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RECORDING REQUESTED BY:
CHICAGO TITLE COMPANY

Recorded at Request of:

~~RECORDING BY~~
~~CHICAGO TITLE COMPANY~~



2005544856

12/23/2005 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE:

68.00

When Recorded Mail to:

Pepe & Hazard, LLP
Goodwin Square
Hartford, CT 06103
Attention: Adam F. Zweifler, Esq.

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AMENDED AND RESTATED SUBORDINATION AGREEMENT

THIS AMENDED AND RESTATED SUBORDINATION AGREEMENT (this "Agreement") is made as of the 22nd day of December, 2005, by and among NATIONWIDE LIFE INSURANCE COMPANY, an Ohio corporation ("Senior Lender") and THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body, corporate and politic ("Subordinate Lender") and ROTUNDA PARTNERS II, LLC a California limited liability company ("Borrower").

Recording

RECITALS

CONCURRENTLY HERewith

WHEREAS, Senior Lender made a loan to Borrower in the original principal amount of \$20,000,000.00 (the "Original Loan"). The Original Loan is being amended and increased to \$21,000,000.00 (the "Loan"). The Loan is evidenced by a Note dated May 8, 2002 (the "Original Note") as amended by a Modification of Note (the "Note Modification") dated on or about the date hereof in the principal amount of \$21,000,000.00 executed by Borrower in favor of Senior Lender (the Original Note as amended by the Note Modification and as further amended and in effect from time to time, the "Note"). The Note is secured by a Deed of Trust, Security Agreement and Fixture Filing dated May 8, 2002 from Borrower, as trustor, for the benefit of Senior Lender, as beneficiary and recorded in the Official Records of Alameda County, California on May 8, 2002 as Document Number 2002205131 (the "Original Deed of Trust"), as amended by a Modification of Deed of Trust, Assignment of Leases and Security Agreement and Assignment of Leases Rents and Profits and Other Loan Documents dated on or about the date hereof (the "Modification Agreement") (the Original Deed of Trust as amended by the Modification Agreement and as further amended and in effect from time to time, the "Deed of Trust") which Deed of Trust encumbers certain real property and the improvements thereon commonly known as the 300 Frank H. Ogawa Plaza, Oakland, California, as more particularly described in Exhibit A attached hereto (the "Property") and by an Assignment of Leases, Rents and Profits dated May 8, 2002 executed by Borrower in favor of Senior Lender and recorded in the Official Records of Alameda County, California on

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May 8, 2002 as Document Number 2002205132 (the "Original Assignment of Leases") and amended by the Modification Agreement (the Original Assignment of Leases as amended by the Modification Agreement and as further amended and in effect from time to time, the "Assignment of Leases"). The Loan is evidenced, secured, and guaranteed by certain other documents executed and delivered by Borrower and Leonard I. Epstein, Mark A. Moss and Phillip H. Tagami in connection therewith (collectively with the Note, the Deed of Trust and the Assignment of Leases, and as modified by the Modification Agreement, the "Senior Loan Documents").

WHEREAS, Subordinate Lender has previously made a loan to Borrower in the original principal amount of \$12,000,000.00 (the "Subordinate Loan"). The Subordinate Loans arises under or is evidenced by (i) a Promissory Note Secured by a Deed of Trust in the amount of \$12,000,000.00 from Borrower to Subordinate Lender dated October 20, 1999 (the "Junior Note"); (iii) a Deed of Trust with Assignment of Rents as Additional Security and Fixture Filing (the "Subordinate Deed of Trust") and (iv) certain other documents evidencing, securing, guaranteeing or otherwise executed by Borrower and Leonard I. Epstein, Mark A. Moss and Phillip H. Tagami in connection with the Subordinate Lender Loans (collectively with the Junior Note, the "Subordinate Loan Documents"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Senior Loan Documents.

WHEREAS, Senior Lender and Subordinate Lender entered into a Subordination Agreement dated May 8, 2002 and recorded in the Official Records of Alameda County, California on May 8, 2002 as Document Number 2002205133 (the "Original Subordination Agreement"), pursuant to which the Subordinate Loan Documents were subordinated to the Senior Loan Documents;

WHEREAS, Senior Lender and Borrower are amending the Senior Loan Documents and the parties wish to confirm the continued subordination of the Subordinate Loan Documents to the Senior Loan Documents as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which hereby are acknowledged by each party hereto, the parties hereto hereby agree that:

1. Amendment and Restatement. This Agreement amends and restates the Original Subordination Agreement in its entirety and the Original Subordination Agreement is superseded in its entirety by this Agreement.

2. Subordination. The Subordinate Loan and each of the Subordinate Loan Documents is and shall be subsequent to and subordinate in right, lien and payment to the Loan, the Senior Loan Documents and any and all other documents evidencing and securing the Loan, the rights of the Senior Lender thereunder and all advances made and other expenses incurred under or as permitted in the Senior Loan Documents.

3. Right to Accept Payments After Default. The Subordinate Lender, upon written notice from the Senior Lender of Borrower's failure to pay amounts due under the Loan, shall not accept any payments from the Borrower on account of the Subordinate Loan and shall immediately deliver to the Senior Lender those payments received by the Subordinate Lender after receipt of the written notice from the Senior Lender.

4. Subordinate Lender's Right to Accept Advance Payments. Subordinate Lender shall not, without the prior consent of Senior Lender, accept any payment from Borrower with respect to the Subordinate Loan more than thirty (30) days in advance of its due date under the Subordinate Loan Documents.

5. Modification of Senior Loan. The Senior Lender, in its sole discretion, may take any action respecting the Borrower, the Loan or the collateral securing the Loan and the Subordinate Loan (the "Collateral") without affecting this Agreement and without notice to or the consent of the Subordinate Lender, including but not limited to the following: (a) modifying the terms of the Loan; (b) granting an extension or renewal of the Loan; (c) deferring payments or entering into a workout agreement of the Loan; (d) releasing or substituting collateral securing the Loan; (e) forbearing from collecting on existing collateral or requiring additional collateral; (f) declaring a default on the Loan and notifying the Subordinate Lender to stop accepting payments; and (g) agreeing to a release, compromise, or settlement of the Loan. Notwithstanding the foregoing, Senior Lender shall not make any of the following modifications to the Loan without the prior written consent of Subordinate Lender, which consent shall not be unreasonably withheld or delayed, (i) make additional advances under the Loan (except for protective advances permitted under the Senior Loan Documents), (ii) readvance amounts which Borrower has paid to Lender on account of the Loan, (iii) extend the Maturity Date of the Loan to date more than thirty (30) years from the funding of the Loan, or (iv) change the amortization schedule of the Loan to reduce the rate of amortization thereunder. The parties hereto acknowledge and agree that it shall not be unreasonable for Subordinate Lender to withhold its consent to a modification if such modification conflicts with Subordinate Lender's requirements for subordinating to refinancing or permanent financing of Borrower's construction financing set out in Section 3(e) of the Promissory Note Secured by Deed of Trust and Article 3 of Subordinated Deed Of Trust And Fixture Filing between Subordinate Lender and Borrower dated October 20, 1999.

6. Notice and Cure. Each Lender agrees to promptly send to the other Lender a copy of any notice of default or failure to perform sent to Borrower. If Borrower shall fail to perform any obligation of Borrower under the Senior Loan Documents, Senior Lender shall not exercise its remedies under the Senior Loan Documents as a result of such default unless and until written notice of such failure has been delivered to Subordinate Lender and, with (i) respect to a Monetary Default, fifteen (15) business days has lapsed following the delivery of such notice to Subordinate Lender, or (ii) in the case of a Non-Monetary Default, thirty (30) days shall have elapsed following the delivery of such notice, unless such Non-Monetary Default cannot reasonably be cured within said thirty (30) day period; in which event Subordinate Lender shall have a reasonable period of time to complete such cure, provided that

action to cure such Non-Monetary Default is commenced within said thirty (30) day period and Subordinate Lender is, in Senior Lender's reasonable judgment, not diminishing or impairing the value of the Property, and is continuously and diligently pursuing the cure of such Non-Monetary Default to completion, or (iii) in the case of an Incurable Default thirty (30) days shall have elapsed following the delivery of such notice to Subordinate Lender, unless within such thirty (30) day period Subordinate Lender commences foreclosure of the Subordinate Loan Documents and thereafter continuously and diligently pursues such foreclosure to completion (the periods described in (i) (ii) and (iii) of this Section 5 being referred to as the "Cure Period"). The Cure period shall not apply with respect to any default which is an Incurable Default under the Senior Loan Documents. With respect to any default which is both a Monetary Default and a Non-Monetary Default, this paragraph shall not operate to extend the Cure Period beyond the fifteen (15) business day period granted above with respect to Monetary Defaults.

7. Default Under Subordinate Loan Documents. Senior Lender shall not declare a default under the Senior Loan Documents solely on the basis of the occurrence of a default by Borrower under the Subordinate Loan Documents, provided however the foregoing shall not prevent Senior Lender from enforcing its rights under the Senior Loan Documents as a result of any default or failure to perform thereunder, subject only to Subordinate Lender's rights under Section 5 of this Agreement.

8. Transfer of Property to Subordinate Lender.

(a) Subordinate Lender may acquire title to the Collateral by foreclosure or deed-in-lieu of foreclosure (hereinafter a "Transfer") and such Transfer shall not constitute a default under the Senior Loan Documents, nor shall Senior Lender charge a fee in connection with such Transfer or require any change in the terms of the Loan, provided that the following conditions are satisfied: (i) at the time of the Transfer, there shall exist no uncured Monetary Default under the Senior Loan Documents beyond the expiration of the Cure Period permitted under Section 5 of this Agreement, (ii) upon completion of such transfer Subordinate Lender shall at retain Control (as hereinafter defined) of the Collateral, (iii) Senior Lender shall have received prior notice of such Transfer, (iv) Subordinate Lender shall have assumed all obligations of Borrower under the Senior Loan Documents from and after the date of such Transfer, (v) Subordinate Lender shall deliver to Lender such additional documentation as Lender may reasonably request, consistent with Lender's customary practices in connection with loan assumption, including, without limitation, UCC-1 Financing Statements, a legal opinion of Subordinate Lender's legal counsel and an update to Lender's policy of title insurance, and (vi) Subordinate Lender shall have paid all fees and expenses incurred by Lender in connection with such transfer, including, without limitation, title insurance charges and Reasonable Attorneys Fees. Any required prior notice hereunder shall be given by Borrower in writing at least thirty (10) days prior to the date of the proposed Transfer. As used herein, the term "Control" means the possession of the direct or indirect legal power to direct the management and policies of the entity in question.

(b) Following Subordinate Lender's acquisition of the Collateral, and as long as no default, or event which, with notice or the passage of time or both, could result in a default exists under the Note or any of the other Senior Loan Documents, Senior Lender shall permit one (1) bona fide arm's length transfer of the Property to another borrowing entity without a change in the terms of the Loan; provided, however, that no such transfer shall be valid or permitted hereunder unless: (i) Lender receives prior written notice of such proposed transfer; (ii) such proposed transferee (the "New Borrower") and the person or entity who will have personal liability under any indemnities delivered to Lender in connection with the Loan (the "New Responsible Party") have been approved in writing by Lender in its sole good faith discretion (taking into consideration such factors as the New Borrower's and New Responsible Party's creditworthiness, business experience, financial condition and managerial capabilities); (iii) Subordinate Lender pays all fees and expenses incurred by Lender in connection with such transfer and assumption, including, without limitation, inspection and investigation fees, title insurance charges, and Reasonable Attorneys' Fees; (v) the proposed New Borrower and the New Responsible Party assume in writing all obligations of Borrower and the original indemnitors and guarantors under the Note, the Deed of Trust and the other Senior Loan Documents, with the same degree of liability as Borrower and the original indemnitors; and (vi) Lender approves the management agreement and the management company to be employed by the proposed New Borrower. Any transfer of all or any portion of the Property which does not strictly comply with the terms and conditions of the foregoing shall be a default under the Senior Loan Documents. This one-time right of transfer shall apply to the Subordinate Lender and not to any subsequent owner of the Collateral.

9. No Third-Party Beneficiaries. All undertakings, agreements, representations and warranties contained in this Agreement are solely for the benefit of the Senior Lender and Subordinate Lender and there are no other parties (including, without limitation, the Borrower or any guarantor), who are intended to be benefited in any way by this Agreement.

10. Insurance Proceeds and Condemnation Awards.

(a) Notwithstanding that both the Senior Lender and the Subordinate Lender may be named as loss payee on certain insurance policies covering the Collateral, in the event of any casualty loss, damage or destruction with respect to such Collateral or the payment of any condemnation award with respect to a taking by eminent domain of any portion of the Collateral, the parties hereto agree that the rights of Subordinate Lender in and to any such proceeds and awards shall be subsequent and subordinate to the rights of Senior Lender with respect thereto.

(b) Notwithstanding that both the Senior Lender and the Subordinate Lender may be named as loss payee on certain insurance policies covering the Collateral, in the event of any casualty loss, damage or destruction with respect to such Collateral, the parties hereto agree as follows:

(i) Senior Lender shall have the exclusive right to adjust, compromise or settle any such loss, damage or destruction and any claim relating thereto with the insurance carrier(s) for such policies and to collect and receive the proceeds from such insurance carrier(s) without the participation of Subordinate Lender, provided, however, if the loss is in excess of \$120,000, Subordinate Lender shall have the right to participate jointly with Senior Lender to adjust, compromise or settle any such loss, damage or destruction and any claim relating thereto with the insurance carrier(s).

(ii) So long as the Loan or any portion thereof remains outstanding, all insurance proceeds received from any insurance carrier(s) with respect to a casualty affecting the Collateral shall be paid to and held by Senior Lender.

(iii) Senior Lender agrees that all insurance proceeds received by Senior Lender with respect to the Collateral shall be applied to repayment of the Loan or disbursed to Borrower to reconstruct the Collateral in accordance with the terms of the Senior Loan Documents. In the event such proceeds are applied to repay the Loan, Senior Lender shall deliver to Subordinate Lender any excess proceeds remaining after repayment of the Loan in full to be disbursed by Subordinate Lender in accordance with the terms of the Subordinate Loan Documents.

(c) Notwithstanding that both the Senior Lender and the Subordinate Lender may have a compensable interest in the Collateral with respect to a condemnation award (an "Award") with respect to a taking by eminent domain of any portion of the Collateral, the parties hereto agree as follows:

(i) The Senior Lender shall have the exclusive right to settle, compromise or appeal, and collect and receive any such Awards, provided, however, in the event that the proceeds of such Award are reasonably anticipated to be in excess of \$120,000, Subordinate Lender shall have the right to jointly participate with Senior Lender in adjusting and negotiating such Award.

(ii) So long as the Loan or any portion thereof remains outstanding, all Awards paid with respect to the taking of the Collateral or any portion thereof shall be paid to and held by Senior Lender.

(iii) Senior Lender agrees that all Awards received by Senior Lender with respect to the Collateral shall be applied to repayment of the Loan or disbursed to Borrower to reconstruct the Collateral in accordance with the terms of the Senior Loan Documents. In the event such proceeds are applied to repay the Loan, Senior Lender shall deliver to Subordinate Lender any excess proceeds remaining after repayment of the Loan in full to be disbursed by Subordinate Lender in accordance with the terms of the Subordinate Loan Documents.

11. Subordinate Lender Estoppel. Within fifteen (15) business days after request by the Senior Lender, the Subordinate Lender shall furnish the Senior Lender with a statement, duly acknowledged and certified, setting forth the original principal amount of the Subordinate Loan, the unpaid principal balance thereof, all accrued and unpaid interest and any other sums due and owing thereunder, the rate of interest, the monthly payments and whether there exist any defaults under the Subordinate Loan Documents.

12. Bankruptcy.

(a) In any case commenced by or against the Borrower or a member of Borrower under Chapter 11 of the Bankruptcy Code or any similar provision thereof or any similar federal or state statute (a "Reorganization Proceeding"), if the fair market value of the Collateral, as determined by Senior Lender in its reasonable discretion, is not greater than one hundred fifteen percent (115%) of the outstanding principal balance of the Loan, the Senior Lender shall have the exclusive right to exercise any voting rights in respect of the Senior Loan Documents and the Subordinate Loan Documents, and the Subordinate Lender shall have the exclusive right to exercise any voting rights in respect of its claims against the Borrower or the member of the Borrower, except that without the consent of the Senior Lender, the Subordinate Lender shall not have the right to vote affirmatively in favor of any plan of reorganization unless the Senior Lender grants its permission thereto or the Senior Lender votes to accept such plan. If the fair market value of the Collateral, as determined by Senior Lender in its reasonable discretion, is greater than one hundred fifteen percent (115%) of the outstanding principal balance of the Loan, then Subordinate Lender shall retain the right to exercise its voting rights in respect of the Subordinate Loan Documents and its claims against the Borrower and such votes shall not require the approval of the Senior Lender, unless any such vote would be for approval of a plan of reorganization that would impair the Loan or result in a change in the terms of repayment of the Loan from the terms set forth in the Senior Loan Documents.

(b) In any Reorganization Proceeding with respect to the Borrower or any member of the Borrower, the Subordinate Lender shall file a proof of claim in respect of its claims against the Borrower or any member of the Borrower and shall send to the Senior Lender a copy thereof together with evidence of the filing with the appropriate court or other authority. If objection is made to the allowance of any claim of the Subordinate Lender, the Senior Lender shall have the right to fully participate in such proceedings.

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

13. Representations, Warranties and Agreements. The Senior Lender and the Subordinate Lender hereby respectively represent and warrant that each: (a) is duly authorized to enter into this Agreement; and (b) upon the execution and delivery of this Agreement, this Agreement shall be its legal obligation, enforceable against each of them in accordance with its terms.

14. Termination. This Agreement is a continuing agreement, and, unless the Senior Lender has consented in writing to its earlier termination, this Agreement shall remain in full force and effect in all respects until the earlier of (a) such time as the Loan has been fully, finally and indefeasibly paid in cash, and all of the financing arrangements and commitments between the Borrower and the Senior Lender have been terminated, and the Senior Lender has released or terminated its lien on and security interest in its collateral, or (b) such time as the Subordinate Loan has been fully paid and the Subordinate Lender has released or terminated its lien on and security interest in its collateral so long as the Subordinate Lender has not accepted any unscheduled payments or prepayments of any portion of the Subordinate Loan without the prior written consent of the Senior Lender.

15. Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, the singular includes the plural, the part includes the whole, "including" is not limiting, and "or" has the inclusive meaning represented by the phrase "and/or". The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section references are to this Agreement unless otherwise specified.

16. Modifications in Writing. No amendment, modification, supplement, termination, consent, or waiver of or to any provision of this Agreement nor any consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by or on behalf of both the Senior Lender and the Subordinate Lender. Any waiver of any provision of this Agreement, or any consent to any departure from the terms of any provisions of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.

17. Waivers: Failure or Delay. No failure or delay on the part of the Senior Lender or the Subordinate Lender in the exercise of any power, right, remedy, or privilege under this Agreement shall impair such power, right, remedy, or privilege or shall operate as a waiver thereof; nor shall any single or partial exercise of any such power, right, or privilege preclude any other or further exercise of any other power, right, or privilege. The waiver of any such right, power, remedy, or privilege with respect to particular facts and circumstances shall not be deemed to be a waiver with respect to other facts and circumstances.

18. Notices and Communications. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, to the parties at the following addresses (or at such other addresses

as shall be given in writing by any party to the others), and shall be deemed complete upon any such mailing:

If to Subordinate Lender: The Redevelopment Agency of the City of Oakland
c/o Agency Director
250 Frank Ogawa Plaza, Second Floor
Oakland, California 94612

with a copy to: Oakland City Attorney
c/o Oakland City Attorney's office
One Frank Ogawa Plaza, Sixth Floor
Oakland, California 94612

If to Borrower: Rotunda Partners II, LLC
300 Frank H. Ogawa Plaza - Suite 340
Oakland, California 94612
Attention: Mark A. Moss

If to Senior Lender: Nationwide Life Insurance Company
One Nationwide Plaza
Columbus, Ohio 43215-2220
Attention: Real Estate Investments, 34T

19. Headings. Section headings used in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any purpose or affect the construction of this Agreement.

20. Conflict. In the event of any conflict between the provisions of this Agreement and the provisions of the Subordinate Lender Loan Documents, the provision of this Agreement shall prevail.

21. Execution in Counterparts; Reproduction. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. This Agreement shall become effective upon the execution and delivery of a counterpart hereof by each of the parties hereto.

22. Severability of Provisions. Any provision of this Agreement which is illegal, invalid, prohibited, or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition, or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

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23. Complete Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement. This Agreement shall not be modified except in a writing signed by the party to be charged, and may not be modified by conduct or oral agreements.

24. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Subordinate Lender and the Senior Lender. The Subordinate Lender and the Senior Lender each expressly reserves its right to transfer or assign its claims, in whole or in part, together with its rights hereunder, provided that, prior to transferring or assigning any interest in its indebtedness to any person or entity, the Senior Lender and the Subordinate Lender shall disclose to such person or entity the existence and contents of this Agreement, and shall provide to such person or entity a complete and legible copy hereof. No assignment by the Subordinate Lender of the Subordinate Lender Loans shall be effective unless and until the Subordinate Lender has delivered to the Senior Lender written notice thereof together with an assignment and assumption by the assignee of the Subordinate Lender's obligations hereunder, in form and content reasonably satisfactory to the Senior Lender.

25. Attorneys' Fees and Disbursements. In the event of any dispute concerning the meaning or interpretation of this Agreement that results in litigation, or in the event of any litigation by a party to enforce the provisions hereof, the prevailing party shall be entitled to recover from the nonprevailing party its reasonable attorneys' fees and disbursements, and any actual court costs incurred.

26. Governing Law. This Agreement will be construed in accordance with and governed by the law of the State of California.

27. WAIVER OF JURY TRIAL. SENIOR LENDER AND THE SUBORDINATE LENDER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENTS OR AGREEMENT EXECUTED OR DELIVERED BY THEM IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND SENIOR LENDER AND THE SUBORDINATE LENDER, EACH HEREBY AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL

BE DECIDED BY COURT TRIAL WITHOUT JURY, AND THAT AN ORIGINAL
COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT
AS WRITTEN EVIDENCE OF THE CONSENT BY EACH PARTY HERETO TO THE
WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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IN WITNESS WHEREOF, the undersigned have entered into this Subordination Agreement as of the date first set forth above, intending to be legally bound hereby.

SENIOR LENDER:

**NATIONWIDE LIFE INSURANCE
COMPANY**, an Ohio corporation

By: _____

Name: _____

Title: _____

TODD A. HARROP
ASSOCIATE VICE PRESIDENT
COMMERCIAL MORTGAGE LOANS

MPA

STATE OF OHIO)

) ss. Columbus

COUNTY OF FRANKLIN)

On December 20, 2005, before me, Debra L. Horvath, a Notary Public in and for the State of Ohio, personally appeared Todd A. Harrop, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

Signature: _____

Debra L. Horvath



DEBRA L. HORVATH
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
7/18/08

[SIGNATURES CONTINUE ON NEXT PAGE]

ILLEGIBLE NOTARY SEAL DECLARATION
(Government Code 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC: Debra L. Horvath

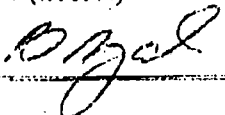
COMMISSION NUMBER: _____

NOTARY PUBLIC STATE: Ohio

COUNTY: Franklin

MY COMM. EXPIRES: 7/18/08

(DATE)

SIGNATURE OF DECLARANT: 

PRINT NAME OF DECLARANT: B. ZABROWSKI

CITY & STATE OF EXECUTION: OAKLAND, CA

DATE SIGNED: Dec. 22, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

SUBORDINATE LENDER:

THE REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND,
a public body corporate and politic

By: Deborah A. Edgerly
Name: DEBORAH A. EDGERLY
Title: Agency Administrator

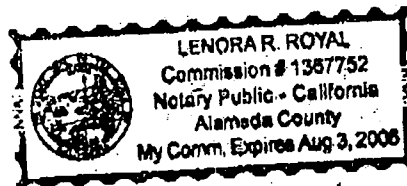
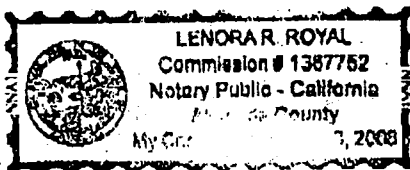
STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA) ss.

On December 20, 2005, before me, Lenora R. Royal, a Notary Public in and for the State of California, personally appeared Deborah A. Edgerly, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

Signature: Lenora R. Royal (Seal)

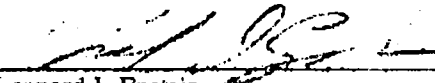
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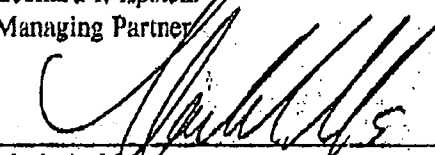


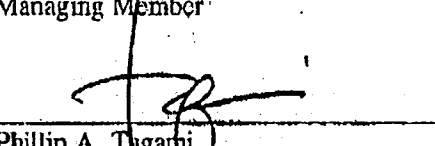
BORROWER:

ROTUNDA PARTNERS II, LLC,
a California limited liability company

By: **ROTUNDA PARTNERS I, LLC**
a California limited liability company,
Its Manager

By: 
Leonard I. Epstein
Managing Partner

By: 
Mark A. Moss
Managing Member

By: 
Phillip A. Tugarin
Managing Member

[ACKNOWLEDGMENTS FOLLOW ON NEXT PAGE]

STATE OF California)
)
COUNTY OF Alameda)

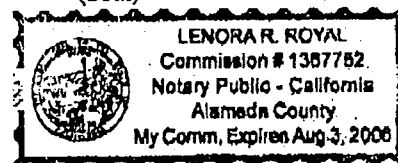
ss.

On December 20, 2005, before me, Lenora R. Royal, a Notary Public in and for the State of California, personally appeared Leonard I. Epstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

Signature: Lenora R. Royal

(Seal)



STATE OF California)
)
COUNTY OF Alameda)

ss.

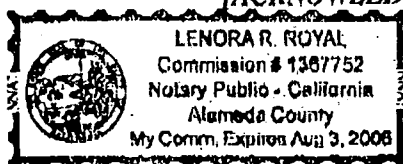
On December 20, 2005, before me, Lenora R. Royal, a Notary Public in and for the State of California, personally appeared Mark A. Moss, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

Signature: Lenora R. Royal

(Seal)

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]



STATE OF California)
COUNTY OF Alameda)

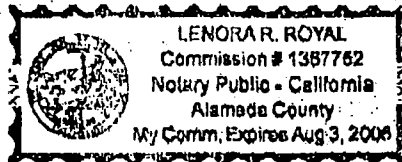
ss.

On December 26, 2005, before me, Lenora R. Royal, a Notary Public in and for the State of California, personally appeared Phillip H. Tagami, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the within instrument in his authorized capacity and that, by his signature on the within instrument, the person or entity upon behalf of which he acted executed the within instrument.

WITNESS my hand and official seal.

Signature: Lenora R. Royal

(Seal)



ILLEGIBLE NOTARY SEAL DECLARATION
(Government Code 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC: Lenora R. Royal

COMMISSION NUMBER: 1367752

NOTARY PUBLIC STATE: CA

COUNTY: Alameda

MY COMM. EXPIRES: Aug. 3, 2006

(DATE)

SIGNATURE OF DECLARANT: 

PRINT NAME OF DECLARANT: B. ZABROWSKI

CITY & STATE OF EXECUTION: OAKLAND, CA

DATE SIGNED: Dec. 22, 2005

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at a point in the western line of Broadway, formerly Telegraph Avenue, distant thereon 100 feet southerly from the southern line of 16th Street; running thence southerly along the western line of Broadway 130 feet; thence north $78^{\circ} 48'$ west, 103.95 feet; thence south $75^{\circ} 36'$ west 102.44 feet to the eastern line of San Pablo Avenue; thence northerly along said eastern line of San Pablo Avenue, 130 feet; thence north $75^{\circ} 33'$ east, 90 feet; thence north $14^{\circ} 24'$ west, 5.72 feet; thence north $11^{\circ} 11'$ east, 112.89 feet to the southern line of 16th Street; thence along the southern line of 16th Street, south $78^{\circ} 48'$ east, 74 feet; thence south $11^{\circ} 12'$ west, 100 feet; thence south $78^{\circ} 48'$ east, 100 feet to the point of beginning.

Parcel Two:

Beginning at a point on the western line of Broadway, formerly Telegraph Avenue, distant thereon 230 feet southerly from the point of intersection thereof with the southern line of 16th Street; thence south $11^{\circ} 12'$ west along said western line of Broadway, 20 feet; thence north $78^{\circ} 48'$ west, 99.41 feet; thence south $75^{\circ} 36'$ west, 97.90 feet to a point on the eastern line of San Pablo Avenue, distant thereon 315.00 feet southerly from the point of intersection thereof with the southern line of 16th Street; thence north $14^{\circ} 24'$ west along said line of San Pablo Avenue, 20 feet; thence north $75^{\circ} 36'$ east, 102.44 feet; thence south $78^{\circ} 48'$ east, 103.95 feet to the point of beginning.

Excepting therefrom, the interest taken by the City of Oakland in the Condemnation Proceedings and in the Superior Court of the State of California, in and for the County of Alameda, entitled City of Oakland, vs. San Pablo Co., et al., Case #74496, a certified copy of Final Judgment was recorded September 23, 1924, in Book 803; Official Records, at Page 245, being an interest in a parcel of uniform width of 18 feet extending from the west line of Broadway to the eastern line of San Pablo Avenue.

Parcel Three:

Beginning at the point of intersection of the western line of Telegraph Avenue with the southern line of 16th Street; running thence southerly along said line of Telegraph Avenue, 100 feet; thence at right

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angles westerly 100 feet; thence at right angles northerly 100 feet to the southern line of 16th street; and thence easterly along said last named line 100 feet to the point of beginning.

Being Lots 1, 2, 3 and 4 in Block "A", as said Lots and Block are shown on the "Map of Survey made for G. C. Potter, March 28, 1877, by T. J. Arnold, C.E.", etc., filed April 23, 1877, in the Office of the County Recorder of Alameda County, Map Book 2, Page 14.

Parcel Four:

All of Lots C, D, F, G and H and a portion of Lot E, as said Lots are shown on the map entitled "City Hall Tract", recorded July 15, 1868, in Book 31 of Deeds, at Page 647, Official Records of Alameda County, described as follows:

Beginning at the intersection of the southeastern line of Clay Street, 80.5 feet in width, with the northeastern line of 15th Street, 60 feet in width; running thence along last said line, south $62^{\circ} 35' 26''$ east, 255.06 feet; thence at right angles north $27^{\circ} 24' 34''$ east, 30.75 feet; thence north $76^{\circ} 46' 33''$ east, 57.25 feet; thence south $62^{\circ} 35' 26''$ east, 1.55 feet to an intersection with the northwestern line of City Hall Plaza, formerly Washington Street, as shown on the map of "Plat Showing Lands to be taken for the district to be assessed to pay the expense of opening a Street in the City of Oakland, California, between the northern line of Fifteenth Street and the western line of San Pablo Avenue", filed April 26, 1912, in Book 26 of Maps, at Page 85, et seq., Official Records of Alameda County; thence along last said line, north $27^{\circ} 24' 34''$ west, 16.23 feet to an intersection with the western line of San Pablo Avenue, 100 feet in width; thence along last said line, north $13^{\circ} 13' 27''$ west, 162.39 feet to an intersection with the southwestern line of 16th Street, 60 feet in width; thence along last said line, north $62^{\circ} 35' 26''$ west, 194.30 feet to an intersection with said southeastern line of Clay Street; thence along last said line, south $27^{\circ} 24' 24''$ west, 207.50 feet to the point of beginning.

Parcel Five:

As designated as the land located at 524 16th Street, Oakland, its legal description is as follows:

Lots 17, 18, 19, 20, 21 and 22 and a portion of Lot 23 in Block "B", as said Lots and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C. E., filed April 23, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County described as follows:

Beginning at a point on the southern line of 17th Street, distant thereon south $76^{\circ} 54'$ east, 155.35 feet from the eastern line of San Pablo Avenue, as said Street and Avenue are shown on said map, said point of beginning being the intersection of said line of 17th Street with the western line of said Lot 22; running thence along the western line of said Lot 23, south $11^{\circ} 06'$ west, 101.95 feet; thence south $78^{\circ} 54'$ east, 25.06 feet to the western line of said Lot 21; thence along the last named line and

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along the western line of said Lot 23, south $11^{\circ} 06'$ west, 108.36 feet to the northern line of 16th Street, as said Street is shown on said Map; thence along the last named line, south $78^{\circ} 54'$ east, 75 feet to the eastern line of said Lot 18; thence along the eastern line of said Lots 18 and 17, north $11^{\circ} 06'$ east, 210.31 feet to said line of 17th Street; thence along the last named line, north $78^{\circ} 54'$ west, 100.06 feet to the point of beginning.

Parcel Six:

As designated as the land located at 1618 San Pablo Avenue, Oakland, its legal description is as follows:

Lot 28, Block "B", as said Lot and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C.E., filed April 23, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County.

Parcel Seven:

As designated as the land located at 529 17th Street, Oakland, its legal description is as follows:

Being all of Lots 29 and 30 and portions of Lots 31 and 32, Block "B", as said Lots and Block are shown on the "Map of the Survey Made for G. C. Potter", March 28, 1877 by T. Arnold C.E., filed April 13, 1877, in Book Two of Maps, Page 14, in the Office of the County Recorder of Alameda County.

Beginning at a point on the south line of 17th Street, distant thereon easterly 103.35 feet from the point of intersection thereof with the northeast line of San Pablo Avenue, as shown on said map; thence easterly along said line of 17th Street, 52 feet to the east boundary line of Lot 29, Block "B", as shown on map; thence southerly along the last named line, 101.95 feet to the southwest boundary line of said Lot 29; thence northwesterly along said last named line, 50.90 feet to the corner common to Lots 28, 29 and 30 in Block "B"; thence southwesterly along the southeast boundary line of said Lot 30, a distance of 86.74 feet to said northeast line of San Pablo Avenue; thence northwesterly along said last named line, 45 feet; thence at right angles northeast, 84 feet, more or less, to the west boundary line of said Lot 30; and thence northerly along last named line, 20 feet, more or less, to the point of beginning.