

In re: Financing Request for a Chapter 11 Debtor-In-Possession Term Loan in the maximum principal amount of \$9,000,000 (including fees, costs, and expenses as outlined below, hereinafter referred to as the "Commitment Amount") to be provided by Lender to Borrower, as hereinafter defined.

Gentlemen:

In reference to the above-captioned matter, the undersigned is pleased to provide this non-assignable commitment (this "Commitment Letter") to Borrower for a debtor-in-possession term loan from Lender upon the terms and subject to the conditions described below.

LENDER: **Soundview Real Estate Partners III**, a Delaware limited liability company, and/or its participants or assigns (the "Lender").

BORROWER: **SW Ownership LLC**, a Delaware limited liability company (the "Borrower"). The Borrower intends to file with the Bankruptcy Court a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Case") and to seek approval of the loan transactions contemplated by this instrument in their capacity as a debtor and debtor-in-possession and to undertake the obligations expressed herein in its capacity as debtor and debtor-in-possession.

AMOUNT OF LOAN/ADVANCES: The maximum aggregate principal amount of the Loan (hereinafter defined) shall be \$9,000,000 including the Closing Costs (defined below) and any other costs as provided herein and/or in the Loan Documents (collectively, the "Maximum Loan Amount"), which amount shall be loaned as follows:

A. Borrower shall file a motion with the Bankruptcy Court for approval of the Loan. Lender shall provide an initial advance of up to \$1,500,000 (the "Initial Advance") upon the issuance of the Bankruptcy Court's initial order approving this Commitment Letter and the Loan, which order may be an order granting the motion on an interim basis ("Interim Order"). In the event the Court enters an Interim order granting the Motion, the Debtor shall seek the subsequent entry of a final order approving the Loan. The remainder of the Loan shall consist of monthly advances (each, an "Advance") to be made by Lender pursuant to draw requests submitted by Borrower and the entry of the Bankruptcy Court's order approving the Loan on a final basis. Each draw request shall be in a form substantially similar to the "Draw Request Form" attached to the Loan Documents and shall provide among other documentation and conditions of advance as required by Lender in the Loan Documents, an updated Budget (hereinafter defined), the amount of the Advance being requested, a certification as to usage of funds and budget compliance for prior advances, affidavits and waivers of lien, if applicable or necessary, consistent with applicable mechanic's lien laws, title insurance endorsements down-dating the Title Policy (hereinafter defined) and coverage for the full aggregate amount of advances made under the Loan.

Upon entry of the applicable interim and/or final orders of the Bankruptcy Court as to the Loan, satisfying the requirements of this Commitment Letter and granting the liens and other rights described herein, which order(s) shall: (i) have a copy of this Commitment Letter attached thereto and incorporated in its entirety by reference; (ii) contain a finding of good faith under section 364(e) of the

Bankruptcy Code; (iii) as to any Interim Order, provide for the validity of the Loan and the terms of the collateralization notwithstanding any subsequent reversal or modification of the Interim Order on appeal; (iv) shall be in form and substance acceptable to Lender; (v) authorize upon satisfaction of all conditions and requirements of this Commitment Letter and of the Loan Documents with the Lender, Lender will make the debtor-in possession loans (together, the "Loan").

B. In addition, Lender may make advances on the Loan, in Lender's reasonable discretion and without further order of the Bankruptcy Court, to pay Lender's costs and expenses incurred both in connection with closing of each Advance of the Loan and in connection with the Bankruptcy Case (in each case including, but not limited to, reasonable fees and costs of the Lender's counsel), which advances shall become part of the principal amount of the Loan. Notwithstanding the above to the contrary, Lender shall submit to the Borrower invoices for such costs and expenses for purposes of disclosure in the Bankruptcy Case.

C. The Loan shall be in the form of one or more draw facility promissory note(s). Funds drawn thereunder and repaid may not be redrawn by Borrower.

TERM:

The maturity date (the "Maturity Date") of the Loan shall be the date that is the earlier of (i) 18 months after the date of the closing of the Loan (the "Closing"); or (ii) the occurrence of a Termination Event (hereinafter defined). Borrower may prepay the Loan prior to the Maturity Date provided that it complies with all terms and conditions of this Commitment Letter and the Loan Documents, including without limitation, the obligation to pay all accrued interest through the date of the payoff and the Exit Fee (hereinafter defined).

**BUDGET/USE
OF PROCEEDS:**

Loan proceeds shall be used by Borrower substantially in accordance with the Budget and anticipated draw schedule in substantially the same form as that which is attached hereto as **Exhibit A** (the "Budget"), which Budget may be modified by the Borrower, subject to Lender's approval which shall be reasonably exercised. Notwithstanding Borrower's requirement to use Loan proceeds within the terms of the Budget, Borrower shall be permitted to expend Loan proceeds for any line item on the Budget so long as (a) the total expended in any given month does not exceed (i) 130% of that month's total per the Budget plus any unexpended amounts for such line item in prior months, each after adjusting such line item(s) by applying any available "Contingency" line item (for purposes of clarity, Borrower has the ability to reduce the Contingency line item in the Budget and correspondingly increase any other budgeted line item), or (ii) the Maximum Loan Amount; or (b) Lender consents. The Budget line-items shall include, but are not limited to, attorney's fees, accountant's fees, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Borrower; provided however that, the incurrence by the debtors' estate of legal fees for Retained Professionals (hereinafter defined) in excess of the Budget shall not constitute an Event of Default or Termination Event.

INTEREST:

A. The interest rate shall be twelve percent (12%) per annum (hereafter the "Contract Rate").

B. Interest shall accrue at the Contract Rate on the unpaid principal balance until the Maturity Date of the Loan, at which time the entire balance of principal

and accrued unpaid interest thereon together with any costs and expenses then owing, shall be due and payable in full. So long as Borrower is not in default under the Loan, no payments of interest shall be required; provided, however, that the Net Sale Proceeds (hereinafter defined) of sales of Collateral shall be remitted to Lender and applied against accrued interest, fees, and principal under the Loan as set forth below.

C. Interest shall be computed on a 30-day month and a 360-day year, unless such computation results in the effective interest rate of the Loan exceeding the maximum rate of interest allowable under applicable state and federal law. It is hereby understood and agreed upon by and between the Borrower and Lender that the Lender does not intend, under any circumstances, to charge, collect, assess or receive interest, at an effective rate, in excess of the maximum rate allowable under applicable state and federal law if the effective interest rate does exceed the maximum rate allowable by applicable state or federal law, the Borrower and Lender intend to and hereby agree to reduce the effective interest rate to the maximum rate allowable by state or federal law.

D. Upon occurrence of an event of default, interest shall accrue to the Lender at the lower of the sum of the Contract Rate and an additional five percent (5%) for a total default rate of seventeen percent (17%) or the maximum effective interest rate allowable under applicable state or federal law on all amounts then outstanding from the date of default ("Default Rate"). Without limiting the generality of the foregoing, payments made more than five (5) business days past their due date shall be deemed to be in default and shall be assessed at the Default Rate. If the Default Rate's effective interest rate exceeds the maximum rate allowable by applicable state or federal law, the Borrower and Lender intend to and hereby agree to reduce the Default Rate's effective interest rate to the maximum rate allowable by applicable state or federal law. Furthermore, nothing herein shall relieve the Borrower of the absolute obligation to pay interest and other amounts due in connection with the Loan.

**COLLATERAL/
OTHER RIGHTS:**

A. The Loan shall be secured by a first priority mortgage lien on all of the real property owned by the Borrower located in Llano County, Texas and Burnet County, Texas, more particularly described in **Exhibit B** attached hereto and made a part hereof for all purposes, subject to the Permitted Exceptions (hereinafter defined), and a first priority lien on all other assets, and property interests, including but not limited to inventory, equipment, fixtures, accounts, accounts receivable, goods, contract rights, and general intangibles of the Borrower, now existing or hereafter acquired, including, without limitation, contract rights and property interests acquired post-petition (hereafter collectively referred to as the "Collateral"); provided however, that Lender's liens and security interests shall not attach to the estate's litigation claims and causes of action, including but not limited to, all causes of action under chapter 5 of the Bankruptcy Code and recoveries thereunder, including, but not limited to, section 506(c) and sections 544 through 550 and section 553 ("Litigation Recoveries"), but the proceeds from all Litigation Recoveries shall be segregated from Borrower's other cash accounts.

The priming mortgage liens and security interests in favor of Lender shall be senior to any and all other liens, mortgages and security interests encumbering said Collateral pursuant to 11 U.S.C. §§ 364 (d) and 364(c)(2). Lender's mortgage liens and security interests in the Collateral shall be senior to all other interests of any party, including, without limitation, tax liens (except ad valorem taxes for 2011 and subsequent years), and may also be subject to any covenants, deed

restrictions, equitable servitudes or other rights in such Collateral as may be acceptable to Lender, its counsel and the Title Insurance Company in their absolute discretion, including without limitation, matters of Survey (hereinafter defined) and those exceptions and encumbrances listed on **Exhibit C** attached hereto and made a part hereof for all purposes (collectively, the "Permitted Exceptions"); provided, however, that Lender shall have 15 days from the date on which complete copies of all Permitted Exceptions are delivered to Lender to review and determine whether Lender has any objections ("Objections") to any of the Permitted Exceptions: Prior to Closing, either (i) Borrower shall have resolved all of Lender's Objections to Lender's satisfaction, or (ii) Lender shall have waived such Objections. The Bankruptcy Court's orders approving the Loan shall provide for the perfection, priority and enforceability of Lender's superpriority and lien claims hereunder without the need for any further action by any entity. Notwithstanding, Lender, in its discretion, may require that the priming mortgage liens and security interests shall be in recordable form, and may (but need not) file and record in applicable filing offices in compliance with state law any appropriate documents to perfect Lender's first priority lien interests therein.

B. In addition, as a condition precedent to Lender's obligation to make the Loan and as a material inducement to the Lender, the Lender shall also receive an allowed super priority administrative expense claim pursuant to 11 U.S.C. §§ 364(c)(1), 503(b) and 507(b), with priority over all other administrative expense claims except those fees and expenses included in the Carve-Out (as defined below) and such other fees and expenses approved by the Bankruptcy Court. The Lender shall not be required, without its consent, to accept property other than cash in satisfaction of (a) its liens and security interests which encumber the Collateral as security for payment of the Loan and (b) the super-priority administrative expense claim, notwithstanding 11 U.S.C. §1129 (a)(7) or (b)(2)(A). The Borrower hereby agrees not to seek to modify, reduce, impair, alter, extinguish or otherwise change either the priming lien or the superpriority administrative expense claims of the Lender pursuant to any provisions of Title 11 or other applicable law. None of the Lender's rights as set forth herein may be modified except without the express written consent of the Lender.

C. Subject to the Permitted Exceptions, Lender's mortgage liens and security interests shall not be primed, surcharged, altered or impaired, whether requested by a creditor, any secured creditor or any other party. No claim or expense shall have priority over Lender's rights in the Collateral. Except as provided in the immediately preceding paragraphs A and B, no administrative expense, and no claim allowed and payable under 11 U.S.C. §§ 330, 331, 503(b) 506(c), 507 or 726, shall have priority over the claims of the Lender set forth herein (save for the Permitted Exceptions) with respect to any asset of the Borrower which constitutes either the Collateral pursuant to 11 U.S.C. §364(d) or, over the claims of the Lender pursuant to 11 U.S.C. §364(c)(1).

D. The Order authorizing the first priority liens and super-priority administrative expense claims in favor of the Lender and incorporating the terms and requirements of this Commitment Letter with respect to each Advance, shall also contain a finding by the Bankruptcy Court that the extension of credit and making of loans by Lender hereunder to Borrower is being made in good faith and, therefore, that Lender shall be entitled to the full protections of 11 U.S.C. §364(e) and shall be made effective immediately without any stay of the effect of such Order so as to permit immediate funding, in Lender's absolute discretion, within the provisions and protections of 11 U.S.C. §364(e).

E. As used herein, the term "Carve-Out" shall mean the escrowed funds

retained in the trust account of Borrower's counsel that shall secure payment of (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6) and (b) allowed fees and expenses incurred by the professionals, including without limitation Munsch Hardt Kopf & Harr, P.C., retained by the Borrower and any official committee of creditors (in each case, a "Committee") pursuant to Section 327, 328, 363, and/or 1103 of the Bankruptcy Code (the "Retained Professionals") after a Termination Event (as that term is defined in the Interim and/or final Order), which escrow account shall be funded from an Advance under the Loan in the amount of \$250,000. To the extent the proceeds of such escrow are required, the Carve-Out shall be exclusively utilized for the purpose of paying the statutory fees due to the United States Trustee and the allowed administrative expenses of the Retained Professionals, and to the extent not so required shall also be deemed the Collateral given to secure the Loan. In no event shall the Carve-Out, in aggregate, exceed the sum of \$250,000, provided further that, any Retained Professionals other than those retained by the Debtor shall be limited to no more than \$25,000.00 of this Carve-Out. Notwithstanding the foregoing, nothing in this paragraph shall limit the fees and expenses incurred by the Retained Professionals under the Budget prior to a Termination Event, provided, however, that proceeds of the Loan and Collateral shall not be used to pay for fees and expenses of the Retained Professionals in excess of the amounts reflected in the Budget plus the Carve-Out. For avoidance of doubt, the total fees and expenses of the Retained Professionals are not limited to the Carve-Out and are budgeted separately from the Borrower's budget for ordinary course professionals, and for its litigation claims against its pre-petition senior lender.

COVENANTS:

In addition to all standard covenants required by the Lender in Debtor-in-Possession loans made under like circumstances, including all standard commercially appropriate terms in the Lender's absolute discretion, the Lender will require that:

A. Borrower shall: (a) own the Collateral, subject to the Permitted Exceptions and interests junior to the Lender, (b) disburse funds for the payment of expenses only as set forth in the Budget, (c) comply with all provisions of the Order authorizing each Advance, and the Loan Documents, (d) present to the Lender such additional instruments as may be required for endorsements to the Title Policy as Lender may require insuring that all disbursements of the Loan subsequent to the initial disbursement retain the lien priority described therein and that there are either no lien claims or unpaid Notices to Owner or any such lien claims or unpaid Notices to Owner are not excepted from the applicable Title Policy referred to above. Borrower may dispose of Collateral in the ordinary course of its business. Borrower may dispose of Collateral out of the ordinary course of business with Bankruptcy Court approval; provided, however, that Lender may require that the net proceeds of such disposition be used to pay down the balance due under the Loan including accrued interest and principal.

B. Borrower shall supply to Lender with each draw request for an Advance: (i) a receipts and disbursements statement relating to the operation of the Collateral including the use of Loan proceeds; and (ii) a schedule reflecting both all available Loan proceeds, not yet disbursed, and all outstanding costs.

C. Within seven (7) days after Borrower receives a copy of the same, Borrower shall provide Lender with (i) copies of any and all appraisals of any of the Borrower's property and/or equipment; and (ii) copies of any notices of default.

D. So long as any portion of the Loan remains outstanding, the Borrower

shall not seek or permit, and shall actively object to the request for entry of, (i) an order dismissing or converting its Bankruptcy Case or appointing a Chapter 11 Trustee or (ii) any order which authorizes under any section of the Bankruptcy Code the granting of any lien or security interest in any Collateral in favor of any party other than that is senior to or in parity with the Lender or the obtaining of any credit or the incurring of any indebtedness that is entitled to super-priority administrative status equal to or superior to that granted to Lender.

E. During the term of the Loan, upon request of the Borrower and in the reasonable exercise of its discretion, Lender will approve sales of developed lots, undeveloped lots, or any other portions of the land comprising the Collateral, and partially release Lender's lien(s) thereon, provided: (i) the proposed sale is to a bona fide third party purchaser; and (ii) the gross sales prices are equal to or exceed those set forth on **Exhibit D** attached hereto and made a part hereof for all purposes. The "Net Sale Proceeds" (defined as gross sale price minus real estate commissions, transfer tax, pro-rated real estate taxes and other usual and customary seller charges and expenses) from such sales shall be applied to the balance due under the Loan including any accrued interest under the Loan, and Lender's reasonable, actual out of pocket expenses in connection with the sale, including but not limited to document preparation, recording fees and attorney's fees.

**DEFAULT/
REMEDIES:**

A. The Loan Documents shall contain terms and provisions, events of default and remedies customarily required by Lender in its absolute discretion in transactions such as the Loan.

B. In addition to other rights and remedies available under the Loan Documents or applicable law, upon the occurrence and continuation of an event of default beyond any and all applicable grace, notice, and cure periods set forth in the Loan Documents:

(i) Lender, if it seeks to exercise its rights and remedies under the Loan Documents with respect to the default, shall provide written notice (the "Written Notice") to the Borrower, the Borrower's counsel of record in the Bankruptcy Case, the Borrower's Chief Restructuring Officer (if any), the United States Trustee, and counsel (if any) for any Committee and the Borrower's senior, pre-petition lender, and shall file an affidavit with the Bankruptcy Court specifying the default. The Written Notice may be any written document providing notice of default, including but not limited to the affidavit filed with the Bankruptcy Court.

(ii) Any party entitled to the Written Notice shall have ten (10) business days from the receipt of the Written Notice in which to cure the default or file a controverting affidavit with the Bankruptcy Court with respect to the default.

(iii) If the default is not cured, or no controverting affidavit is filed with the Bankruptcy Court, within the prescribed ten (10) business day period, Lender may file an emergency motion for relief from the automatic stay requesting that the Bankruptcy Court set an expedited hearing on 48 hours notice to determine whether Lender shall be granted relief from the automatic stay to foreclose

on its liens or take any other action available to Lender under the Loan Documents and applicable law. At the hearing the Borrower may only contest the validity of the Lender's declaration of the default and may not challenge the validity or priority of the Loan.

C. The entire principal balance of the Loan, plus all accrued and unpaid interest, including interest at the Default Rate, from the date of the actual default notwithstanding the date the Written Notice is provided to the Borrower, fees and costs, through the date of payment, shall, in addition to default by Borrower under the Loan Documents as described above, automatically become due and payable upon (i) the failure to cure any existing and continuing default as is set forth above beyond any applicable notice and cure periods, (ii) the confirmation of any plan of reorganization in the Bankruptcy Case unless the plan proposes (a) to treat Lender's claims in the same manner as provided in this Commitment Letter and the Loan Documents, or (b) such other treatment as the Lender, in its sole and absolute discretion, may consent, (iii) conversion of the Borrower's Bankruptcy Case to a case under Chapter 7, (iv) appointment of a Chapter 11 trustee or examiner with expanded powers unless the Lender consents to such an appointment, (v) dismissal of Borrower's Bankruptcy Case, (vi) entry of an order granting relief from stay to any party other than Lender with regard to any interest in the Collateral exceeding, in any single instance, \$50,000.00, or aggregating in excess of \$250,000.00, (vii) entry of an order approving the transfer of any of the Collateral exceeding, in any single instance, \$50,000.00, or aggregating in excess of \$250,000.00, to a party other than Lender other than (a) in the ordinary course of business or (b) with Lender's consent, or (viii) the institution of any foreclosure action with respect to any interest in real property of Borrower that constitutes any portion of the Collateral exceeding, in any single instance, \$50,000.00, or aggregating in excess of \$250,000.00. The term "Termination Event" shall include the occurrence of, among other things, any one or more of the foregoing Events of Default enumerated in (i) – (viii). For avoidance of doubt, the aggregate threshold set forth above in subsections (vi) – (viii) shall be calculated as a single aggregate threshold for all such items, combined. Notwithstanding any provision contained herein to the contrary, upon execution of the Loan Documents by the parties thereto and approval of the Loan Documents by the Bankruptcy Court, the Loan Documents shall control over the previous agreements, including without limitation this Commitment Letter, for among other things all events of default, termination and acceleration rights, and remedies.

CONDITIONS:

Lender's obligations to close the Loan or to make each Advance of the Loan shall be expressly subject to the following conditions precedent:

A. On or before **February 28, 2011, but in no event before the execution and delivery of this Commitment Letter by Borrower and the payment of the Diligence Deposit**, the Borrower shall file the Bankruptcy Case and a motion, in form and substance acceptable to Lender in its discretion, requesting (i) approval of the Loan as described herein and (ii) authority to grant the Lender the lien priorities described herein with respect to the Collateral (the "Motion"). A copy of this Commitment Letter shall be attached to the Motion as filed with the Court. A Notice of the Motion and of the Hearing on the Motion shall be served on all parties in interest of the Borrower. The Notice, the Motion, and other pleadings filed in support of the Motion shall be served on an expedited basis on (i) all known secured creditors of Borrower, (ii) all known creditors which assert an interest in the Collateral, (iii) all parties with whom the Borrower has an executory contract pertaining to an interest in land, (iv) the Borrower's list of top 20 unsecured creditors, (v) all equity security holders of the Borrower, (vi) the Office of the United States Trustee, and (vii) all appropriate taxing authorities.

B. With regard to all Collateral which is an interest in real property (i) issuance of a ALTA 2006 Form Lender's Commitment for title insurance (the "Title Commitment"), issued by a title agency and title insurance underwriter chosen by Lender and its counsel (the "Title Company"), in form and substance satisfactory to Lender, in its reasonable discretion, committing to insure that the Lender's interest in the Collateral will be a first priority lien consistent with the terms of this Commitment Letter, subject to any Permitted Exceptions; and (ii) delivery to Lender of a property insurance certificate(s) showing that the Collateral is insured, in an amount not less than the greater of (a) their respective fair market value or (b) their respective replacement cost, and showing Lender as additional insured and loss payee. The reasonable cost of all of the foregoing insurance policies, endorsement, commitments, certificates and binders shall be paid by Borrower.

C. Borrower shall have executed such notes, deeds of trust or mortgages, security agreements, loan agreements, resolutions, certificates, affidavits and other usual and customary loan documentation, consistent with the terms set forth herein and otherwise in form reasonably satisfactory to Lender and its counsel in their sole discretion. The Order of the Bankruptcy Court authorizing the Loan shall not have been appealed, stayed, modified or amended, and shall be in form and substance acceptable to Lender, in its sole and absolute discretion, and shall be made effective immediately without any stay of the effect of such Order so as to permit immediate funding, in Lender's discretion, within the provisions and protections of 11 U.S.C. §364.

In addition, Borrower shall have provided Lender evidence reasonably satisfactory to Lender and Title Company that all agreements and documents have been executed by the Borrower and the party executing the above documents has the authority to bind the Borrower. Additionally, Borrower's counsel shall provide a legal opinion as may be required to ensure the Loan complies with all applicable Texas and federal legal requirements. All of the foregoing loan agreements, notes, deeds of trust or mortgages, security agreements, resolutions, certificates, affidavits, opinions, insurance commitments, binders, policies, and endorsements and this Commitment, shall be referred to herein, collectively, as the "Loan Documents." Each of the Loan Documents shall be in form and substance reasonably satisfactory to the Lender and Lender's counsel, in their sole discretion.

D. Other than the events that led Borrower to file the Bankruptcy Case, there shall exist no event of default beyond all applicable notice and cure periods or set of circumstances which given the expiration of time or the giving of notice would give rise to an event of default under the Loan Documents.

E. Not later than the date on which Borrower delivers complete copies of the Permitted Exceptions listed in **Exhibit C**, Borrower, at its sole cost and expense, shall provide a survey or "update" of the existing survey (the "Survey") of the Collateral, certified in accordance with ALTA standards to Lender and the Title Company prepared by a surveyor licensed by the State in which such real property is located, showing such real estate to be free of material encroachments, overlaps and other survey defects, except such survey applicable Permitted Exceptions, all in accordance with Lender's and Title Company's survey requirements.

F. All known parties claiming liens in the Collateral and all creditors of the Borrower, all parties with whom the Borrower has an executory contract with respect to the Collateral, all entities who have filed or served a Notice to Owner with reference to the Collateral and all other parties in interest in each of the

Borrowers' respective bankruptcy cases shall have been served with notice of the Motion and the hearing thereon, and (i) no such party shall have objected to the Loan and entry of the required orders of the Bankruptcy Court approving each Advance, or (ii) any objections of such parties in interest shall have been specifically overruled in their entirety in the written Order of the Bankruptcy Court approving each Advance made under the Loan, in form reasonably satisfactory to the Lender and its counsel in their reasonable discretion.

H. This Commitment Letter is subject to and conditioned upon the accuracy of all information, representations, exhibits and other materials submitted with or in support of the Loan request and there must be no material adverse change in the condition, business or prospects of the Collateral or the Borrower prior to the disbursements of funds or during the term of the Loan.

I. This Commitment Letter is subject to and conditioned upon the receipt and satisfactory review of the due diligence materials.

J. Borrower shall have demonstrated and/or Lender, in its sole discretion, shall have determined that there are no environmental, land use, zoning or other governmental or regulatory issues that will adversely impact the Collateral in its current "as is, where is" condition, the operations of Borrower or its ability to repay the Loan. Borrower shall have provided the Lender with any and all reports on such issues in its possession. Said reports shall be in form and substance satisfactory to Lender in its sole discretion.

K. Lender, at its discretion, may waive any one or more of the above-described conditions, but no such waiver shall be effective against Lender unless in writing and signed by an authorized representative of Lender.

L. Borrower shall have satisfied Lender's Objections or Lender shall have waived such Objections.

FEES & COSTS:

A. Upon execution of this Commitment Letter by Borrower, Borrower shall pay to Lender an initial deposit of \$50,000 (the "Diligence Deposit") which shall be used to pay all of Lender's reasonable costs and expenses related to the Loan or to the Bankruptcy Case (including Lender's reasonable travel and lodging expenses) and out-of-pocket expenses and the fees and expenses of Lender's counsel. Nothing in this Commitment Letter shall be construed to limit Lender's right to recover its reasonable costs, expenses, and legal fees up to the amount of the Diligence Deposit.

Borrower shall also be responsible for all reasonable recording costs (including mortgage or intangible taxes) for filing the recordable Loan Documents, the cost of the Lender's Title Insurance Policy, which the Title Company shall provide, and the cost of the survey of the real property which serves as Collateral. All of such these costs, including Lender's reasonable out of pocket costs, expenses, and legal fees paid out of the Diligence Deposit, shall be referred to collectively as the "Closing Costs". On termination of this Commitment Letter or Closing, any unused portion of the Diligence Deposit will be credited or refunded to the Borrower.

B. If the Bankruptcy Court has approved this Commitment Letter pursuant to the Interim Order or other order, Borrower shall pay to Lender a loan fee equal to two percent (2%) of the Loan (the "Loan Fee"), which shall be payable out of proceeds resulting from the Initial Advance (the Initial Advance shall be

advanced less the Loan Fee) and shall be non-refundable and fully earned upon payment.

C. If the Bankruptcy Court has approved this Commitment Letter and the Loan contemplated by it pursuant to the Interim Order or other order and the Borrower fails to consummate the Closing because the Borrower received or elected to receive alternative DIP financing from a source other than Lender, then Borrower shall immediately pay to Lender a break-up fee of \$200,000.00 (the "Break-Up Fee"); provided, however, that if Lender has made the Initial Advance pursuant to the Interim Order or other order and has received the Loan Fee, then in such event, Lender shall retain the Loan Fee in lieu of the Break-Up Fee and Lender's Initial Advance (including any portion of the advance made to pay the Loan Fee) plus a Reduced Exit Fee, equal to 10% of the Commitment Amount less any portion of the Loan Fee that has already been paid, shall be repaid with interest immediately upon Borrower obtaining alternative DIP financing.

D. In addition, the Borrower shall pay to Lender the reasonable fees and expenses (including reasonable travel expenses, if any) of Lender's counsel or other advisors, arising subsequent to Closing in connection with this transaction and the representation of Lender in the Case, which such reasonable fees and expenses shall be deemed a part of the Loan secured by the Collateral. The reasonable legal fees of Lender's counsel shall be calculated on a time-spent basis, based upon the standard hourly rates of Lender's counsel.

E. Borrower agrees that the Loan shall be without cost to Lender. Borrower assumes liability for and will pay all reasonable costs and expenses required to satisfy the conditions hereof and the making of the Loan as provided hereunder (including the costs of the Title Policy and the survey). Such reasonable costs and expenses shall be paid as provided hereunder, or upon demand if the Loan does not close or if this Commitment Letter is terminated.

G. Upon termination of the Loan for any reason, including without limitation a payoff of the Loan prior to the Maturity Date, Borrower shall pay Lender a fee equal to the greater of (i) all interest that has accrued and not been paid on the Loan pursuant to the terms of this Commitment Letter, including any interest that accrued at the Default Rate; or (ii) \$1,800,000 less (a) all interest paid (if any) on the Loan and (b) the Loan Fee (the "Exit Fee"). If the Loan is terminated after the Court has entered an Interim Order and the Initial Advance has been made, because Borrower received or elected to receive alternative DIP financing from a source other than Lender, then Lender shall be entitled to the Reduced Exit Fee.

This Commitment Letter will become effective once signed by all parties. This offer by Lender will expire on **February 25, 2011 at 5:00 PM Eastern Time, time is of the essence.** Lender shall have no obligation with respect to the Loan unless and until this Commitment Letter is fully executed and received by Lender along with the Diligence Deposit, which shall be deposited in accordance with the following wire instructions:

Wire instructions:

| | |
|-----------------|---|
| Account Name: | Soundview Real Estate Partners III LLC |
| Account Number: | 8805-184-44 |
| ABA Number: | 021-0000-21 |
| Bank Name: | JP Morgan Chase 640 Madison Avenue New York, NY 10022 |

CLOSING: The Closing on the Loan shall take place as soon as practical after satisfaction of the conditions contained herein, including without limitation, approval of the Bankruptcy Court, at a time and location chosen by Lender. Each successive disbursement on the Loan shall take place upon satisfaction of the conditions contained herein and in the loan documents.

ASSIGNMENT: Lender, at its sole cost and expense, may assign any or all of its obligations and rights hereunder to one or more assignees or participants, and may collaterally assign the Loan Documents to Lender's lender under any existing or future loan arrangement. Lender intends to bring participants into this transaction either as assignees or indirectly as lenders to Lender. Borrower consents to Lender's sale or assignment of all or a portion of the Loan, at no cost to Borrower, and Borrower agrees to execute any and all agreements and other documents reasonably requested by Lender and Lender's lenders to formalize such assignments of or participations in the Loan.

CONFIDENTIALITY: This Commitment is confidential. Until such time as the Commitment has been executed by each of the Borrower and the Lender, the Borrower shall not disclose the terms of this Commitment to any third party other than its officers, directors, professionals and advisors, unless otherwise required by Bankruptcy Court order following a hearing on notice to the Lender. This provision shall survive the termination of this Commitment.

SURVIVAL OF COMMITMENT: By signing this Commitment Letter, both parties acknowledge that: (i) this Commitment Letter is not a binding commitment on the part of any person to provide or arrange for financing on the terms and conditions set forth herein or otherwise, nor can the Borrower assure Bankruptcy Court approval of the terms set forth herein; (ii) any such commitment on the part of the Lender and Borrower would be in a separate written instrument signed by the Lender and Borrower; (iii) this Commitment Letter supersedes any and all discussions and understandings, written or oral, between or among the Lender and Borrower and any other person as to the subject matter hereof. Under no circumstances will the Borrower be liable for any punitive, exemplary, consequential or indirect damages which may be alleged to result from this Commitment Letter, or the Loan or any other related financing

EXECUTION AND RELIANCE ON COUNSEL:

This Commitment Letter may be executed in counterparts which, taken together, shall constitute one original. This Commitment Letter is for the benefit of the Borrower only and may not be assigned except upon the prior written consent of Lender, which consent may be withheld for any reason or for no reason. No party other than the Borrower or a consented to assignee may rely upon the terms and conditions of this Commitment Letter. This Commitment Letter is executed by an individual strictly in his capacity as a representative of the Lender and such individual expressly represents that he has the authority to execute this Commitment Letter on behalf of the party for whom he signed. By acceptance of this Commitment Letter, Borrower agrees that no representative, member, partner, shareholder, employee or agent of the Lender shall be personally liable for the payment of any claim or performance of any obligations hereunder. This Commitment Letter will be governed by and construed in accordance with the laws of the State of Texas and of the United States, without regard to the principles of conflicts of laws thereof. **The Borrower and Lender each have had the**

benefit of advice of counsel in connection with the execution of this Commitment Letter and the Loan contemplated hereby. This document has been negotiated at arms length and in good faith between the Lender and the Borrower.

NON WAIVER:

No failure or delay on the part of Lender to exercise any rights under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any right under the Loan Documents preclude any further exercise thereof, or the exercise of any other right. Each and every right or remedy granted under the Loan Documents or under any document delivered thereunder or in connection therewith or allowed to Lender in law or equity shall be deemed cumulative and may be exercised from time to time.

As referenced in this Commitment Letter, funding of the Loan is dependent upon, among other things, satisfactory negotiation of loan documentation between the Borrower and the Lender. The foregoing letter simply sets forth general terms and conditions upon which the Lender would be willing to make the Loan described herein. **This Commitment Letter is not, in and of itself, a document that guarantees funding by the Lender to the Borrower in the amounts set forth herein. Only final loan documentation and satisfaction of the conditions set forth above will obligate the Lender to fund the Loan.** Any material deterioration of the financial condition of the Borrower or the condition of the Collateral between the execution of this Commitment Letter and the closing of the Loan will relieve the Lender of any obligation on the part of the Lender to fund the Loan.

If you find this Commitment Letter to your satisfaction, please execute a copy of this document in the space provided herein below and return the same to the undersigned.

SOUNDVIEW REAL ESTATE PARTNERS III,
a Delaware limited liability company

By: 

Name: NICHOLAS D. NEWMAN

Title: MANAGING PARTNER

The undersigned, Borrower hereby executes this Commitment Letter February 28, 2011

SW OWNERSHIP LLC,
a Delaware limited liability company

By: Charles W. Carvill
Name: Charles W. Carvill
Title: Authorized Signatory