Procedure 11 and Bankruptcy Rule 9011.

B. Functional Equivalent of Chapter 11. Each of the Borrower Parties acknowledges that this Agreement is of considerable benefit to it, and represents the functional equivalent of a restructuring of Borrower's business under the United States Bankruptcy Code because, among other things, (i) Borrower has received forbearances and financial accommodations from Lender Parties; and (ii) Borrower was afforded by Lender Parties an opportunity to cause a sale or refinancing of the Project, all in lieu of a bankruptcy petition, which Borrower elected not to file. Borrower has thus been provided with a full and fair opportunity to reestablish or reorganize its financial stake in the Project, and has elected not to seek a further restructuring of its business. Each of the Borrower Parties understands that Lender Parties are entering into this Agreement in reliance on Borrower's representation that it will not seek a further restructuring of its business.

11. Miscellaneous.

A. Survival. All warranties, representations, covenants, obligations and agreements contained in this Agreement shall survive the Close of Escrow hereunder. All warranties and representations shall be effective regardless of any investigation made or which could have been made.

B. Further Instruments. The parties shall cause to be executed, acknowledged or delivered such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement.

C. Cumulative Remedies. No remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute (except as otherwise expressly herein provided).

D. No Waiver. No waiver by Lender Parties of any breach of this Agreement or of any warranty or representation hereunder by Borrower shall be deemed a waiver of any other breach by Borrower (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by Lender Parties after any breach by Borrower shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by Borrower, whether or not Lender Parties know of such breach at the time it accepts such payment or performance. No failure or delay by any Lender Party to exercise any right it may have by reason of the default of Borrower shall operate as a waiver of default or modification of the Loan, the Loan Documents or this Agreement or shall prevent the exercise of any right by any Lender Party.

E. Governing Law. THIS AGREEMENT WAS NEGOTIATED IN PART IN THE STATE OF NEW YORK, AND THE LOAN WAS MADE BY LBHI FROM THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE LENDER PARTIES, BORROWER AND EACH GUARANTOR AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (EXCLUDING APPLICATION OF ANY PRINCIPLE OF CONFLICT OF LAWS WHICH WOULD DIRECT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW OR NOT PROHIBITED BY LAW, BORROWER AND EACH GUARANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

F. Jurisdiction.

1. SUIT BY BORROWER OR GUARANTORS. BORROWER AND EACH GUARANTOR HEREBY AGREES THAT ANY LEGAL SUIT, ACTION OR PROCEEDING BROUGHT BY BORROWER AND/OR EITHER GUARANTOR OR ANY AFFILIATE THEREOF AGAINST ANY LENDER PARTY AND/OR SERVICER (OTHER THAN COMPULSORY COUNTERCLAIMS PERMITTED HEREUNDER IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING COMMENCED BY ANY LENDER PARTY IN A JURISDICTION OUTSIDE OF NEW YORK) ARISING OUT OF OR RELATING TO THE LOAN, THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR RELATING TO THE PROJECT SHALL ONLY BE INSTITUTED BY BORROWER, GUARANTORS OR ANY AFFILIATE THEREOF IN COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK OR THE UNITED STATES DISTRICT COURT



LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK. BORROWER AND EACH GUARANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO BRING ANY LEGAL OR EQUITABLE SUIT, ACTION OR PROCEEDING AGAINST ANY LENDER PARTY AND/OR SERVICER ARISING OUT OF OR RELATING TO THE LOAN, THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR RELATING TO THE PROJECT IN ANY OTHER COURT OTHER THAN COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK OR THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK.

2. SUIT BY ANY LENDER PARTY. WITH RESPECT TO ANY CLAIM OR ACTION ARISING HEREUNDER OR UNDER THE LOAN DOCUMENTS, BORROWER AND GUARANTOR (1) IRREVOCABLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK, (2) AGREE THAT ALL SUCH CLAIMS OR ACTIONS MAY BE HEARD AND DETERMINED IN SUCH COURTS OF THE STATE OF NEW YORK OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT AND (3) IRREVOCABLY WAIVE ANY (a) OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY LOAN DOCUMENT BROUGHT IN ANY SUCH COURT AND (b) ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS AGREEMENT WILL BE DEEMED TO PRECLUDE ANY LENDER PARTY FROM BRINGING AN ACTION OR PROCEEDING WITH RESPECT HERETO IN ANY OTHER JURISDICTION.

3. DESIGNATION OF AGENT FOR SERVICE OF PROCESS. BORROWER AND EACH GUARANTOR WILL MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN NEW YORK, NEW YORK WITH RESPECT TO THIS AGREEMENT. BORROWER AND EACH GUARANTOR DESIGNATE CORPORATION SERVICE COMPANY, WITH OFFICES ON THE DATE HEREOF AT 1131 AVENUE OF THE AMERICAS, SUITE 3100, NEW YORK, NY 10036-6710, TO RECEIVE FOR AND ON BEHALF OF BORROWER OR SUCH GUARANTOR (AS THE CASE MAY BE) SERVICE OF PROCESS IN NEW YORK, NEW YORK WITH RESPECT TO THIS AGREEMENT. BORROWER OR SUCH GUARANTOR, AS THE CASE MAY BE, SHALL PROVIDE TO LENDER PARTIES AT LEAST THIRTY (30) DAYS PRIOR WRITTEN NOTICE BEFORE CHANGING SUCH DESIGNATION. BORROWER AND GUARANTOR FURTHER AGREE THAT THE FAILURE OF ITS AGENT FOR SERVICE OF PROCESS TO GIVE IT NOTICE OF ANY SERVICE OF PROCESS WILL NOT IMPAIR OR AFFECT THE VALIDITY OF SUCH SERVICE OR OF ANY JUDGMENT BASED THEREON. IN ADDITION, BORROWER AND GUARANTOR IRREVOCABLY CONSENT TO SERVICE OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT ITS ADDRESS GIVEN OR REFERRED TO IN THIS AGREEMENT.

G. WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER, LENDER PARTIES AND EACH GUARANTOR HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY FOR ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR THE LOAN DOCUMENTS OR (2) IN ANY WAY RELATING TO THE PROJECT, THE LOAN, THE LOAN DOCUMENTS OR THE SENIOR MEZZANINE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND,

ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER, LENDER PARTIES AND EACH GUARANTOR HEREBY AGREE AND CONSENT THAT ANY OF THEM MAY FILE AN ORIGINAL COUNTERPART OF THIS AGREEMENT OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

H. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any person, other than the parties hereto and, subject to any restrictions on assignment herein contained, their respective successors and assigns.

I. Amendments. This Agreement may be amended by written agreement of amendment executed by all parties hereto, but not otherwise.

J. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party. Without limitation on anything contained in the Loan Documents, in the event that any Lender Party shall be a party to any legal proceeding instituted in connection with or arising out of the Loan or this Agreement, Borrower agrees to pay to such Lender Party all sums paid or incurred by such Lender Party as costs and expenses in the legal proceedings, together with reasonable attorneys' fees. This subparagraph J shall survive the Close of Escrow or termination of this Agreement.

K. Effect on Loan Documents. Neither the provisions of, nor any performance under, this Agreement (including any payments by Borrower under this Agreement) shall amend, modify, supplement, extend, delay, renew, terminate, waive, release or otherwise limit or prejudice Lehman Re's rights and remedies or Borrower's or either Guarantor's obligations under the Loan Documents (including Lehman Re's right to receive full payment as well as late charges, delinquent interest and all other charges provided for in the Loan Documents). Notwithstanding the foregoing, if and only if Lehman Re receives the full Payoff Amount and the Close of Escrow occurs, upon the Close of Escrow, the Loan Documents shall be terminated and none of the parties thereto shall have any further obligations thereunder (except for those obligations that are intended to survive repayment in full of the Loan) and Lehman Re shall be deemed to have agreed not to sue any of the Borrower Parties for any breach of any obligation under the Loan Documents; provided, however, that the foregoing covenant shall in no event extend to the continuing liabilities and obligations of any Borrower Party relating to, arising out of, or in connection with the breach of any representation, warranty, indemnity, covenant or agreement set forth in this Agreement, the Loan Documents or in any document executed under or in connection with this Agreement or the Loan Documents that are intended to survive the repayment in full of the Loan, or to any indemnities in favor of Lehman Re under any Loan Document that are intended to survive the repayment in full of the Loan; and, provided further, that the covenant by Lehman Re pursuant to this subparagraph shall be void from its inception, and all liabilities and obligations of Borrower Parties under the Loan Documents shall continue in full force and effect as they existed immediately prior to the Effective Date, in the event:

1. Any of the Borrower Parties shall take any act or make any claim of rescission of this Agreement or make any other claim which is inconsistent with this Agreement; or

2. A receiver, liquidator or trustee shall be appointed for Borrower and/or any Guarantor or if Borrower and/or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by Borrower and/or

any Guarantor, or if any proceeding for the dissolution or liquidation of Borrower and/or any Guarantor shall be instituted, provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower and/or any Guarantor, upon same not being discharged, stayed or dismissed within thirty (30) days.

L. No Agreement on Value. The parties hereto specifically acknowledge and agree that the Payoff Amount does not necessarily reflect the parties' views regarding the value of the Loan or the membership interests encumbered by the Loan, and such amount shall not be used as evidence of value in any action or proceeding involving Lender Parties, on the one hand, and Borrower or either Guarantor, or all of them, on the other hand.

M. Entire Agreement. This Agreement and the Senior Mezzanine Loan Payoff Agreement contain the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

N. Time of the Essence. Time is of the essence of this Agreement.

O. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

P. Notices. Any notice which a party is required or may desire to give the other shall be in writing and may be sent by personal delivery or by mail (either (1) by United States registered or certified mail, return receipt requested, postage prepaid, or (2) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery), addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

**To Borrower:**

c/o Magnum Management, LLC  
270 Lafayette Street  
New York, NY 10012  
Attn: Benjamin Shaoul

**With a copy to:**

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Attn: Andrew L. Herz, Esq.

**To Principal Pledgor:**

c/o Magnum Management, LLC  
270 Lafayette Street  
New York, NY 10012  
Attn: Benjamin Shaoul

With a copy to:

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Attn: Andrew L. Herz, Esq.

**To Ravner:**

c/o Magnum Management, LLC  
270 Lafayette Street  
New York, NY 10012  
Attn: Marc Ravner

**With a copy to:**

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Attn: Andrew L. Herz, Esq.

**To Shaoul:**

c/o Magnum Management, LLC  
270 Lafayette Street  
New York, NY 10012  
Attn: Benjamin Shaoul

**With a copy to:**

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Attn: Andrew L. Herz, Esq.

**To Lender Parties:**

**LBHI**

Lehman Brothers Holdings Inc.  
1271 Avenue of the Americas, 46th Floor  
New York, NY 10020  
Attn: Joelle Halperin  
MTS No.: WH6456

**With copies to:**

Paul, Hastings, Janofsky & Walker LLP  
75 East 55th Street  
New York, NY 10022  
Attn: Kenneth J. Friedman, Esq.

TriMont Real Estate Advisors, Inc.  
Monarch Tower  
3424 Peachtree Road, N.E.  
Suite 2200  
Atlanta, GA 30326  
Attn: Karen Mishkin  
Ref. No.: 1141314

With copies to:

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Gregory Petrick, Esq.

KeyCorp Real Estate Capital Markets, Inc.  
911 Main Street, Suite 1500  
Kansas City, Missouri 64105  
Attention: Bryan Nitche

**To Escrow Holder:**

Commonwealth Land Title Insurance Company  
c/o New York Land Services  
630 Third Avenue  
New York, NY 10017  
Attn: David Wilcomes

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given.

Q. Confidentiality. Each of Borrower and each Guarantor shall keep the terms of this Agreement strictly confidential and shall not disclose or permit its employees or agents to disclose the terms of this Agreement (except for reasonably necessary disclosures to its attorneys, accountants, investors, agents, lenders and representatives and to Senior Lender and Senior Mezzanine Lender) and except as may be required by law or in connection with litigation between such parties and the Lender Parties.

R. Counterparts. This Agreement may be executed in any number of counterparts so long as each signatory hereto executes at least one such counterpart. Each such counterpart shall constitute one original, but all such counterparts taken together shall constitute one and the same instrument.

S. Joint and Several Liability. Borrower and each Guarantor shall each be primarily, jointly and severally liable for each of the obligations and liabilities of Borrower under this Agreement and any document executed under or in connection with this Agreement and each Guarantor hereby waives any guarantor or suretyship defenses that may otherwise apply with respect thereto.

T. Ownership of Senior Mezzanine Loan and Junior Mezzanine Loan.

(a) LBHI and LCPI acknowledge that neither they nor any assignee have had any interest in, claim to or lien on the Junior Mezzanine Loan and the documents evidencing and securing same or the proceeds thereof and that Lehman Re has the sole and exclusive right to retain all proceeds of such loan without any claim or interest of such parties. To the extent that LBHI, LCPI or any of their respective representatives or agents is in possession of any of the Junior Mezzanine Loan Documents, such party shall cause such documents to be delivered to or at the direction of Lehman Re concurrently with the execution and delivery of this Agreement and the Senior Mezzanine Loan Payoff Agreement.

(b) Lehman Re and LCPI acknowledge that neither they nor any assignee have had any interest in, claim to or lien on the Senior Mezzanine Loan and the documents evidencing and securing same or the proceeds thereof and that LBHI has the sole and exclusive right to retain all proceeds of such loan without any claim or interest of such parties. To the extent that Lehman Re, LCPI or any of their respective representatives or agents is in possession of any of the Senior Mezzanine Loan Documents, such party shall cause such documents to be delivered to or at the direction of LBHI concurrently with the execution and delivery of this Agreement and the Senior Mezzanine Loan Payoff Agreement.

(c) Notwithstanding the execution and delivery of this Agreement evidencing the resolution of the Lender Parties' disputes regarding the actual ownership status of the Loan and/or the Senior Mezzanine Loan, each of the Lender Parties acknowledges that (i) the Lender Parties have had, and continue to have, certain disputes regarding the actual ownership status of certain loan and other assets originated by LBHI and/or certain affiliates of LBHI other than the Loan and the Senior Mezzanine Loan (collectively, the "Remaining Assets"), (ii) nothing contained in this Agreement shall prejudice the claims that any of them may have against one another with respect to the Remaining Assets arising in connection with the Repurchase Agreement or any documents executed and/or delivered in connection with the Repurchase Agreement (the Repurchase Agreement and such other documents are collectively, the "Repo Documents"), and (iii) nothing contained in this Agreement shall be deemed to create an admission, stipulation and/or implication on the part of any of the Lender Parties as to the actual ownership status of the Remaining Assets. Each of the Lender Parties further agrees that no negotiations and communications which may arise or may have previously arisen concerning this Agreement or the transactions contemplated hereby shall be admissible as evidence on any issue that is or may be before any court or administrative body in order to establish proof of ownership of the Remaining Assets or to create or establish any admission of liability as to, or for any other evidentiary purpose with respect to, the ownership status of the Remaining Assets. In addition, nothing contained in this Agreement shall be deemed to waive any of the rights any of the Lender Parties may have against one another with respect to the Remaining Assets pursuant to the Repo Documents, and each of the Lender Parties hereby reserves all of its respective rights and remedies under such Repo Documents with respect to the Remaining Assets.

U. Bankruptcy Court Approval. Notwithstanding anything to the contrary contained in this Agreement, each of the parties hereto agrees that the effectiveness of this Agreement and each of the terms and provisions set forth in this Agreement and any of the transactions contemplated in this Agreement shall be subject, in their entirety, to the Bankruptcy Court entering a final order approving (i) this Agreement and the transactions contemplated herein and (ii) the Senior Mezzanine Loan Payoff Agreement and the transactions contemplated therein.

[NO FURTHER TEXT – SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Borrower, each Guarantor and Lender Parties have executed this Agreement as of the day and year first above written.

**LENDER PARTIES:**

**LEHMAN BROTHERS HOLDINGS INC.,**  
a Delaware corporation as Debtor and Debtor in Possession in its chapter 11 case in the United States Bankruptcy Court for the Southern District of New York, Case No. 08-13555 (JMP)

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

**LEHMAN COMMERCIAL PAPER INC.,**  
a New York corporation as Debtor and Debtor in Possession in its chapter 11 case in the United States Bankruptcy Court for the Southern District of New York, Case No. 08-13555 (JMP)

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

**LEHMAN RE LTD.,**  
a Bermuda corporation

By: Its Joint Provisional Liquidators (without personal liability)

By: \_\_\_\_\_  
Name: Peter C.B. Mitchell  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: D. Geoffrey Hunter  
Title: Authorized Signatory



**BORROWER:**

**M&B MEZZ LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Marc Ravner  
Its: Executive Manager

By: \_\_\_\_\_  
Name: Benjamin Shaoul  
Its: Executive Manager

**PRINCIPAL PLEDGOR:**

**M&B REALTY DEVELOPMENT LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Marc Ravner  
Its: Executive Manager

By: \_\_\_\_\_  
Name: Benjamin Shaoul  
Its: Executive Manager

**GUARANTORS:**

\_\_\_\_\_  
**MARC RAVNER**

\_\_\_\_\_  
**BENJAMIN SHAOUL**

ACCEPTED AND AGREED TO AS  
OF THE EFFECTIVE DATE SOLELY WITH  
RESPECT TO PARAGRAPHS 2 THROUGH 5  
AND EXHIBIT B:

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

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

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

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