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Loan No. V_56185

CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership, as mortgagor
(Borrower)

to

JPMORGAN CHASE BANK, N.A., as mortgagee
(Lender)

**MORTGAGE AND
SECURITY AGREEMENT**

Dated: June 14, 2007

PREPARED BY AND UPON
RECORDATION RETURN TO:

Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
Attention: Barry A Hines, Esq.

**NOTE TO CLERK/RECORDER:
THIS INSTRUMENT IS ALSO A FIXTURE FINANCING STATEMENT.**

NOTE TO RECORDER/CLERK:

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING
PURSUANT TO ALA. CODE §7-9A-502 (c) (1975), AND SHOULD BE INDEXED IN THE
INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF BORROWER, AS
DEBTOR, AND LENDER, AS SECURED PARTY.

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 14 day of June, 2007, by CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership, having its principal place of business at 5718 Westheimer, Suite 2100, Houston, Texas 77057, as mortgagor ("**Borrower**"), to JPMORGAN CHASE BANK, N.A., a banking association chartered under the laws of the United States of America, having its principal place of business at 270 Park Avenue, New York, New York 10017, as mortgagee ("**Lender**").

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS \$108,000,000.00, it being understood that such maximum principal indebtedness shall be the last \$36,000,000.00 outstanding under the Note.

RECITALS:

Borrower by its Fixed Rate Note of even date herewith given to Lender is indebted to Lender in the principal sum of \$36,000,000.00 in lawful money of the United States of America (such Fixed Rate Note, together with all extensions, renewals, modifications, substitutions and amendments thereof, shall collectively be referred to as the "**Note**"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note, and with a final maturity date of July 1, 2017

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note and the Other Obligations (as defined in Article 2).

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably, unconditionally and absolutely mortgage, grant, bargain, sell, pledge, enfeoff, assign, warrant, transfer and convey to Lender (with power of sale), and does hereby grant a first priority security interest to Lender in the following property, rights, interests and estates now owned, or hereafter acquired, by Borrower (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (collectively, the "**Land**"), together with additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the development, ownership or occupancy of such real property, and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(b) Improvements. The buildings, structures, fixtures, additions, accessions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(c) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(d) Fixtures and Personal Property. All machinery, furnishings, equipment, goods, consumer goods, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, fans, alarm systems, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements, including without limitation, chairs, desks, lamps, mirrors, bookcases, tables, couches, shelves, outdoor furniture, grills, cabinets, rugs, carpeting, floor coverings, draperies and drapery rods and brackets, curtains, shades, venetian blinds, screens, awnings, paintings, hangings, pictures, keys or other entry systems, cable t.v. equipment, intercom equipment, electric and electronic equipment, private telephone systems, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, plants, stoves, ranges, microwaves, dishwashers, garbage disposal units, refrigerators, washers and dryers, tools, lawn mowers, pool equipment, exercise equipment, machinery, water heaters, incinerators, machines, engines, boilers, dynamos, elevators, stokers, tanks, office supplies, other customary apartment equipment, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements and the right, title and interest of Borrower in and to any of the Personal Property (as hereinafter defined) which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located (the "**Uniform Commercial Code**") superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(e) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (individually, a "**Lease**"; collectively, the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents (including all

tenant security and other deposits), additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(f) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(g) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(i) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interests of Lender in the Property;

(k) Agreements. All agreements, contracts (including purchase, sale, option, right of first refusal and other contracts pertaining to the Property), certificates, instruments, franchises, permits, licenses, approvals, consents, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property (including any Improvements or respecting any business or activity conducted on the Land and any part thereof) and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to that certain Escrow Agreement for Reserves and Impounds of even date herewith between Borrower and Lender; hereinafter, the "**Escrow Agreement**"), documents, instruments,

chattel paper, deposit accounts, investment property, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to the extent assignable), approvals, actions, choses, commercial tort claims, suits, proofs of claim in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively called the "**Intangibles**"); and

(n) Other Rights. Any and all other rights of Borrower in and to the Property and any accessions, renewals, replacements and substitutions of all or any portion of the Property and all proceeds derived from the sale, transfer, assignment or financing of the Property or any portion thereof.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and the terms and conditions of that certain Assignment of Rents and Leases, of even date herewith from Borrower to Lender, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 DEFINITION OF PERSONAL PROPERTY. For purposes of this Security Instrument, the Property identified in Subsections 1.1(d) through 1.1(n), inclusive, shall be collectively referred to herein as the "**Personal Property**."

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Funds (as defined in the Escrow Agreement), all insurance proceeds described in Section 3.2 and condemnation awards or payments described in Section 3.4, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void; provided however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof with respect to matters

relating to any period of time during which this Security Instrument was in effect shall survive any such payment or release.

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"):

(a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;

(b) the payment of interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Loan Documents (as hereinafter defined);

(c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Loan Documents;

(d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and

(e) the payment of all sums advanced, costs and expenses incurred, and processing fees charged by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower contained in any other agreement given by Borrower to Lender which is for the purpose of further securing the obligations secured hereby, and any amendments, modifications and changes thereto; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument or the Other Loan Documents.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**".

Section 2.4 PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default (as hereinafter defined).

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender in connection with the creation of the Obligations, the payment of any other sums owed by Borrower to Lender or the performance of any Obligations (collectively the "**Other Loan Documents**"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. The term "**Loan Documents**" as used herein shall individually and collectively refer to the Note, this Security Instrument and the Other Loan Documents; provided, however, that notwithstanding any provision of this Security Instrument to the contrary, the Obligations of the Borrower under that certain Environmental Indemnity Agreement of even date herewith executed by Borrower in favor of Lender (the "**Environmental Indemnity**") shall not be deemed or construed to be secured by this Security Instrument or otherwise restricted or affected by the foreclosure of the lien hereof or any other exercise by Lender of its remedies hereunder or under any other Loan Document, such Environmental Indemnity being intended by the signatories thereto to be its (or their) unsecured obligation.

Section 3.2 INSURANCE.

(a) Borrower shall obtain and maintain, and shall pay all premiums in accordance with Subsection 3.2(b) below for, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance providing "special" form coverage (including, without limitation, riot and civil commotion, vandalism, malicious mischief, water, fire, burglary and theft and subject to the terms and provisions set forth below, sinkhole collapse, windstorm, hail, smoke, aircraft or vehicles, sprinkler leakage, and damage from weight of ice or snow, and without any exclusion for terrorism) on the Improvements and the Personal Property and in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and

footings) with a waiver of depreciation; (B) containing an agreed amount endorsement and replacement cost endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; (C) providing that the deductible shall not exceed \$100,000.00 per claim and \$200,000.00 in the aggregate per annum, with \$25,000 per claim thereafter so long as Borrower maintains the cash escrow account described in Section 3.8(e) hereof; and (D) containing Demolition Costs, Increased Cost of Construction and "Ordinance or Law Coverage" or "Enforcement" endorsements in amounts reasonably satisfactory to Lender if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses or the ability to rebuild the Improvements is restricted or prohibited. The Full Replacement Cost may be redetermined from time to time by an appraiser or contractor designated and paid by Lender or by the person or persons in the regular employ of the insurer who determine(s) Full Replacement Cost in the regular course of the insurer's business, and if the insurer so determines Full Replacement Cost then such determination will be acceptable to Lender. No omission on the part of Lender to request any such appraisals shall relieve Borrower of any of its obligations under this Subsection;

(ii) comprehensive commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined single limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the aggregate; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written and oral contracts; (5) contractual liability covering the indemnities contained in Article 11 hereof (except Section 11.2) to the extent the same is available; and (D) to include a deductible not to exceed \$10,000.00;

(iii) business income insurance (A) with loss payable to Lender; (B) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of 60 days from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (C) covering losses of Rents derived from the Property in an amount equal to 100% of the projected rental income from the Property for a period of twelve (12) months. The amount of such business income insurance shall be determined by Lender prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the rental income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Subsection 3.2(a) shall be held by Lender and

shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the proceeds of such business income insurance. Notwithstanding the foregoing provisions of this Subsection 3.2(a)(iii), provided that (aa) no Event of Default or event which with the giving of notice or the passage of time or both shall constitute an Event of Default shall have occurred and be then continuing and (bb) insurance proceeds payable pursuant to this Subsection 3.2(a)(iii), which are derived from the Property for loss of rents, have been paid to Lender, then to the extent that insurance proceeds payable to Lender pursuant to this Subsection 3.2(a) shall exceed (yy) the monthly amount required to be paid by Section 1 of the Note, plus (zz) the monthly amounts required to be paid by the Escrow Agreement, Lender will disburse to Borrower, on a monthly basis, a portion of the insurance proceeds to pay Operating Expenses for such month. "Operating Expenses" shall mean the operating expenses actually incurred by Borrower for the operation and maintenance of the Property, and excluding expenses for which Borrower shall be reimbursed from, or which shall be paid for out of, any Funds (as defined in the Escrow Agreement);

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements: (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.2(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.2(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$500,000.00 per accident and per disease per employee, and \$500,000.00 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance (without exclusion for explosion), if applicable, in amounts as shall be reasonably required by Lender and covering all boilers or other pressure vessels, turbines, engines, machinery and equipment located at or about the Property (including, without limitation, electrical equipment, sprinkler systems, heating and air conditioning equipment, refrigeration equipment and piping);

(vii) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the Full Replacement Cost, provided such

insurance is available from the National Flood Insurance Program. If not available, Borrower will provide such flood insurance at a commercially reasonable rate as required by other CMBS lenders on similar properties in the area where the Property is located, and in addition to the maximum available under the National Flood Insurance Program, if the Property is in a zone other than C or X, any excess limits as determined by Lender in its reasonable discretion; and

(viii) umbrella liability insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and in the aggregate on terms consistent with the commercial general liability insurance policy required under Section 3.2(a)(ii) hereof;

(ix) such other insurance and in such amounts as Lender from time to time may reasonably request in writing against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located, including, without limitation, sinkhole insurance, wind, mine subsidence insurance and environmental insurance; provided, however, the windstorm insurance coverage on the Property as of the date hereof is acceptable to Lender as of the date hereof so long as the deductible thereunder does not exceed \$25,000 per occurrence and the insurer continues to be a Qualified Insurer, and there shall be no personal liability for such deductible notwithstanding the terms of the Note, any guaranty of the Loan or any of the Other Loan Documents. In all other regards (except as otherwise expressly provided), such insurance must comply with the requirements of subsections (b) through (h) hereinafter. Borrower agrees that it shall maintain earthquake insurance for the Property if the Property is located in seismic zone 3.

(b) All insurance provided for in Subsection 3.2(a) hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), in such forms and, from time to time after the date hereof, in such amounts as may from time to time be satisfactory to Lender, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located as admitted or unadmitted carriers which, in either case, have been approved by Lender in the exercise of its reasonable business judgment, and which have a claims paying ability rating of (i) A-, 9 or better issued by A.M. Best, or (ii) A or better issued by Standard & Poor's Ratings Group, or (iii) with a claims paying ability rating otherwise acceptable to Lender (each such insurer shall be referred to below as a "**Qualified Insurer**"). Such Policies shall not be subject to invalidation due to the use or occupancy of the Property for purposes more hazardous than the use of the Property at the time such Policies were issued. No Policy required under Sections 3.2(a)(i) and (iii) hereof shall contain an exclusion from coverage under such Policy for loss or damage incurred as a result of an act of terrorism or similar acts of sabotage or if any such Policy does contain such an exclusion, Borrower shall obtain and maintain a separate terrorism insurance policy with coverage amounts and for periods required by Sections 3.2(a)(i) and (iii) above ("**Terrorism Coverage**"); provided, however, Borrower shall not be required to pay

more than \$30,000.00 (the "**Terrorism Premium Cap**") in annual premiums to obtain Terrorism Coverage. If the Terrorism Premium Cap is not sufficient to purchase the amount of Terrorism Coverage required by Sections 3.2(a)(i) and (iii) above, then Borrower shall purchase the amount of Terrorism Coverage that is available for the Terrorism Premium Cap. Not less than five (5) Business Days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Subsection 3.2(a), binders evidencing the renewal of the Policies, or the placement of new Policies, shall be delivered by Borrower to Lender. Not less than two (2) Business Days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Subsection 3.2(a), an invoice shall be delivered by Borrower to Lender for the premium due with respect to the renewal of the Policies or the placement of new Policies (the "Insurance Premiums"). Not less than ten (10) days prior to the due date of the Insurance Premiums, evidence satisfactory to Lender of payment of the Insurance Premiums shall be delivered by Borrower to Lender unless Lender is paying the Insurance Premiums directly on behalf of Borrower in which event no such evidence will be required. Not less than sixty (60) days following the payment of the Insurance Premiums, Borrower shall deliver to Lender certified policies of the Policies marked "premium paid."

(c) Borrower shall not obtain (i) separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 3.2(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower, or (ii) any umbrella or blanket liability or casualty Policy required by this Security Instrument unless, in each case, Lender's interest is included in such Policy as provided in this Security Instrument and such Policy is issued by a Qualified Insurer. If Borrower obtains separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall cause certified copies of each Policy to be delivered as required in Subsection 3.2(a). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Subsection 3.2(a). Nothing in this Article III shall prohibit Borrower from obtaining insurance not otherwise required by this Article III, which insurance may be in form and content and issued by insurance carriers acceptable to Borrower in Borrower's sole discretion.

(d) All Policies of insurance provided for or contemplated by Subsection 3.2(a) shall name Lender, its successors and assigns, including any servicers, trustees or other designees of Lender, and Borrower as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, shall contain a so-called New York standard non-contributing Lender clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies of insurance provided for in Subsection 3.2(a) shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant under any Lease or other occupant, or failure to comply with the

provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be materially changed (other than to increase the coverage provided on the Property thereby) or canceled without at least thirty (30) days' prior written notice to Lender and any other party named therein as an insured;

(iii) Intentionally Omitted; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) Intentionally Omitted.

(g) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right but not the obligation, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by this Security Instrument and shall bear interest at the Default Rate (as hereinafter defined).

(h) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice thereof to Lender.

(i) In case of loss covered by Policies in excess of \$100,000.00, and provided no Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, Borrower may settle and adjust any claim with the consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed). Lender will review any such settlement at its own cost and expense. Notwithstanding the foregoing, if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default has occurred and is then continuing, Lender may settle and adjust any claim in Lender's sole discretion without the consent of Borrower. Borrower has the sole right to agree with the insurance company or companies with regard to losses in any one instance aggregating not in excess of \$100,000.00 if Borrower acts in a competent and timely manner, and provided that in any case Lender shall and is hereby authorized to collect and receive any such insurance proceeds; and if an Event of Default has occurred or in connection with any settlement of a claim by Lender after an Event of Default as set forth above, the reasonable and actual expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and

be secured hereby and shall be reimbursed by Borrower to Lender upon demand (unless deducted by and reimbursed to Lender from such proceeds).

(ii) In the event of any insured damage to or destruction of the Property or any part thereof (herein called an "**Insured Casualty**"), if (A) less than 80% of the total floor area of the Improvements has been damaged, destroyed or rendered unusable as a result of such Insured Casualty and in the reasonable judgment of Lender, the Property can be restored within nine (9) months after the date insurance proceeds are made available (i.e., after the adjustment and settlement with the insurance company) and (2) can be restored at least six (6) months prior to the Maturity Date (as defined in the Note) to an economic unit not less valuable (including an assessment by Lender of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, and (B) no Event of Default (hereinafter defined) shall have occurred and be then continuing, then the proceeds of casualty insurance shall be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof subject to Insured Casualty, as provided below. In the event Borrower is unable to complete restoration within said nine (9) month period, and provided no Event of Default shall have occurred and is then continuing and no event has occurred or is then existing which, with the passage of time or the giving of notice or both, would constitute an Event of Default, Lender will extend the rebuildability period up to but no more than six (6) additional months provided that (i) Lender receives a written request from Borrower for such extension and (ii) in the event proceeds of rent loss insurance are not available or are not sufficient in Lender's reasonable judgment to cover the loss of rents from the Property during such extended period of restoration, Lender shall have received funds from Borrower in an amount equivalent to rent loss insurance which would have been received by Borrower had Borrower maintained rent loss insurance for the extended rebuildability period allowed by Lender. Lender shall hold and apply such additional funds in the same manner as proceeds of rent loss insurance. Borrower hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, however, in any event Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof. If Lender does not make proceeds of insurance available to Borrower because the Property cannot be restored within the time frame or in the manner required by Section 3.2(h)(ii)(A)(2) herein, Borrower may pay the Debt in full without penalty (including prepayment penalty or defeasance payment) upon prior written notice to Lender.

(iii) Except as provided above, the proceeds of casualty insurance collected upon any Insured Casualty shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Property

or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall not be considered a voluntary prepayment requiring payment of the prepayment consideration provided in the Note, and shall not reduce or postpone any payments otherwise required pursuant to the Note, other than the final payment on the Note.

(iv) If proceeds of insurance, if any, are made available to Borrower for the restoring, repairing, replacing or rebuilding of the Property, Borrower hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Lender.

(v) If Borrower is entitled to reimbursement out of insurance proceeds held by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (1) evidence reasonably satisfactory to it (which evidence may include inspection[s] of the work performed) that the restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Lender, (2) evidence reasonably satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (3) funds, or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (4) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. With respect to disbursements to be made by Lender: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien and the costs described in Subsection 3.2(h)(vi) below. Insurance proceeds held by Lender shall be deposited into an account of Lender, which shall bear interest for the benefit of Borrower at the 30 day money market rate offered by the bank used by Lender for escrow deposits, and shall be held and released by Lender, and used by Borrower, in accordance with the terms and conditions of this Security Instrument. Lender shall be entitled to a servicing fee in the amount of .50% per annum multiplied by the average daily balance on deposit but in no event greater than the interest on such account, and Lender is hereby authorized to deduct such

servicing fee from insurance proceeds on deposit on a monthly basis. All interest or other income in connection with the deposit or placement of such funds, less the servicing fee, shall be reported under Borrower's tax identification number, and shall only be disbursed as set forth in this Security Instrument. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto. In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding. Lender will act reasonably in requesting or requiring any of the items in Section 3.2(h)(v)(1)-(4) above.

(vi) Notwithstanding anything to the contrary contained herein, the proceeds of insurance reimbursed to Borrower in accordance with the terms and provisions of this Security Instrument shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and collection thereof and by the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, actual and reasonable attorneys' fees and actual and reasonable costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor).

(vii) Notwithstanding the foregoing or anything else contained herein to the contrary, so long as no Event of Default exists hereunder, (1) Borrower will be entitled to solely adjust all insurance claims with respect to an Insured Casualty where the Insured Casualty has resulted in 50% or less of the total floor area of the Improvements being damaged, destroyed or rendered unusable and where such damage, destruction or rendering unusable exceeds 50% of the total floor area of the Improvements, Lender will be entitled to participate reasonably with Borrower in adjusting such claims and (2) in the event a claim equals or exceeds the then current balance of the Loan, Borrower and Lender agree to jointly and reasonably settle such claim. With respect to (2) immediately above, in the event the Lender and Borrower cannot mutually agree to a settlement within 90 days after the Insured Casualty, assuming any delay beyond such 90 days is not due to the insurer's actions or inactions in which event such 90 day limitation will not apply, Lender shall then have the sole right to settle such claim.

Section 3.3 PAYMENT OF TAXES, ETC.

(a) Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**"), all ground rents, maintenance assessments and similar charges (not costs of maintaining the Property), now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Other Charges**"), and all charges for utility services provided to the Property as same become due and payable. Except where Lender escrows for and pays on behalf of Borrower directly, Borrower will deliver to Lender,

promptly upon Lender's request, evidence satisfactory to Lender that the Taxes and Other Charges (if any) have been so paid or are not then delinquent. Borrower shall not allow and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have set aside and deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.4 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for said condemnation or eminent domain and to make any compromise or settlement in connection with such proceeding, subject to the provisions of this Security Instrument. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Lender may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable (such application to be free from any prepayment consideration provided in the Note, except that if an Event of Default,

or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the full prepayment consideration computed in accordance with the Note). If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.5 USE AND MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained and operated in a good and safe condition and repair and in keeping with the condition and repair of properties of a similar use, value, age, nature and construction. Borrower shall not use, maintain or operate the Property in any manner which constitutes a public or private nuisance or which makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property with items of the same utility and of equal or greater value) without the prior written consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.4 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. In the case of an Insured Casualty, Borrower shall promptly repair, replace or rebuild the Property upon receipt of insurance proceeds in accordance with Section 3.2(h) of this Security Instrument. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender. Borrower shall not take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of management.

Section 3.6 WASTE. Borrower shall not commit or suffer any material waste of the Property or, without first obtaining such additional insurance as may be necessary to cover a proposed change in use of the Property, make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.7 COMPLIANCE WITH LAWS; ALTERATIONS.

(a) Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted by a court of competent jurisdiction to affect the

Property, or the use thereof, including, but not limited to, the Americans with Disabilities Act (the "**ADA**") (collectively "**Applicable Laws**").

(b) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender, which approval will not be unreasonably withheld or delayed. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(c) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations of which Borrower is aware which relate to compliance with Applicable Laws.

(d) Borrower shall take appropriate measures to prevent and will not engage in or knowingly permit any illegal activities at the Property.

Section 3.8 BOOKS AND RECORDS.

(a) Borrower shall keep accurate books and records of account in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to Borrower, the Property and the operation thereof, and will permit all such books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction, repair or operation to Borrower of the Improvements) to be inspected or audited and copies made by Lender and its representatives during normal business hours and at any other reasonable times upon reasonable notice but not less than 48 hours notice. Borrower represents that its principal place of business is as set forth in the introductory paragraph of this Security Instrument and that all books and records pertaining to the Property are maintained at such office or at the Property or at such other location as may be expressly disclosed to Lender in writing. Borrower will furnish, or cause to be furnished, to Lender: (i) prior to securitization of the Loan by Lender, on or before forty-five (45) calendar days after the end of each calendar month, and (ii) following securitization of the Loan by Lender, on or before forty-five (45) calendar days after the end of each calendar quarter the following items, each certified by Borrower as being true and correct in all material respects to the best of Borrower's knowledge, in such format and in such detail as Lender or its servicer may reasonably request, it being agreed that the format and detail of statements (including rent rolls) given to Lender as part of the application process for the Loan is acceptable:

(i) a written statement (rent roll) dated as of the last day of each such calendar month or quarter, as applicable, identifying each of the Leases by the term, space occupied, rental required to be paid (including percentage rents and tenant sales), security deposit paid, any rental concessions, all rent escalations, any rents paid more than one (1) month in advance, any special provisions or inducements granted to tenants, any taxes, maintenance and other common charges paid by tenants, all vacancies and identifying any defaults or payment delinquencies thereunder; and

(ii) monthly, quarterly and year-to-date operating statements prepared for each calendar month or quarter, as applicable, during each such reporting period detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service, and total cash flow.

(b) Within ninety (90) calendar days following the end of each calendar year, Borrower shall furnish an operating statement of the Property and a balance sheet showing the financial condition of the Borrower and the Property including a statement of profit and loss (which may be part of the income tax returns described below) for the Property in such format and in such detail as Lender or its servicer may request, and setting forth the financial condition and the income and expenses for the Property for the immediately preceding calendar year prepared in accordance with generally accepted accounting principles, it being agreed that the format and detail of such information (including rent rolls) given to Lender as part of the application process for the Loan is acceptable. Borrower shall deliver to Lender copies of all income tax returns, requests for extension and other similar items contemporaneously with its delivery of same to the Internal Revenue Service.

(c) Borrower will permit representatives appointed by Lender, including independent accountants, agents, attorneys, appraisers and any other persons, to visit and inspect during its normal business hours upon reasonable notice, but not less than 48 hours, and at any other reasonable times any of the Property and to make photographs thereof, and to write down and record any information such representatives obtain, and shall permit Lender or its representatives to investigate and verify the accuracy of the information furnished to Lender under or in connection with this Security Instrument or any of the Other Loan Documents and to discuss all such matters with its officers, employees and representatives. Borrower will furnish to Lender at Borrower's expense all evidence which Lender may from time to time reasonably request as to the accuracy and validity of or compliance with all representations and warranties made by Borrower in the Loan Documents and satisfaction of all conditions contained therein. Any inspection or audit of the Property or the books and records of Borrower, or the procuring of documents and financial and other information, by or on behalf of Lender, shall be at Lender's expense and shall be for Lender's protection only, and shall not constitute any assumption of responsibility or liability by Lender to Borrower or anyone else with regard to the condition, construction, maintenance or operation of the Property, nor Lender's approval of any certification given to Lender nor relieve Borrower of any of Borrower's obligations.

(d) Prior to the transfer of the Loan by Lender pursuant to Section 16.1 hereof, Borrower shall deliver to Lender the reports required by Section 3.8(a) on a monthly basis in the time frames provided therein.

(e) In the event Borrower maintains a stop loss deductible program and such stop loss deductible is greater than \$25,000.00 per occurrence and \$50,000.00 per annum in the aggregate, then Borrower covenants to maintain and shall provide evidence to Lender on a quarterly and annual basis (a copy of a bank statement being deemed as providing evidence), a cash escrow account containing not less than the aggregate annual stop loss amount less, from time to time during the policy year, permissible withdrawals made from that account to cover actual casualty losses. At the end of each insurance policy year, such account shall be reimbursed, if applicable, to the extent of any new stop loss aggregate commencing at the beginning of the ensuing policy year.

Section 3.9 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (as hereinafter defined), and except for any mechanic's and materialmen's liens that are being contested in good faith by Borrower through appropriate legal proceedings, subject to the following provision.

After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of mechanic's and materialmen's liens, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the mechanic's and materialmen's liens from Borrower and from the Property or Borrower shall have paid all of the mechanic's and materialmen's liens under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such proceedings, (vi) Borrower shall have set aside and deposited with Lender adequate reserves for the payment of the mechanic's and materialmen's liens, together with all interest and penalties thereon, unless Borrower has paid all of the mechanic's and materialmen's liens under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any contested mechanic's and materialmen's liens, together with all interest and penalties thereon.

Section 3.10 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms

of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

ARTICLE 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1 PROPERTY USE. The Property shall be used only for multifamily use, and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

Section 4.2 ERISA.

(a) It shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) During the term of the Loan or any obligation or right hereunder, Borrower shall not be a Plan (hereinafter defined) and none of the assets of Borrower shall constitute assets of a Plan within the meaning of Section 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA. It shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not a Plan or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(ii) None of the assets of Borrower are, with the application of 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA, regarded as assets of any Plan; or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

"**Plan**" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title I of ERISA or a plan or other arrangement (within the meaning of Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the related Treasury Department regulations, including temporary regulations) subject to Section 4975 of the Code.

Section 4.3 SINGLE PURPOSE ENTITY. (1) Borrower covenants and agrees that it has not and shall not:

(a) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Property, and activities incidental thereto;

(b) acquire or own any material asset other than (i) the Property, (ii) such incidental Personal Property as may be necessary for the operation of the Property, and (iii) cash or derivatives thereof (*i.e.*, a certificate of deposit or shares in a money market account) owned by the Borrower;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's Partnership Agreement, Articles or Certificate of Incorporation, Articles of Organization, Operating Agreement or similar organizational documents, as the case may be;

(e) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Lender;

(f) commingle its assets with the assets of any of its partner(s), principals, affiliates, or of any other person or entity or transfer any assets to any such person or entity other than (i) distributions on account of equity interests in the Borrower permitted hereunder and properly accounted for, (ii) in connection with goods and services, including insurance, purchased or contracted for by Borrower's property management company for the Property and for other properties managed by the property management company in the ordinary course of managing apartment complexes, (iii) rents and other deposits held by Borrower's property management company permitted by the Security Instrument and properly accounted for, and (iv) with respect to the insurance deductible escrow account provided for in Section 3.8(e) above which will involve such commingling;

(g) except as permitted pursuant to Section 8.3 hereof, and except for unsecured loans from Original Principal and/or general or limited partners of the Borrower and/or principals of either that (i) are not evidenced by a note, (ii) are upon terms reasonably acceptable to Lender, (iii) do not exceed the greater of \$100,000 or three times the monthly interest payable under the Note, and (iv) are subject to subordination and standstill agreements reasonably acceptable to Lender, incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not

evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time three percent (3%) of the outstanding Debt (the 3% limitation excludes items for which Lender has escrowed funds pursuant to the Escrow Agreement dated of even date herewith between Borrower and Lender);

(h) allow any person or entity to pay its debts and liabilities (except a Guarantor or Indemnitor) or fail to pay or cause to be paid its debts and liabilities solely from its own assets;

(i) except as otherwise provided in (f) above, fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, members, principals and affiliates of Borrower, the affiliates of a partner or member of Borrower, and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by the Borrower;

(j) enter into any contract or agreement with any partner, member, principal or affiliate of Borrower, any guarantor of all or a portion of the Debt (a "**Guarantor**") or any partner, member, principal or affiliate thereof, or any indemnitor under the Loan Documents (an "Indemnitor"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any partner, member, principal or affiliate of Borrower or Guarantor, or any partner, member, principal or affiliate thereof;

(k) seek dissolution or winding up in whole, or in part;

(l) fail to correct any known misunderstandings regarding the separate identity of Borrower;

(m) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Borrower (except for a Guarantor or Indemnitor);

(n) make any loans or advances to any third party, including any partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof;

(o) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks; provided, however, the foregoing will not limit or prevent Borrower's property management company from performing any of the foregoing on behalf of the Borrower in the ordinary course of managing the Property and in conjunction and together with other properties managed by such property management company, and such actions may include without limitation, negotiating and/or entering into multi-party contracts or purchase orders, and handling multi-party issues or items on management company or multi-party stationary, invoices or checks;

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof);

(q) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

(r) allow any person or entity to pay the salaries of its own employees or fail to generally maintain a reasonably sufficient number of employees for its contemplated business operations as reasonably determined by the Borrower's general partner; provided, however, the foregoing will not limit or prevent Borrower's property management company or another affiliate from paying the Borrower's employees on behalf of Borrower with the Borrower's funds;

(s) fail to maintain reasonably adequate capital for the then usual and customary obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, market conditions and available effective rents;

(t) file a voluntary petition or otherwise initiate proceedings to have the Borrower or any general partner or managing member adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any general partner or managing member, or file a petition seeking or consenting to reorganization or relief of the Borrower or any general partner or managing member as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any general partner or managing member; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Borrower or any general partner or managing member or of all or any substantial part of the properties and assets of the Borrower or any general partner or managing member, or make any general assignment for the benefit of creditors of the Borrower or any general partner or managing member, or admit in writing the inability of the Borrower or any general partner or managing member to pay its debts generally as they become due or declare or effect a moratorium on the Borrower or any general partner or managing member debt or take any action in furtherance of any such action;

(u) share any common logo with or hold itself out as or be considered as a department or division of (i) any partner, principal, member or affiliate of Borrower, (ii) any affiliate of a partner, principal, member or affiliate of Borrower, or (iii) any other person or entity or allow any person or entity to identify the Borrower as a department or division of that person or entity; provided, however, the foregoing will not limit or prevent the Borrower's property management company from doing or performing any of the foregoing or otherwise dealing with the Property and/or the Borrower in conjunction and together with other properties managed by such property management company, and

such actions by the property management company may include sharing the property management company's logo for marketing purposes; or

(v) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other person or entity.

(2) If Borrower is a limited partnership or a limited liability company, its sole general partner or managing member (the "**SPE Principal**") of Borrower, as applicable, is and shall be at all times a corporation whose sole asset is its interest in Borrower and such SPE Principal of Borrower will at all times comply, and will cause Borrower to comply, with each of the covenants, terms and provisions contained in Section 4.3(1) as if such representation, warranty or covenant was made directly by such SPE Principal.

(3) Borrower represents and warrants to Lender that it:

(a) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(b) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority except for ad valorem taxes disclosed in writing to Lender, which are properly protested and otherwise handled in accordance with the applicable property protest procedures;

(c) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that in any of the foregoing cases resulted in a judgment against it that has not been paid in full;

(d) has no judgments or liens of any nature against it except for tax liens not yet due and the Permitted Exceptions;

(e) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(f) has no material contingent or actual obligations not related to the Property.

Section 4.4 EMBARGOED PERSON. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, to the best of Borrower's knowledge and belief (a) none of the funds or other assets of Borrower, SPE Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower, SPE Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("**Embargoed Person**"); (b) no Embargoed Person has any interest of any nature whatsoever in

Borrower, SPE Principal or Guarantor, as applicable, with the result that the investment in Borrower, SPE Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, SPE Principal or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, SPE Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

Section 4.5 OFAC. Borrower hereby represents and warrants that Borrower, SPE Principal and Guarantor and each and every Person affiliated with Borrower, SPE Principal and/or Guarantor or that to Borrower's knowledge has an economic interest in Borrower, or, to Borrower's knowledge, that has or will have an interest in the transaction contemplated by this Security Instrument or in the Property or will participate, in any manner whatsoever, in the Loan are (i) in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury; (ii) is not a Prohibited Person (as defined below); (iii) in full compliance with the requirements of the Patriot Act and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (as used in this Section only, "**OFAC**"); (iv) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Act and available to Lender for Lender's review and inspection during normal business hours and upon reasonable prior notice; (v) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower, SPE Principal or Guarantor (or any of their respective beneficial owners, affiliates or participants) become listed on the Annex or any other list promulgated under the Patriot Act or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. It shall be an Event of Default hereunder if Borrower, Guarantor, SPE Principal or any other party to any Loan Document becomes listed on any list promulgated under the Patriot Act or is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

"Prohibited Person" shall mean any person or entity:

(a) a "blocked" person listed in the Annex, or otherwise subject to the provisions of, the Executive Order Nos. 12947, 13099 and 13224 on Terrorist Financing, effective September 24, 2001, and all modifications thereto or thereof, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (as used in this Section only, the "**Annex**");

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex, or is otherwise subject to the provisions of, the Annex;

(c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Annex;

(d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Annex;

(e) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Act or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Act; or

(f) who is an Affiliate of or affiliated with a person or entity listed above.

"Patriot Act" shall mean the USA PATRIOT Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including Executive Order 13224 effective September 24, 2001.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

Section 5.1 BORROWER'S REPRESENTATIONS. Borrower represents and warrants to Lender that each of the representations and warranties set forth in that certain Closing Certificate of even date herewith executed by Borrower in favor of Lender are true and correct as of the date hereof and are hereby incorporated and restated in this Security Instrument by this reference.

Section 5.2 WARRANTY OF TITLE. Borrower represents and warrants that it has good and marketable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the **"Permitted Exceptions"**). Borrower shall, at its sole cost and expense, forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall, at its sole cost and expense, forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.3 STATUS OF PROPERTY.

(a) To the best knowledge of Borrower, no portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.2 hereof.

(b) To the best knowledge of Borrower, Borrower has obtained all necessary certificates, permits, licenses and other approvals, governmental and otherwise, necessary for the use, occupancy and operation of the Property and the conduct of its business (including, without limitation, certificates of completion and certificates of occupancy) and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are to the best knowledge of Borrower in full compliance with all Applicable Laws, including, without limitation, zoning ordinances, building codes, land use and environmental laws, laws relating to the disabled (including, but not limited to, the ADA) and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty. There is no pending or, to the best knowledge of Borrower, threatened condemnation proceedings affecting the Property or any portion thereof.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full and no notice of any mechanics' or materialmen's liens or of any claims of right to any such liens have been received and in either case remain unresolved.

(i) Borrower has paid in full for, or will pay in full in the ordinary course of business, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are to the best knowledge of Borrower in a good and safe condition and repair and in compliance with all Applicable Laws.

(k) Except as otherwise reflected in the Permitted Exceptions, all Improvements lie within the boundary of the Land.

Section 5.4 NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

Section 5.5 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

ARTICLE 6 - OBLIGATIONS AND RELIANCES

Section 6.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2 NO RELIANCE ON LENDER. The partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3 NO LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 1.1(e) and 1.1(k) or Section 1.2, Lender is not undertaking (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the Other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty with respect thereto by Lender. Upon written request by Borrower, Lender shall deliver written confirmation to Borrower stating whether or not actions taken by Borrower of which Lender has knowledge constitute an Event of Default hereunder, and/or whether any Event of Default hereunder has been cured.

Section 6.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 and that certain Closing Certificate of even date herewith executed by Borrower, without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that such

warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Loan Documents; and that Lender would not be willing to make the Loan (as hereinafter defined) and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5 and such Closing Certificate.

ARTICLE 7 - FURTHER ASSURANCES

Section 7.1 RECORDING FEES. Borrower will pay all taxes, filing, registration or recording fees, and all reasonable and actual expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 FURTHER ACTS. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, requires revenue or other stamps to be affixed to the Note, this Security Instrument, or the Other Loan Documents, or imposes any other tax or charge on the same, Borrower will pay the same, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of

usury, then Lender shall have the option, by written notice of not less than ninety (90) calendar days, to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) calendar days, to declare the Debt immediately due and payable.

Section 7.4 CONFIRMATION STATEMENT.

(a) Borrower shall, within ten (10) Business Days after receiving a written request from Lender, furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, confirming to Lender (or its designee) (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, and (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an Event of Default under the Note or this Security Instrument; provided, however, Lender shall not be entitled hereunder to receive more than one (1) such statement in each calendar year.

(b) Intentionally Omitted

(c) Upon any transfer or proposed transfer contemplated by Section 16.1 hereof, at Lender's request, Borrower, any Guarantors and any Indemnitors shall provide an estoppel certificate to the Investor (defined in Section 16.1) or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may require.

Section 7.5 SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, and at no cost to Borrower whether now or in the future (i.e., and without limitation, if such splitting causes additional costs to defease the Loan in split form than it would have absent such split, Lender will be responsible for such additional costs), shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of Debt, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender; provided however, that any such documents must provide for necessary cross-easements, such that all buildings and/or tenants and/or other occupants on the Property will have the right to use all amenities, rights, benefits and all other portions of the Property in

the event the ownership of the Property would be separated by virtue of such splitting provided for hereinabove.

Section 7.6 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or Other Loan Document, Borrower, at no expense to Borrower, will issue, in lieu thereof, a replacement Note or Other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or Other Loan Document in the same principal amount thereof and otherwise of like tenor and in the same form with the same terms and provisions as the lost, stolen, destroyed or mutilated Note or Other Loan Document.

Section 7.7 PAYOFF QUOTE. To the extent the Note can be paid off or defeased, upon Borrower's written request, not more often than twice per calendar year, Lender shall provide a pay-off quote to Borrower, which quote will contain the amount necessary to pay-off the Loan, including any per diem interest, defeasance costs and prepayment penalty, if such pay-off remains valid. Such pay-off quotes shall be at no cost to Borrower.

ARTICLE 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the creditworthiness of Borrower and experience of Borrower and its partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE.

(a) Borrower agrees that Borrower shall not, without the prior written consent of Lender, Transfer the Property or any part thereof or permit the Property or any part thereof to be Transferred. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer of the Property without Lender's consent.

(b) As used in Section 8.2(a), "Transfer" shall mean any voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer of all or any part of the Property or any interest therein including, but not limited to: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder; (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iv) if Borrower,

Guarantor, or any managing member or general partner of Borrower or Guarantor is a corporation, any Transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such Borrower, Guarantor, managing member or general partner by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of forty-nine percent (49%) or more of such corporation's stock shall directly or indirectly be vested in or pledged to a party or parties who are not now stockholders (provided, however, in no event shall this subpart [iv] apply to any Guarantor whose stock or shares are traded on a nationally recognized stock exchange); (v) if Borrower, Guarantor, manager, or any managing member or general partner of Borrower or Guarantor is a limited liability company or partnership, the Transfer by which an aggregate of forty-nine percent (49%) or more of the ownership interest in such limited liability company or forty-nine percent (49%) or more of the partnership interests in such partnership shall directly or indirectly be vested in or pledged to parties not having an ownership interest as of the date of this Security Instrument; (vi) if Borrower, any Guarantor or any managing member or general partner of Borrower or any Guarantor is a partnership, limited liability company or joint venture, the change, removal or resignation of a general partner, managing member or joint venturer or the Transfer directly or indirectly of all or any portion of the partnership or ownership interest of any general partner, managing member or joint venturer; and (vii) except as expressly permitted by Section 8.3, any Transfer by an Original Principal, directly or indirectly, of its ownership interest in the Borrower.

Section 8.3 EXCLUDED AND PERMITTED TRANSFERS.

(a) A Transfer within the meaning of this Article 8 shall not include (i) transfers of ownership interests in the Borrower, any general partner, limited partner or managing member or any Guarantor made by devise or descent or by operation of law upon the death of a joint tenant, partner, member or shareholder or other principal of any of the foregoing, subject, however, to all the following requirements: (A) written notice of any transfer under this Section 8.3, whether by will, trust or other written instrument, operation of law or otherwise, is provided to Lender or its servicer, together with copies of such documents relating to the transfer as Lender or its servicer may reasonably request, (B) control over the management and operation of the Property is retained by one or more of Alan E. Ferris and Madeleine S. Ferris (the "**Original Principals**", whether one or more) at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by persons who are acceptable in all respects to Lender in its sole and absolute discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a Guarantor, and (D) no such transfer, death or other event has any adverse effect either on the bankruptcy-remote status of Borrower under the requirements of any national rating agency for the Securities (hereinafter defined) or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby, (ii) transfers otherwise by operation of law in the event of a bankruptcy, (iii) a Lease of a portion of the Property to a space tenant or (iv) a defeasance under the Note.

(b) Notwithstanding any provision of this Security Instrument to the contrary, the prohibitions in Subsection 8.2(a) shall not apply to an inter vivos or testamentary transfer

of all or any portion of ownership interests in the Borrower, any general or limited partner or managing member or any Guarantor to and among one or more of the foregoing listed parties and/or to and among one or more family members of any such transferor and/or to a trust in which all of the beneficial interest is held by one or more family members of any such transferor and/or to a partnership or limited liability company or other legal entity in which a majority of the capital and profits interests are held by one or more of any such transferor and/or family members of transferor, provided, that any inter vivos transfer of all or any portion of the ownership interests in the Borrower, such general or limited partner or managing member or such Guarantor is made in connection with such transferors' bona fide, good faith estate and/or tax planning and that the person(s) with voting control of Borrower or the management of the Property are (i) the same person(s) who had such voting control and management rights immediately prior to the transfer in question, or (ii) reasonably acceptable to Lender and provided further that no such transfer shall have any adverse effect on the bankruptcy remote status of Borrower under the requirements of any national rating agency for the Securities. Lender acknowledges that Original Principals and/or either one of them separately are acceptable to exercise voting control of Borrower and the management of the Property. As used herein, "family members" shall include the spouse, children and grandchildren and any lineal descendants. Lender will not charge any fee for transfers permitted under this Section 8.2(b) and above under 8.2(a).

(c) Notwithstanding the provisions of Section 8.2 above, Lender will give its consent to two (2) separate sales or transfers of the Property or ownership interests in the Borrower, a general partner or managing member of the Borrower, or any Guarantor, if (but only if) no Event of Default under the Loan Documents has occurred and is continuing, and if each of the following conditions precedent have been fully satisfied (as determined in Lender's sole and absolute discretion): (i) the grantee's or transferee's integrity, reputation, financial condition, character and management ability are satisfactory to Lender in its sole discretion, and all information relating thereto requested by Lender is delivered to Lender at least 30 days prior to the proposed transfer, (ii) the grantee's or transferee's (and its sole general partner's or managing member's) single purpose and bankruptcy remote character are satisfactory to Lender in its sole discretion, and all information relating thereto requested by Lender is delivered to Lender at least 30 days prior to the proposed transfer, (iii) Lender has obtained such estoppels from any guarantors of the Note or replacement guarantors and such other legal opinions regarding substantive consolidation issues, enforceability of the assumption documents, no adverse impact on the Securities or any REMIC holding the Note and similar matters as Lender may require, (iv) all of Lender's reasonable and actual costs and expenses associated with the sale or transfer (including reasonable attorneys' fees) are paid by Borrower or the grantee or transferee, (v) the payment of a transfer fee not to exceed 1% of the then unpaid principal balance of the loan evidenced by the Note and secured hereby (the "**Loan**"), (vi) the execution and delivery to Lender of a written assumption agreement and/or substitute guaranty (in its sole and absolute discretion) and such modifications to the Loan Documents executed by such parties and containing such terms and conditions as Lender may require in its sole and absolute discretion prior to such sale or transfer (provided that in the event the Loan is included in a REMIC and is a performing Loan, no modification to the terms and conditions shall be made or permitted that would cause (A)

any adverse tax consequences to the REMIC or any holders of any Mortgage-Backed Pass-Through Securities, (B) the Security Instrument to fail to be a Qualifying Security Instrument under applicable federal law relating to REMIC's, or (C) result in a taxation of the income from the Loan to the REMIC or cause a loss of REMIC status), and (vii) if applicable, the delivery to Lender of an endorsement (at Borrower's sole cost and expense) to Lender's policy of title insurance then insuring the lien created by this Security Instrument in form and substance acceptable to Lender in its sole judgment. Lender shall use commercially reasonable effort to cooperate with Borrower and approve any requested assumption within thirty (30) days of written request for such assumption so long as Borrower is not in default hereunder and Lender timely receives all information requested by this Section 8.3(c).

(d) Without limiting the foregoing, if Lender shall consent to a transfer of the Property, the written assumption agreement described in Subsection 8.3(c)(vi) above shall provide for the release of Borrower and, if approved by Lender in its reasonable discretion, each Guarantor and Indemnitor of personal liability under the Note and Other Loan Documents, but only as to acts or events occurring, or obligations arising, after the closing of such transfer.

(e) Subject to satisfaction of the Purchase Money Loan Criteria (hereinafter defined), the Borrower shall have the one-time right to grant a second position security interest in the Property to secure a loan (a "**Purchase Money Loan**") to the Borrower. "**Purchase Money Loan Criteria**" shall mean:

(i) Lender shall have reasonably approved (aa) the terms of the Purchase Money Loan, (bb) the documents and instruments in connection with the Purchase Money Loan (the "**Purchase Money Loan Documents**") and (cc) the lender providing the Purchase Money Loan (the "**Purchase Money Lender**") provided, however, the initial Borrower is automatically approved as a Purchase Money Lender without further request or action of any person or party;

(ii) The Purchase Money Lender and Lender shall have entered into a subordination and intercreditor agreement in the form attached hereto as Exhibit B;

(iii) (iii) The Property has (as reasonably determined by Lender pursuant to the terms hereof) (i) a projected Debt Service Coverage Ratio (as hereinafter defined), after giving effect to the Purchase Money Loan, of 1.07:1.00 or more for the twelve (12) month period commencing on the date Borrower requests Lender's approval of the Purchase Money Loan; and (ii) maintained a Debt Service Coverage Ratio of not less than 1.07:1.00 for the twelve (12) month period ending on the date Borrower requests Lender's approval of the Purchase Money Loan;

(iv) The combined loan to value ratio (including the Loan and the Purchase Money Loan), as established by a current MAI appraisal prepared by an appraiser reasonably approved by Lender and conducted after Borrower requests

Lender's approval of the Purchase Money Loan, is no more than ninety percent (90%);

(v) No Event of Default, nor any event which with notice or the passage of time or both would constitute an Event of Default, shall have occurred and be then continuing under any of the Loan Documents;

(vi) Lender shall have received (aa) evidence reasonably satisfactory to Lender that the Purchase Money Loan shall have no adverse effect on the bankruptcy remote status of Borrower under the requirements of any Rating Agency for the Securities and (bb) a legal opinion regarding substantive consolidation issues;

(vii) Delivery to Lender of all items reasonably required by Lender in connection with Lender's evaluation of approval of the Purchase Money Loan, all of which must be reasonably acceptable in form and substance to Lender, including, without limitation, current rent rolls, operating statements and financial statements;

(viii) Intentionally Omitted

(ix) Payment by Borrower of all reasonable costs and expenses, including legal fees incurred by Lender in connection with the Purchase Money Loan. Borrower shall pay a deposit of \$7,500 (the "**Expense Deposit**") toward such costs and expenses at the time Borrower requests Lender's approval of the Purchase Money Loan. If Lender determines that the conditions set forth herein have not been satisfied, the deposit less Lender's actual costs and expenses shall be returned to Borrower. If the actual costs and expenses are greater than the Expense Deposit, Borrower shall pay the difference to Lender;

(x) If requested by Lender, each Rating Agency shall have delivered written confirmation that any rating issued by such Rating Agency in connection with the securitization of any Securities will not, as a result of the proposed Purchase Money Loan, be downgraded from the then current ratings thereof, qualified or withdrawn; and

(xi) The maturity date of the Purchase Money Loan shall be coterminous with the Maturity Date.

For purposes of this Section 8.3, the following terms shall have the following meanings:

"Actual Capital Expenditures" shall mean, for any period, the amount expended for items capitalized under generally accepted accounting principles (including expenditures for building improvements or major repairs, leasing commissions and tenant's improvements).

"Debt Service" shall mean the aggregate amount of principal (calculated on a thirty (30) year amortization) with respect to the Loan and any other notes secured by the Property or by

direct or indirect pledges of equity in the Borrower ("**Other Loans**") and interest due and payable on the Loan and any Other Loans, over a twelve month period.

"Debt Service Coverage Ratio" shall mean a ratio in which:

- (a) the numerator is the Net Cash Flow; and
- (b) the denominator is Debt Service.

"Effective Gross Income" shall mean actual (or projected, based on historical results) rents collected for any consecutive, twelve (12)- month period plus Other Income based on trailing (or projected based on historical results) twelve (12) month results, less, if applicable, (i) prepaid rents for periods in excess of such twelve (12) month period and (ii) refundable deposits.

"Net Cash Flow" shall mean for any consecutive, twelve (12) month period, (a) Effective Gross Income, less (b) Operating Expenses (assuming a management fee of 3% of Effective Gross Income) based on trailing (or projected, based on historical results) twelve (12) month results, less (c) Underwritten Capital Expenditures, less (d) a Vacancy Adjustment, if necessary.

"Operating Expenses" shall mean, for any period, the total of all actual or projected (based on historical results including both increases and decreases): expenditures, computed in accordance with generally accepted accounting principles, of whatever kind during such period relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance (which ordinary repairs and maintenance for the purposes of this definition shall be no less than the underwritten, stabilized amount of such expenses), insurance, license fees, property taxes and assessments (taking into consideration the potential impact of the sale of the Property on such taxes and assessments), advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments (e.g., lease assumptions) as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Underwritten Capital Expenditures, Actual Capital Expenditures, and contributions to any reserves required under the Loan Documents.

"Other Income" shall mean, for any period, all income, computed in accordance with generally accepted accounting principles, derived from the ownership and operation of the Property from whatever source during such period, including, but not limited to, utility charges, escalations, forfeited security deposits, reasonable interest on credit accounts, service fees or charges, license fees, parking fees, lease termination fees, rent concessions or credits, rents from month-to-month tenants provided, that, such rent from the month-to-month tenants is less than ten percent (10%) of Effective Gross Income, but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, insurance proceeds and condemnation proceeds (other than business interruption or other loss of income insurance), and any other extraordinary gains, and any disbursements to the Borrower from any escrow fund established by the Loan Documents.

"Underwritten Capital Expenditures" shall mean an amount equal to the product of \$175 multiplied by the number of units at the Property.

"Vacancy Adjustment" shall mean the amount of adjustment, if any, which would be necessary to show Effective Gross Income, excluding Other Income, to be not greater than 95% of Effective Gross Income as shown on certified rent rolls for any consecutive trailing twelve (12) month period.

Section 8.4 NO IMPLIED FUTURE CONSENT. Lender's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property made in contravention of this Article 8 shall be null and void and of no force and effect.

Section 8.5 COSTS OF CONSENT. Subject to Section 17.1 of this Security Instrument, Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable and actual expenses (including, without limitation, all recording costs, reasonable in-house and outside attorneys' fees and disbursements and title search costs) incurred by Lender, in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

Section 8.6 CONTINUING SEPARATENESS REQUIREMENTS. In no event shall any of the terms and provisions of this Article 8 amend or modify the terms and provisions contained in Section 4.3 herein.

ARTICLE 9 - DEFAULT

Section 9.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events beyond any applicable notice and cure period provided below shall constitute an **"Event of Default"**:

(a) if any portion of the Debt is not paid prior to the seventh (7th) calendar day after the same is due or if the entire Debt is not paid on or before the maturity date, along with applicable prepayment premiums, if any;

(b) if Borrower, or its general partner or managing member, if applicable, (i) violates or does not comply with any of the provisions of Section 4.3, Article 8, or the Undelivered Items Letter, if any, (ii) fails to deliver any of the reports required by Section 3.8 within ten (10) days after receiving written notice from Lender, provided such notice and ten (10) day cure period shall only apply to the first failure to provide such items in any twelve (12) month period, or (iii) fails to timely complete the "Immediate Repairs", if any (as defined in the Escrow Agreement for Reserves and Impounds);

(c) if any representation or warranty of Borrower or of its members, general partners, principals, affiliates, agents or employees, or of any Guarantor made herein or in the Environmental Indemnity or in any other Loan Document, in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(d) if Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower or any Guarantor shall admit in writing its inability to pay, or Borrower's or any Guarantor's failure to pay its debts as they become due;

(e) if (i) Borrower or any subsidiary or general partner or managing member of Borrower, or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any subsidiary or general partner or managing member of Borrower, or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any subsidiary or general partner or managing member of Borrower, or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) calendar days; or (iii) there shall be commenced against Borrower or any subsidiary or general partner or managing member of Borrower or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) calendar days from the entry thereof; or (iv) Borrower or any subsidiary or general partner or managing member of Borrower, or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) Borrower or any subsidiary or general partner or managing member of Borrower, or any Guarantor shall admit in writing its inability to, pay its debts as they become due;

(f) subject to Borrower's right to contest certain liens as provided in this Security Instrument, if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days;

(g) if any federal tax lien is filed against Borrower, any general partner, manager or managing member of Borrower, any Guarantor or the Property and same is not discharged of record within thirty (30) calendar days after same is filed;

(h) except as permitted in this Security Instrument, the actual material alteration, material improvement, material demolition or material removal of any material portion of the Improvements, or any material construction on the Property, without the prior consent of Lender;

(i) Borrower's failure to maintain the insurance required under this Security Instrument;

(j) without Lender's prior consent which will not be unreasonably withheld, (i) any managing agent for the Property resigns or is removed and is not replaced by a managing agent that is reasonably acceptable to Lender within thirty (30) days after such resignation or removal, (ii) the ownership, management or control of such managing agent is transferred to a person or entity other than the general partner or managing member of the Borrower, or (iii) there is any material change in the property management agreement of the Property (for purposes of this Section 9.1(j), the term "managing agent" means the property management company for the Property and not an individual employee of such management company);

(k) this Security Instrument shall cease to constitute a first-priority lien on the Property (other than in accordance with its terms);

(l) seizure or forfeiture of the Property, or any material portion thereof, or Borrower's interest therein, resulting from criminal wrongdoing or other unlawful action of Borrower or its affiliates, under any federal, state or local law;

(m) if Borrower consummates a transaction which would cause this Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the Other Loan Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(n) if any default occurs under any guaranty or indemnity including the Environmental Indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, or such guaranty or indemnity shall cease to be in full force and effect, or any guarantor or indemnitor shall deny or disaffirm its obligation thereunder; and

(o) if Borrower or any Guarantor, as the case may be, shall continue to be in default under any other term, covenant or condition of this Security Instrument or any Other Loan Documents for thirty (30) calendar days after notice from Lender, which notice describes such default with reasonable specificity; provided that if such default cannot reasonably be cured within such thirty (30) calendar day period and Borrower (or such Guarantor as the case may be) shall have commenced to cure such default within such thirty (30) calendar day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) calendar day period shall be extended for so long as it shall require Borrower (or such Guarantor as the case may be) in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) calendar days after the notice from Lender referred to above.

Section 9.2 DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum

rate equal to the lesser of (a) the greater of (i) five percent (5%) plus the Prime Rate (as defined in the Note), and (ii) five percent (5%) plus the Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "Default Rate").

ARTICLE 10 - RIGHTS AND REMEDIES

Section 10.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in this Security Instrument or the Other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Lender that is chargeable to Borrower or subject to reimbursement by Borrower under the Loan Documents, shall be and become a part of the "Debt", and Borrower promises, upon demand, to pay to Lender, at the place where the Note is payable, all sums so incurred, paid or expended by Lender, with interest from the date when paid, incurred or expended by Lender at the Default Rate.

(b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property and to apply the remainder of such Rents on the Debt in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Lender pursuant to this Subsection 10.1(b), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property (REGARDLESS OF WHETHER SUCH LOSS IS THE RESULT OF THE NEGLIGENCE OF LENDER) unless such loss is

caused by the willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Borrower shall and does hereby agree to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss, or damage, which may or might be incurred by Lender under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this Subsection 10.1(b) shall impose any duty, obligation, or responsibility upon Lender for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any hazardous substances or environmental conditions on or under the Property (unless arising as a result of Lender's gross negligence or willful misconduct), or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of Lender with respect to the Property taken under this subsection.

(c) Right to Accelerate. Lender may, without notice (except as provided in Section 9.1(o) above) demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(d) Foreclosure-Power of Sale. Lender may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or other legal method for the complete or partial foreclosure of this Security Instrument or the complete or partial sale of the Property under power of sale or under any applicable provision of law. Lender may sell the Property, and all estate, right, title, interest, claim and demand of Borrower therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property.

(e) Rights Pertaining to Sales. Subject to the requirements of applicable law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Property under or by virtue of Subsection 10.1(d) above,

whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(i) Lender may conduct any number of sales from time to time. The power of sale set forth above shall not be exhausted by any one or more such sales as to any part of the Property which shall not have been sold, nor by any sale which is not completed or is defective in Lender's opinion, until the Debt shall have been paid in full.

(ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.

(iii) After each sale, Lender or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Borrower in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as specified in the Note. Lender is hereby appointed the true and lawful attorney-in-fact of Borrower, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Borrower's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, Borrower hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Borrower, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers all such instruments as may be advisable, in Lender's judgment, for the purposes as may be designated in such request.

(iv) Any and all statements of fact or other recitals made in any of the instruments referred to in Subsection 10.1(e)(iii) given by Lender shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited.

(v) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Borrower to the fullest extent permitted by applicable law.

(vi) Upon any such sale or sales, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Debt the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any

enforcement proceeding hereunder, and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(vii) Upon any such sale, it shall not be necessary for Lender or any public officer acting under execution or order of court to have present or constructively in its possession any of the Property.

(f) Lender's Judicial Remedies. Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt to foreclose the liens and security interests of this Security Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Lender under this Security Instrument, the Note or the Other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

(g) Lender's Right to Appointment of Receiver. Lender, as a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Borrower, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Borrower, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Property, shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Property, including (without limitation), the power to collect the Rents, enforce this Security Instrument and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such Rents. Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Commercial Code Remedies. Lender may exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request in writing that Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower.

(i) Apply Escrow Funds. Lender may apply any Funds (as defined in the Escrow Agreement) and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; and

(v) All other sums payable pursuant to the Note, this Security Instrument and the Other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument and reasonable internal costs and expenses incurred by Lender including, without limitation, Lender's reasonable in-house legal fees.

(j) Other Rights. Lender (i) may surrender the Policies maintained pursuant to this Security Instrument or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Debt, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; and (ii) may apply the Tax and Insurance Funds (as defined in the Escrow Agreement) and/or the On-going Replacement Funds (as defined in the Escrow Agreement) and any other funds held by Lender toward payment of the Debt; and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.

(k) Discontinuance of Remedies. In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(l) Remedies Cumulative. All rights, remedies, and recourses of Lender granted in the Note, this Security Instrument and the Other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Property, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Property prior to Lender bringing suit to recover the Debt; and (vi) in the event Lender elects to bring suit on the Debt and obtains a judgment against Borrower prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Security Instrument, shall remain in full force and effect and may be exercised thereafter at Lender's option.

(m) Bankruptcy Acknowledgment. In the event the Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Security Instrument, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of the Bankruptcy Code so to permit Lender to pursue its rights and remedies against Borrower as provided under this Security Instrument and all other rights and remedies of Lender at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under § 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Borrower shall not contend or allege in any pleading or petition filed in any court proceeding that Lender does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

(n) Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Security Instrument, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Lender from the Property, or the Tax and Insurance Escrow Fund or the Replacement Escrow Fund (as defined in the Escrow Agreement) or proceeds from insurance which Lender elects to apply to the Debt pursuant to Article 3 hereof, shall be applied by Lender to the Debt in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees; (2) to that portion, if any, of the Debt with respect to which no person or entity has personal or entity liability for payment (the "**Exculpated Portion**"), and with respect to the Exculpated Portion as follows: first, to accrued but unpaid interest, second, to matured principal, and third, to unmatured principal in inverse order of maturity; (3) to the remainder of the Debt as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Debt, and third, to prepayment of the unmatured portion, if any, of principal of the Debt applied to installments of principal in inverse order of maturity; (4) the balance, if any or to the extent applicable, remaining after the full and final payment of the Debt to the holder or beneficiary of any inferior liens covering the Property, if any, in order of the priority of such inferior liens (Lender shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority); and (5) the cash balance, if any, to the Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt like any other payment. The balance of the Debt remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

Section 10.2 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times upon reasonable prior notice not to be less than forty-eight (48) hours.

Section 10.3 NOTICE OF CURE. In the event Borrower cures an Event of Default hereunder to the satisfaction of Lender in its sole discretion, Lender shall deliver a written acknowledgment of such cure to Borrower upon the written request of Borrower.

ARTICLE 11 - INDEMNIFICATION; SUBROGATION

Section 11.1 GENERAL INDEMNIFICATION.

(a) Subject to the limitations set forth in Section 10 of the Note, Borrower shall indemnify, defend and hold Lender harmless against: (i) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the Debt, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Debt, this Security Instrument, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Security Instrument (other than those arising solely from a state of facts that first came into existence after the earlier to occur of (i) the date the Loan is paid in full or (ii) the date Lender acquires title to the Property through foreclosure or a deed in lieu thereof) INCLUDING ANY LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS AND EXPENSES RESULTING FROM THE NEGLIGENCE OF LENDER OR TRUSTEE; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Lender by reason of Lender's willful misconduct or gross negligence.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the secured indebtedness, this Security Instrument, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Lender shall notify Borrower of such litigation or claim and Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any). The right to such attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Lender in any such litigation or claim of the type described in this Subsection 11.1(b), whether or not any such litigation or claim is prosecuted to judgment, shall be deemed to have accrued on the commencement of such claim or action and shall be enforceable whether or not such claim or action is prosecuted to judgment. If Lender commences an action against Borrower to enforce any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, Borrower shall pay to Lender its reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses. If Borrower breaches any term of this Security Instrument and such breach extends beyond applicable notice and/or cure

periods, Lender may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "**attorneys**" in this Subsection 11.1(b) and elsewhere in this Security Instrument shall include without limitation any attorney or law firm engaged by Lender and Lender's in-house counsel, and all references to "**fees and expenses**" in this Subsection 11.1(b) and elsewhere in this Security Instrument shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Lender's in-house counsel.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Security Instrument.

(d) Notwithstanding anything in this Section 11.1 or Section 11.4 to the contrary, Lender and Borrower agree that Lender's recourse shall be limited as provided in Section 10 of the Note, which is incorporated herein by reference.

Section 11.2 ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (as hereinafter defined) imposed upon or incurred by or asserted against any Indemnified Parties (other than those arising solely from a state of facts that first came into existence after Lender acquired title to the Property through foreclosure or a deed in lieu thereof), and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances (as hereinafter defined) in, on, above, or under the Property; (b) any past, present or future Release (as hereinafter defined) of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property in connection with any actual or proposed Remediation (as hereinafter defined) of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Law (as hereinafter defined) (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any material failure by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the

imposition, recording or filing or the future imposition, recording or filing of any Environmental Lien (as hereinafter defined) encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Section 11.2; (h) any material misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations under the Environmental Indemnity of even date executed by Borrower; and (i) any diminution in value of the Property to the extent actually realized by Lender in any way connected with any occurrence or other matter referred to in this Section 11.2.

The term "**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment or relating to any wrongful death, personal injury or property damage that is caused by or related to the presence, growth, proliferation, reproduction, dispersal, or contact with any biological organism or portion thereof, including molds or other fungi, bacteria or other microorganisms or any etiologic agents or materials. The term "**Environmental Law**" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "**Environmental Law**" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or the presence of biological or etiologic agents or materials or use, management, or maintenance of the Property.

The term "**Environmental Lien**" includes but is not limited to any lien or other encumbrance imposed pursuant to Environmental Law, whether due to any act or omission of Borrower or any other person or entity.

The term "**Hazardous Substances**" includes but is not limited to any and all substances, biological and etiologic agents or materials (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials,

extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a material negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paints, radon, radioactive materials, flammables and explosives, and any biological organism or portion thereof (living or dead), including molds or other fungi, bacteria or other microorganisms, or any etiologic agents or materials.

The term "**Indemnified Parties**" includes but is not limited to Lender, any person or entity who is or will have been involved in originating the Loan evidenced by the Note, any person or entity who is or will have been involved in servicing the Loan, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including but not limited to those who may acquire any interest in Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Property, whether during the term of the Loan or as part of or following foreclosure pursuant to the Loan) and including but not limited to any successors by merger, consolidation or acquisition of all or a substantial part of Lender's assets and business.

The term "**Losses**" includes but is not limited to any claims, suits, liabilities (including but not limited to strict liabilities), administrative or judicial actions or proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value to the extent actually realized by Lender, fines, penalties, charges, fees, expenses, costs of Remediation (whether or not performed voluntarily), judgments, award, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineer's fees, environmental consultants' fees and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings.

The term "**Release**" with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

The term "**Remediation**" includes but is not limited to any response, remedial, removal, or corrective action; any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit,

sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in this Article 11.

Section 11.3 DUTY TO DEFEND AND ATTORNEYS AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties, but only with respect to Losses expressly provided to be indemnified pursuant to this Security Instrument. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 11.4 SURVIVAL OF INDEMNITIES. Notwithstanding any provision of this Security Instrument or any other Loan Document to the contrary but subject as provided herein below, the provisions of Section 11.1 and Section 11.2, and Borrower's obligations thereunder, shall survive (a) the repayment of the Note, (b) the foreclosure of this Security Instrument, and (c) the release (or reconveyance, as applicable) of the lien of this Security Instrument. Provided, however, that notwithstanding any other provision hereof to the contrary, including expressly the prior sentence, Borrower's obligations under Section 11.2 shall be subject to and limited by the same terms and limitations set forth in Article 8 of the Environmental Indemnity, which are incorporated herein and made a part hereof.

ARTICLE 12 - SECURITY AGREEMENT

Section 12.1 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called in this paragraph the "**Collateral**"). Borrower hereby authorizes Lender to prepare and file, in form and substance satisfactory to Lender, such financing statements, continuation statements, other uniform commercial code forms and shall pay all actual and reasonable expenses and fees in connection with the filing and recording thereof, and such further assurances as Lender may from time to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted. This Security Instrument shall also be effective as a "fixture filing" as to property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Security Instrument. If an Event of Default shall occur, Lender, in addition to any other rights and remedies which they may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code,

including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon written request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity, structure, or jurisdiction or form of organization of any Borrower, such Borrower shall notify Lender thereof, and promptly after written request by Lender shall be authorized to prepare and file such Uniform Commercial Code forms as Lender may deem necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and Borrower shall pay all reasonable and actual expenses and fees in connection with such filing. Lender shall also be authorized to prepare and file such other additional Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and Borrower shall pay all expenses and fees in connection with the filing thereof, it being understood and agreed, however, that no such additional documents shall increase Borrower's obligations under the Note, this Security Instrument and the Other Loan Documents. Borrower hereby irrevocably authorizes Lender to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as Borrower's attorney-in-fact, in connection with the Collateral covered by this Security Instrument. Notwithstanding the foregoing, Borrower shall appear and defend in any action or proceeding which affects or purports to affect the Property and any interest or right therein, whether such proceeding affects title or any other rights in the Property (and in conjunction therewith, Borrower shall fully cooperate with Lender in the event Lender is a party to such action or proceeding).

Section 12.2 FIXTURE FILING INFORMATION. The information in the subsections below this paragraph is provided in connection with the filing of this Security Instrument as a financing statement as referred to above, and the Borrower hereby represents and warrants such information to be true and complete as of the date of this Security Instrument.

(a) The Borrower is the record owner of the real estate described in this Security Instrument. The name and mailing address of the record owner of the real estate described in this Security Instrument is set forth in the first paragraph of this Security Instrument.

(b) For purposes of the Uniform Commercial Code, Borrower is the Debtor. The name, mailing address, type of organization and state of formation of the Debtor (Borrower) is set forth in the first paragraph of this Security Instrument. The Organizational Identification Number of the Borrower is 6602810.

(c) For purposes of the Uniform Commercial Code, the Lender is the Secured Party. The name and mailing address of the Secured Party (Lender) is:

JPMorgan Chase Bank, N.A.
c/o Centerline Servicing Inc.
5221 North O'Connor Boulevard, Suite 600
Irving, Texas 75039
Attention: Wesley Wolf
Senior Vice President, Asset Management
Facsimile: (972) 868-5493

(d) This document covers goods which are or are to become fixtures.

ARTICLE 13 - WAIVERS

Section 13.1 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 13.2 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 13.3 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 13.4 INTENTIONALLY OMITTED.

Section 13.5 WAIVER OF TRIAL BY JURY.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH INCLUDING, BUT NOT LIMITED TO THOSE RELATING TO (A) ALLEGATIONS THAT A

PARTNERSHIP EXISTS BETWEEN LENDER AND BORROWER; (B) USURY OR PENALTIES OR DAMAGES THEREFOR; (C) ALLEGATIONS OF UNCONSCIONABLE ACTS, DECEPTIVE TRADE PRACTICE, LACK OF GOOD FAITH OR FAIR DEALING, LACK OF COMMERCIAL REASONABLENESS, OR SPECIAL RELATIONSHIPS (SUCH AS FIDUCIARY, TRUST OR CONFIDENTIAL RELATIONSHIP); (D) ALLEGATIONS OF DOMINION, CONTROL, ALTER EGO, INSTRUMENTALITY, FRAUD, REAL ESTATE FRAUD, MISREPRESENTATION, DURESS, COERCION, UNDUE INFLUENCE, INTERFERENCE OR NEGLIGENCE; (E) ALLEGATIONS OF TORTIOUS INTERFERENCE WITH PRESENT OR PROSPECTIVE BUSINESS RELATIONSHIPS OR OF ANTITRUST; OR (F) SLANDER, LIBEL OR DAMAGE TO REPUTATION. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 13.6 WAIVER OF AUTOMATIC OR SUPPLEMENTAL STAY. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower (other than an involuntary petition filed by or joined in by Lender), the Borrower shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Security Instrument, or any other rights that Lender has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Borrower shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Security Instrument against any guarantor of the Debt. The waivers contained in this paragraph are a material inducement to Lender's willingness to enter into this Security Instrument and Borrower acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Lender of Lender's rights and remedies against Borrower or any guarantor of the Debt.

ARTICLE 14 - NOTICES

Section 14.1 NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Borrower: Crystal Tree I Limited Partnership
5718 Westheimer, Suite 2100
Houston, Texas 77057
Attention: Alan E. Ferris
Facsimile No.: (713) 784-6048

If to Lender: JPMorgan Chase Bank, N.A.
c/o Centerline Servicing Inc.
5221 North O'Connor Boulevard, Suite 600
Irving, Texas 75039
Attention: Wesley Wolf
Senior Vice President, Asset Management
Facsimile No.: (972) 868-5493

With a copy to: Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
Attention: Barry A. Hines, Esq.
Facsimile No.: (502) 587-6391

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this subsection, the term "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

ARTICLE 15 - APPLICABLE LAW

Section 15.1 GOVERNING LAW; JURISDICTION. This Security Instrument shall be governed by and construed in accordance with applicable federal law and the laws of the state where the Property is located, without reference or giving effect to any choice of law doctrine. Borrower hereby irrevocably submits to the jurisdiction of any court of competent jurisdiction located in the state in which the Property is located in connection with any proceeding arising out of or relating to this Security Instrument.

Section 15.2 USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the

Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 15.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 16 - SECONDARY MARKET

Section 16.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Securities or any Rating Agency (as hereinafter defined) rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitor and the Property, whether furnished by Borrower, any Guarantor, any Indemnitor or otherwise, as Lender determines necessary or desirable. Provided, however, Lender will use best efforts not to use the existence of the Loan or the Debt and any such documents and information for promotional and advertising purposes. The term "**Rating Agency**" shall mean each statistical rating agency that has assigned a rating to the Securities.

ARTICLE 17 - COSTS

Section 17.1 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination (excluding the scheduled maturity of the Note) of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, (d) reviewing leases, easements, or any other document submitted by or on behalf of Borrower to Lender for review or approval, or (e) determining, at Borrower's request, Borrower's satisfaction of any condition under the Loan Documents (the occurrence of any of the above shall be called an "**Event**"). Borrower hereby acknowledges and agrees to pay, immediately, upon demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event. Notwithstanding the foregoing or any other term or provision contained in this Security Instrument, the Note, or any Other Loan Documents to the contrary, where the payment of fees by Borrower is required herein, such fees will be limited to actual, out-of-pocket costs paid to third parties (such as airline tickets and

hotels), and will be reasonable and customary according to industry standard. Further, notwithstanding the foregoing sentence, fees for the following will be waived (i) transfers under Sections 8.3(a) and (b) herein (the parties agree that fees arising under Section 8.3(c) are not waived and remain the obligations of Borrower); (ii) the review of reports, financial statements and other required information submitted by Borrower in connection with the Note, this Security Instrument and the Other Loan Documents, (iii) fees incurred in servicing cash accounts (other than fees specifically set forth in the Loan Documents), and (iv) routine inspections of the Property by Lender (when no Event of Default is then continuing) and other inspections not related to an extraordinary event such as Lender having a reasonable belief that the Property has been environmentally contaminated or a fire or other casualty.

Section 17.2 ATTORNEY'S FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other Loan Documents and (ii) the items set forth in Section 17.1 above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or Personal Property and/or collecting any amount payable or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date of payment or incurring by Lender until paid by Borrower.

ARTICLE 18 - DEFINITIONS

Section 18.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**," "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 19 - MISCELLANEOUS PROVISIONS

Section 19.1 NO ORAL CHANGE. This Security Instrument, the Note, and the Other Loan Documents and any provisions hereof or thereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 19.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 19.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 19.4 HEADINGS, ETC.. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 19.5 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 19.6 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 19.7 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Loan Documents and the performance and discharge of the Other Obligations.

Section 19.8 ENTIRE AGREEMENT. The Note, this Security Instrument and the Other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Loan Documents.

ARTICLE 20 - SPECIFIC NOTICE.

It is expressly agreed and understood that this Mortgage includes indemnification provisions (including, without limitation, the indemnification provisions in Article 11 hereof) which, in certain circumstances, could include an indemnification by Borrower of Lender from claims or losses arising as a result of Lender's own negligence.

ARTICLE 21 - SPECIAL STATE OF ALABAMA PROVISIONS

Section 21.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 22 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 22 shall control and be binding.

In addition to the rights and remedies set forth in Article 10 (Remedies), at the option of Lender this Security Instrument may be foreclosed in any manner now or hereafter provided by Alabama law, and Lender, or its agent, may sell the Property or any part of the Property at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale, together with a description of the Land, at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper of general circulation published in said county or counties, as may be required. Any such sale shall be held between the hours of 11 A.M. and 4 P.M. on the day designated for the exercise of the power to sell the Property. At any such sale, Lender may execute and deliver to the purchaser a conveyance of the Property or any part of the Property. In the event of any sale under this Security Instrument by virtue of the exercise of the powers of sale herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect. If only a portion of the Property is sold pursuant to the power of sale provided herein and if the Obligations remain outstanding, the portion of the Property not sold shall continue as security for the Obligations and Lender may exercise the power of sale granted herein with respect to the remaining portion of the Property.

Any sale may be adjourned by Lender, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by
Borrower effective the day and year first above written.

BORROWER:

CRYSTAL TREE I LIMITED PARTNERSHIP, a
Texas limited partnership

By: CRYSTAL TREE CORPORATION, a Texas
corporation, General Partner

By: 
Alan E. Ferris, President

STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared Alan E. Ferris,
President of CRYSTAL TREE CORPORATION, a Texas corporation and general partner of
CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership, known to me to be
the person whose name is subscribed to the foregoing instrument, and acknowledged to me that
he executed the same for the purposes and consideration therein expressed, in the capacity
therein stated, and as the act and deed of said corporation on behalf or said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this June 2nd 2007.

[NOTARY SEAL]


Notary Public in and for the State of Texas

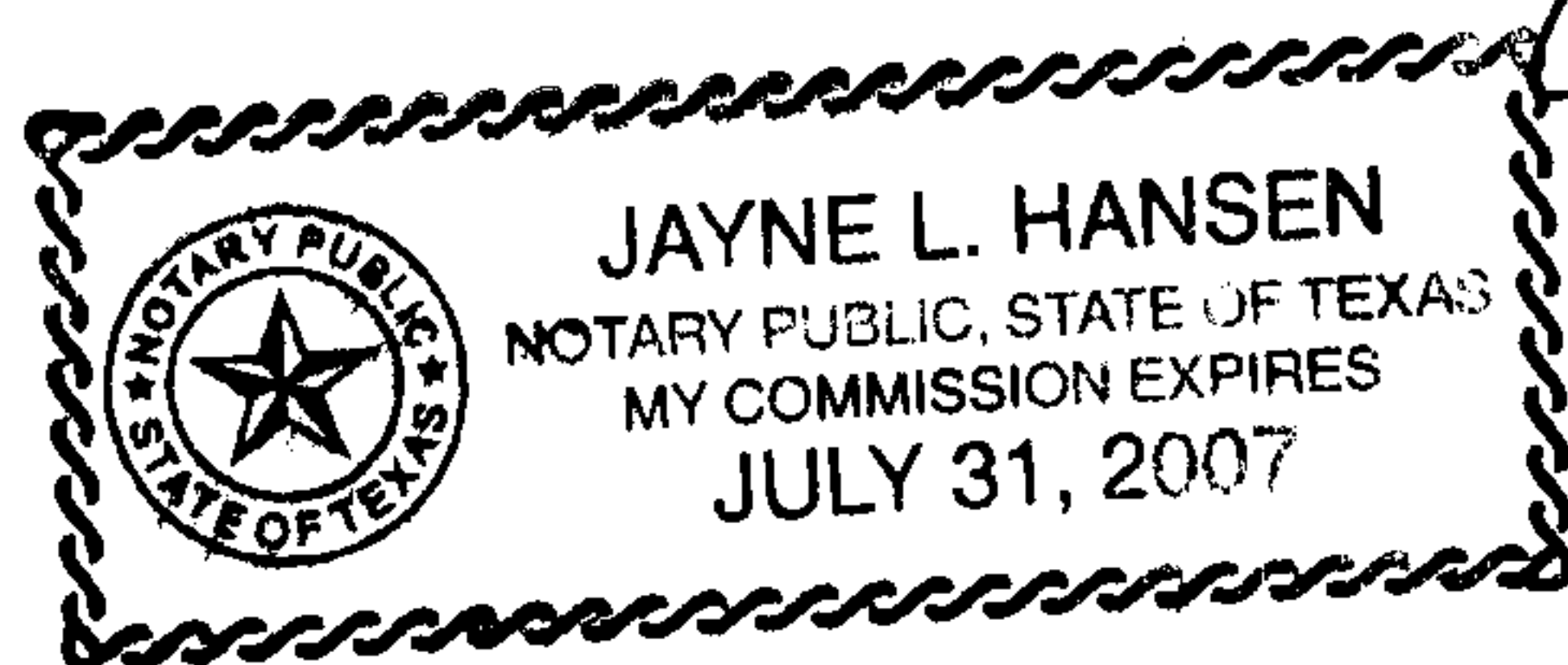


EXHIBIT A

(Description of Land)

All of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being described as follows:

PARCEL I

LOT 1

Lot 1, Kenley survey, as recorded in Map Book 24, page 90, in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

A parcel of land situated in the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 25, Township 18 South, Range 2 West and the N.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama being more particularly described as follows:

Begin at the Northwest corner of the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 25, Township 18 South, Range 2 West and run South along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 684.25 feet to a point; thence $90^{\circ} 00'$ to the left in an Easterly direction a distance of 266 feet, more or less, to a point on the edge of a lake; thence in a generally Southeasterly direction along the edge of the lake a distance of 1960 feet, more or less, to a point on a line lying 30 feet West of and parallel to the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence in a Northerly direction along said line a distance of 113 feet, more or less, to a point; thence $90^{\circ} 00'$ to the right in an Easterly direction a distance of 30.00 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $90^{\circ} 00'$ to the left in a Northerly direction along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1165.03 feet to the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $87^{\circ} 54' 49''$ to the left in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1320.29 feet to the POINT OF BEGINNING.

LOT 2

Lot 2, Kenley Survey, as recorded in Map Book 24, page 90, in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

A parcel of land situated in the N.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 36, and the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 25, both in Township 18 South, Range 2 West, Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest corner of the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 25, Township 18 South, Range 2 West and run in a Southerly direction along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 684.25 feet to the POINT OF BEGINNING; thence $90^{\circ} 00'$ to the left in an Easterly direction a distance of 266 feet, more or less, to a point on the edge of a lake; thence in a generally Southeasterly direction a distance of 1960 feet, more or less, to a point on a line lying 30.00 feet West of and parallel to the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence in a Northerly direction along said line a distance of 113 feet, more or less, to a point; thence $90^{\circ} 00'$ to the right in an Easterly direction a distance of 30.00 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $90^{\circ} 00'$ to the right in a Southerly direction along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 150.00 feet to the Southeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $0^{\circ} 2' 48''$ to the right in a Southerly direction a distance of 313.00 feet to a point; thence $119^{\circ} 46' 09''$ to the right in a Northwesterly direction a distance of 676.92 feet to a point; thence $76^{\circ} 15' 36''$ to the left in a Southwesterly direction a distance of 166.93 feet to a point; thence $68^{\circ} 38' 40''$ to the right in a Northwesterly direction a distance of 157.66 feet to a point; thence $80^{\circ} 48''$ to the left in a Southwesterly direction a distance of 189 feet, more or less, to a point on the edge of a lake; thence in a generally Northwesterly direction along the edge of the lake a distance of 620 feet, more or less, to a point; thence in a Westerly direction a distance of 83 feet, more or less, to a point on the West line of the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 25, Township 18 South, Range 2 West; thence $90^{\circ} 00'$ to the right in a Northerly direction along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance for 463.17 feet to the point of beginning.

PARCEL II

A 60 foot non-exclusive roadway easement for ingress and egress to East Inverness Parkway as described in the instruments recorded in Real Volume 13, page 426; Real Volume 28, page 673; Real Volume 30, page 85 and Deed Book 342, page 479, in the Probate Office of Shelby County Alabama being situated in Shelby County, Alabama.

PARCEL III

An easement for the right to construct and maintain a limited access roadway and temporary construction access, as set out in the Access Roadway Easement dated December 7, 1995 from The Water Works and Sewer Board of the City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument No. 1995-36410 in the Probate Office of Shelby County, Alabama, and subject to the terms, covenants, and conditions therein, over and across the following described parcel:

Begin at the Southeast corner of the N.W. ¼ of the S.E. ¼ of Section 25, Township 18 South, Range 2 West and run in a Westerly direction along the South line of said 1/4-1/4 section a distance of 80.00 feet to a point; thence right in a Northeasterly direction a distance of 93 feet, more or less, to a point on the East line of said 1/4-1/4 section; said point being 50.04 feet Northerly of the Southeast corner of said 1/4-1/4 section; thence right in a Southerly direction along the East line of said 1/4-1/4 section a distance of 50.04 feet to the POINT OF BEGINNING; being situated in Shelby County, Alabama.

PARCEL IV

An easement for, and right to construct and maintain, a dam embankment as set out in the Dam Embankment Easement dated December 7, 1995, from The Water Works and Sewer Board of the City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument No. 9514/1348 in the Probate Office of Jefferson County, Alabama, and subject to the terms, covenants, and conditions therein, over and across the following described parcel:

Commence at the Southeast corner of the S.E. ¼ of the S.W. ¼ of Section 25, Township 18 South, Range 2 West, and run in a Northerly direction a distance of 34.86 feet to the POINT OF BEGINNING; thence continue in a Northerly direction along the last stated course a distance of 558.69 feet to a point; thence 170° 11' 13" to the left in a Southwesterly direction a distance of 215.83 feet to a point; thence 17° 21' 18" to the left in a Southeasterly direction a distance of 319.22 feet to the POINT OF BEGINNING, being situated in Jefferson County, Alabama.

PARCEL V

A perpetual, non-exclusive easement for operation of the drain valve and for maintenance of the Dam Embankment as set out in the Extended Dam Embankment Easement Agreement, dated August 27, 1998 from The Water Works and Sewer Board of the City of Birmingham, a public corporation, to Crystal Tree I, a Texas Limited Partnership, recorded as Instrument Number 9811/2851 in the Probate Office of Jefferson County, Alabama and subject to the indemnity set out therein, over and across the following described parcel:

Commence at the Southeast corner of the S.E. ¼ of the S.W. ¼ of Section 25, Township 18 South, Range 2 West and run in a Northerly direction a distance of 34.86 feet to the POINT OF BEGINNING; thence 7° 32' 31" to the left in a Northwesterly direction a distance of 319.22 feet to a point; thence 17° 21' 18" to the right in a Northeasterly direction a distance of 245.83 feet to a point on the East line of said 1/4-1/4 section; thence 9° 48' 47" to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 205.36 feet to a point; thence 170° 11' 13" to the left in a Southwesterly direction a distance of 453.52 feet to a point; thence 17° 21' 18" for a distance of 319.78 feet to a point; thence 82° 13' 41" to the left in an Easterly direction a distance of 35.32 feet to the POINT OF BEGINNING; being situated in Jefferson County, Alabama.

PARCEL VI

Embankment Access & Sewer Limit Easement

The Embankment Access Easement, a perpetual, non-exclusive, easement for vehicular and pedestrian ingress and egress, as set out in the Embankment Access and Sewer Line Easement Agreement by and between The Waterworks and Sewer Board of the City of Birmingham and Crystal Tree I Limited Partnership, dated August 27, 1998, recorded as Instrument Number 9811/2853 in the Probate Office of Jefferson County, Alabama and Instrument Number 1998-33769 in the Probate Office of Shelby County, Alabama, subject to the terms, indemnity, and provisions therein, said easement more particularly described as follows:

Commence at the Northwest corner of the N.W. ¼ of the N.E. ¼ of Section 36, Township 18 South, Range 2 West, and run South along the West line of said 1/4-1/4 section a distance of 368.81 feet to a point; thence 87° 59' 25" to the left in an Easterly direction a distance of 213.62 feet to a point; thence 106° 14' 58" to the left in a Northwesterly direction a distance of 17.45 feet to the P.C. (point of curve) of a curve to the left having a radius of 400.00 feet and a central angle of 20° 06' 01"; thence along the arc of said curve in a Northwesterly direction a distance of 140.33 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Northwesterly direction a distance of 88.90 feet to the P.C. (point of curve) of a curve to the right having a radius of 296.75 feet and a central angle of 31° 37' 25"; thence along the arc of said curve in a Northwesterly direction a distance of 163.79 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Northwesterly direction a distance of 89.83 feet to a point; thence 87° 10' 23" to the left in a Westerly direction a distance of 46.78 feet to the POINT OF BEGINNING; thence continue along the last stated course a distance of 87.97 feet to the P.C. (point of curve) of a curve to the right having a radius of 117.01 feet and central of 56° 19' 33"; thence along the arc of said curve in a Northwesterly direction a distance of 114.93 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 62.00 feet and a central angle of 53° 11' 34"; thence along the arc of said curve in a Northwesterly, Northerly and Northeasterly direction a distance of 57.56 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 148.31 feet and a central angle of 23° 34' 46"; thence along the arc of said curve in a Northeasterly direction a distance of 61.04 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Northeasterly direction a distance of 40.03 feet to the P.C. (point of curve) of a curve to the right having a radius of 150.00 feet and a central angle of 24° 17' 46"; thence along the arc of said curve in a Northeasterly direction a distance of 63.61 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 70.00 feet and a central angle of 61° 27' 41"; thence along the arc of said curve in a Northeasterly direction a distance of 75.09 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Northeasterly direction a distance of 71.29 feet to the P.C. (point of curve) of a curve to the right having a radius of 335.00 feet and a central angle of 9° 46'; thence along the arc of said curve in a Northeasterly direction a distance of 57.10 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 250.47 feet and a central angle of 22° 45' 53"; thence along the arc of said curve in a Northeasterly, Northerly and Northwesterly direction a distance of 99.52 feet to the POINT OF ENDING.

Being assessed as tax parcel numbers 02-7-25-0-000-005.001; 02-7-25-0-000-005.000; 02-7-25-0-000-004.001; 02-7-36-0-001-004.003 and 02-7-25-0-000-003.000, which numbers cover no other lands.

EXHIBIT B

(Form of Subordination and Intercreditor Agreement)

INTERCREDITOR AGREEMENT

by and between

as Senior Lender

and

[_____]

as Junior Lender

Dated as of _____, 20__

Premises:

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement"), dated as of _____, 20__ by and between _____, a _____, having an office at _____, _____, _____ ("Senior Lender"), and _____ a _____, having an office at _____, ("Junior Lender").

RECITALS

WHEREAS, Senior Lender has made a loan to _____ ("Original Borrower") in the original principal amount of \$ _____ (the "Senior Loan"), which Senior Loan is evidenced by a certain Promissory Note, dated as of _____, 2007, made by Original Borrower to Senior Lender in the amount of the Senior Loan (the "Senior Note"), and secured by, among other things, a Mortgage and Security Agreement or a Deed of Trust and Security Agreement, dated as of _____, 20__, made by Original Borrower in favor of Senior Lender (the "Senior Mortgage"), which Senior Mortgage encumbers the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the "Premises"); and

WHEREAS, Original Borrower has transferred the Premises pursuant to Article 8 of the Senior Mortgage and _____, as transferee, ("Borrower") has assumed Original Borrower's obligations under the Senior Loan Documents (as such term is hereinafter defined); and

WHEREAS, Junior Lender has loaned or is about to loan to Borrower the aggregate amount of \$ _____ (the "Junior Loan"), which indebtedness is evidenced by a certain Promissory Note, dated as of _____, 2007, made by Borrower in favor of Junior Lender in the amount of the Junior Loan (the "Junior Note"), and secured by, among other things, a Mortgage and Security Agreement or a Deed of Trust and Security Agreement, dated as of _____, 2007, from Borrower in favor of Senior Lender (the "Junior Mortgage"), which Junior Mortgage encumbers the Premises; and

WHEREAS, Senior Lender and Junior Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents and the Junior Loan Documents (as such term is hereinafter defined) on the terms and conditions hereinbelow set forth, and to evidence certain agreements with respect to the relationship between the Junior Loan and the Junior Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

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

Section 1.1 Certain Definitions; Rules of Construction.

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

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

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

“Award” has the meaning provided in Section 9(d) hereof.

“Borrower” has the meaning provided in the Recitals hereto.

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

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“Certificates” means any securities (including all classes thereof) representing beneficial ownership interests in the Senior Loan or in a pool of mortgage loans including the Senior Loan issued in connection with a Securitization of the Senior Loan.

“Continuing Senior Loan Event of Default” means an Event of Default under the Senior Loan for which (i) Senior Lender has provided notice of such Event of Default to Junior Lender in accordance with Section 11 of this Agreement and (ii) the cure period provided to Junior Lender in Section 11 of this Agreement has expired.

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

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including, without limitation, the taking of possession or control of the Premises, (ii) acceleration of, or demand or action taken in order to collect, all or any

indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts), (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises or (iv) exercise of any right or remedy available to Junior Lender under the Junior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises.

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

“Junior Lender” has the meaning provided in the first paragraph of this Agreement.

“Junior Loan” has the meaning provided in the Recitals hereto.

“Junior Mortgage” has the meaning provided in the Recitals hereto.

“Junior Loan Documents” means the Junior Mortgage and the Junior Note together with all documents and instruments set forth on Exhibit C hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

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

“Junior Note” has the meaning provided in the Recitals hereto.

“Monetary Cure Period” has the meaning provided in Section 11 hereof.

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

“Premises” has the meaning provided in the Recitals hereto.

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

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises from forfeiture, casualty, loss or waste, including, with respect to the Junior Loan, amounts advanced by Junior Lender pursuant to Section 11 hereof.

“Qualified Manager” shall mean a property manager of the Premises which (1) is a reputable management company having at least five (5) years’ experience in the management of commercial properties with similar uses as the Premises and in the jurisdiction or similar jurisdictions in which the Premises are located, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least (5) properties of the same property type as the Premises, (iii) at the time of its engagement as property manager has leasable square footage of the same property type as the Premises equal to the lesser of (A) 1,000,000 leasable square feet and (B) five (5) times the leasable square feet of the Premises and (iv) is not the subject of a bankruptcy or similar insolvency proceeding.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“Rating Agencies” shall mean, prior to a Securitization, each of S&P, Moody’s Investors Service, Inc., and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been designated by Senior Lender and, after a Securitization, shall mean any of the foregoing that have rated any of the Certificates.

“Rating Agency Confirmation” means each of the Rating Agencies shall have confirmed in writing that the occurrence of the event with respect to which such Rating Agency Confirmation is sought shall not result in a downgrade, qualification or withdrawal of the applicable rating or ratings ascribed by such Rating Agency to any of the Certificates then outstanding. In the event that no Certificates are outstanding or the Senior Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall require the consent of the Senior Lender, which consent shall not be unreasonably withheld or delayed.

“Required Special Servicer Rating” means (i) a rating of “CSS1” in the case of Fitch, (ii) on S&P’s Select Servicer List as a U.S. Commercial Mortgage Special Servicer in the case of S&P and (iii) in the case of Moody’s, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination, and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Securitization” means the sale or securitization of the Senior Loan (or any portion thereof) in one or more transactions through the issuance of securities, which securities may be assigned ratings by the Rating Agencies.

“Senior Lender” has the meaning provided in the first paragraph of this Agreement.

“Senior Loan” has the meaning provided in the Recitals hereto.

“Senior Loan Default Notice” has the meaning provided in Section 11 hereof.

“Senior Loan Documents” means the Senior Note and the Senior Mortgage, together with the instruments and documents set forth on Exhibit B hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

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

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

“Senior Mortgage” has the meaning provided in the Recitals hereto.

“Senior Note” has the meaning provided in the Recitals hereto.

[“SPE Constituent Entity” means _____ **[list any entity required to be a single purpose entity pursuant to the terms of the Senior Loan Documents]**]

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

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

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

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

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

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

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

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

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

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

Section 1.2 Approval of Loans and Loan Documents.

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

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Junior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Junior Loan Documents, (ii) the execution, delivery and performance of the Junior Loan Documents will not constitute a default or an event which, with

the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Junior Lender is under no obligation or duty to, nor has Junior Lender represented that it will, see to the application of the proceeds of the Junior Loan by Borrower or any other Person to whom Junior Lender disburses such proceeds and (iv) any application or use of the proceeds of the Junior Loan for purposes other than those provided in the Junior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Junior Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender's consent to subordinate financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Junior Loan Documents or the making of the Junior Loan, have been either satisfied or waived.

Section 1.3 Representations and Warranties.

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

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Junior Loan Documents as of the date hereof. To Junior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Junior Loan Documents.

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

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

(iv) Junior Lender has, independently and without reliance upon Senior Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

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

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

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

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

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

(x) Junior Lender is the same as Original Borrower and all of the direct and indirect owners of interests in Junior Lender are the same as all of the direct and indirect owners of interest in Original Borrower.

(xi) The Junior Loan is not cross-defaulted with any loan other than the Senior Loan.

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

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

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

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

(iv) Senior Lender has, independently and without reliance upon Junior Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

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

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

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

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

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

Section 1.4 Transfer of Junior Loan or Senior Loan.

(a) Junior Lender shall not Transfer all or any of the Junior Loan or any interest therein.

(b) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein, and notwithstanding any such Transfer or subsequent Transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Junior Loan and the Junior Loan Documents in accordance with the terms and provisions of this Agreement.

(c) Except to the extent transfers are excluded and thus allowed or affirmatively permitted for Original Borrower under Sections 8.3(a) and (b) of the Senior Mortgage, which transfers are likewise excluded and thus allowed or affirmatively permitted hereunder, none of the direct or indirect ownership interest in Junior Lender shall be transferred to any party during the term of the Junior Loan.

Section 1.5 Enforcement Action by Junior Lender.

(a) Junior Lender shall have the right to commence an Enforcement Action upon the occurrence of a default under the Junior Loan Documents (beyond all applicable notice and cure periods set forth in the Junior Loan Documents); provided, however, in connection with any such Enforcement Action, Junior Lender shall not take any action to invalidate or discharge the lien of the Senior Mortgage or otherwise claim or allege that the Senior Loan Documents are not enforceable, in whole or in part. If any such Enforcement Action shall result in a Transfer of title to the Premises, then (i) the transferee of title to the Premises shall be Junior Lender, (ii) the Premises will be managed by Junior Lender, an Affiliate of Junior Lender reasonable satisfactory to Senior Lender (provided however, if the Person which will be managing the Premises is the same Person which managed the Premises for Original Borrower then such Person is hereby deemed approved by Senior Lender) or by a Qualified Manager promptly after the Transfer of title to the Premises, and (iii) the transferee shall take title to the Premises subject to the lien of the Senior Mortgage and the Senior Loan Documents and the transferee shall assume the obligations under the Senior Loan Documents pursuant to Section 8.3(c) of the Senior Mortgage; provided, however, so long as there has been no material adverse change with respect to the Original Borrower, (except for excluded, and thus allowed, or permitted transfers as referred to in Section 4[c] above), subsections (i) and (v) of Section 8.3(c) are deemed waived or satisfied, and subsection (vi) of Section 8.3(c) will be limited such that the assumption agreement will not amend or modify the Senior Loan Documents as they exist at that time and any substitute guaranty will be substantially identical to the guaranty executed by the Original Principals. Further, any such transfer to the Junior Lender will not count as one of the two (2) assumptions provided for in Section 8.2(c) of the Senior Mortgage. The Junior Lender shall provide notice of the Transfer and an officer's certificate from an officer of Junior Lender certifying that all conditions set forth in this Section 5(a) have been satisfied (except to the extent waived or deemed satisfied as provided herein) to Senior Lender upon consummation of any Transfer of the Premises pursuant to this Section 5(a). Senior Lender may request reasonable evidence that the foregoing requirements have been satisfied.

(b) In the event Junior Lender commences any Enforcement Action and/or acquires title to the Premises, Senior Lender hereby acknowledges and agrees that any such action shall not, by itself, constitute a breach or default under the Senior Loan Documents, provided the conditions in this Section 5 are met.

(c) Except as set forth in Section 5(b) above, nothing contained herein shall limit or restrict the right of Senior Lender to declare an Event of Default under the Senior Loan Documents after the expiration of applicable notice and cure periods (including the notice and cure periods set forth in this Agreement) or to exercise its rights and remedies, in law or in equity, or otherwise, under the Senior Loan Documents following such Event of Default.

(d) Anything contained in this Agreement to the contrary notwithstanding, to the extent not paid by Borrower, Junior Lender shall pay all costs and expenses incurred by Lender (including, without limitation, reasonable attorneys' fees) in connection with any Enforcement Action commenced by Junior Lender.

Section 1.6 Notice of Rating Confirmation. Junior Lender promptly shall notify Senior Lender of any intended action relating to the Junior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Senior Lender in obtaining such confirmation. Senior Lender promptly shall notify Junior Lender of any intended action relating to the Senior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Junior Lender in obtaining such confirmation. Junior Lender shall pay all fees and expenses of the Rating Agencies in connection with any request for any Rating Agency Confirmation pursuant to this Agreement.

Section 1.7 Modifications, Amendments, Etc.

(a) Senior Lender shall have the right without the consent of Junior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Senior Loan Modification") of the Senior Loan or the Senior Loan Documents provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting personal liability under the Senior Loan Documents and/or limiting transfers of interests in the Borrower or the Premises, (vi) cross default the Senior Loan with any other indebtedness, (vii) consent to a higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Senior Loan, (viii) obtain any contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises, (or other similar equity participation), or (ix) amend or modify any of the defeasance provisions contained in the Senior Note and/or extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such

prepayment fee, premium or yield maintenance charge; provided, however, in no event shall Senior Lender be obligated to obtain Junior Lender's consent to a Senior Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or indulgence relating to the Senior Loan during the existence of a Continuing Senior Loan Event of Default, except that under no conditions shall clause (i) (with respect to increase principal amount only), or clause (ix) be modified without the written consent of Junior Lender. In addition and notwithstanding the foregoing provisions of this Section 7, any amounts funded by the Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Senior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(a).

(b) Junior Lender shall have the right without the consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Junior Loan Modification") of the Junior Loan or the Junior Loan Documents provided that no such Junior Loan Modification shall (i) increase the interest rate or principal amount of the Junior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Junior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Junior Loan (except that Junior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Junior Loan Documents), (iv) convert or exchange the Junior Loan into or for any other indebtedness or subordinate any of the Junior Loan to any indebtedness of Borrower, (v) provide for any additional contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises or (vi) cross default the Junior Loan with any other indebtedness. Notwithstanding anything to the contrary contained herein, if an Event of Default exists under the Junior Loan Documents, Junior Lender shall be permitted to modify or amend the Junior Loan Documents in connection with a work-out or other surrender, compromise, release, renewal or modification of the Junior Loan except that under no conditions shall clause (i), with respect to increases in principal amounts only, clause (ii), clause (iii) (with respect to shortening the maturity only), clause (iv) or clause (v) be modified without the written consent of the Senior Lender. In addition and notwithstanding the foregoing provisions of this Section 7(b), any amounts funded by the Junior Lender under the Junior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Junior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(b).

(c) Senior Lender shall deliver to Junior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender) within a reasonable time after any of such applicable instruments have been executed by Senior Lender.

(d) Junior Lender shall deliver to Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Junior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Junior

Lender) within a reasonable time after any of such applicable instruments have been executed by Junior Lender.

Section 1.8 Subordination of Junior Loan and Junior Loan Documents.

(a) Junior Lender hereby subordinates and makes junior the Junior Loan, the Junior Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this Section 8(a).

(b) Every document and instrument included within the Junior Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

Section 1.9 Payment Subordination.

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

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 9(a), provided that no Event of Default shall then exist under the Senior Loan Documents, Junior Lender may accept payments of any amounts due and payable from time to time which Borrower is obligated to pay Junior Lender in accordance with

the terms and conditions of the Junior Loan Documents and Junior Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Junior Lender may take any Enforcement Action which is permitted under Section 5 hereof; provided, however, that (i) Junior Lender shall, prior to commencing any Enforcement Action, give the Senior Lender written notice of the default which would permit Junior Lender to commence such Enforcement Action and (ii) Junior Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Enforcement Action.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"). To the extent not required to be (i) paid to and used by Borrower to restore the Premises and/or (ii) paid to Senior Lender under the terms of the Senior Loan Documents, the amount of the Award is in excess of such amounts shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Junior Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Junior Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Junior Lender.

Section 1.10 Rights of Subrogation; Bankruptcy.

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

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Junior Lender shall entitle Junior Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Junior Lender agrees that, except with respect to the enforcement of its remedies under the Junior Loan Documents permitted hereunder, prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

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

(d) In connection with any Proceeding (i) Junior Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against the Borrower [or any SPE Constituent Entity] without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Junior Lender's lien encumbering the Premises; (ii) Senior Lender may vote in any such Proceeding any and all claims of Junior Lender, and Junior Lender hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Junior Lender in connection with any case by or against the Borrower [or any SPE Constituent Entity] in any Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Junior Lender only if the proposed plan would result in Senior Lender being "impaired" (as such term is defined in the United States

Bankruptcy Code) and (iii) Junior Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

Section 1.11 Rights of Cure. Prior to Senior Lender commencing any Enforcement Action under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit the Senior Lender to commence such Enforcement Action to Junior Lender, whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "Senior Loan Default Notice") and shall permit Junior Lender an opportunity to cure such default in accordance with the provisions of this Section 11. If the default is a monetary default relating to a liquidated sum of money, Junior Lender shall have until three (3) Business Days after the later of (i) the giving by Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower's cure provision, if any, (a "Monetary Cure Period") to cure such monetary default; provided, however, in the event it elects to cure any such monetary default, Junior Lender shall (x) defend and hold harmless Senior Lender for all cost, expenses, losses, liabilities, obligations, damages, penalties, costs, and disbursements imposed on, incurred by or asserted against Senior Lender due to or arising from such Monetary Cure Period and (y) without duplication of the foregoing, reimburse the Senior Lender for any interest charged by Senior Lender on any required (pursuant to applicable pooling and servicing agreement) advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances. Junior Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than two consecutive months unless Junior Lender has commenced and is continuing to diligently pursue an Enforcement Action pursuant to Section 5 hereof. If the default is of a non-monetary nature, Junior Lender shall have the same period of time as the Borrower under the Loan Documents to cure such non-monetary default. All cure rights granted to the Junior Lender hereunder shall automatically terminate upon occurrence of any Proceeding with respect to the Borrower.

Section 1.12 [Intentionally Omitted].

Section 1.13 [Intentionally Omitted].

Section 1.14 [Intentionally Omitted].

Section 1.15 [Intentionally Omitted].

Section 1.16 [Intentionally Omitted].

Section 1.17 Obligations Hereunder Not Affected.

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

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

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

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

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

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

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

Section 1.18 Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 18. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) three (3) Business Days after the date mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Junior Lender:

Attention: _____

Telecopy: () _____-

With a copy to:

Attention: _____
Telecopy: () _____ - _____


20070620000290540 88/91 \$282.00
Shelby Cnty Judge of Probate, AL
06/20/2007 03:11:04PM FILED/CERT

To Senior Lender:

Attention: _____
Telecopy: () _____ - _____

With a copy to:

Attention: _____
Telecopy: () _____ - _____

Section 1.19 Estoppel.

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

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

Section 1.20 Further Assurances. So long as all or any portion of the Senior Loan and the Junior Loan remains unpaid and the Senior Mortgage encumbers the Premises, Junior Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

Section 1.21 No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought. If any Certificates are outstanding, this Agreement shall not be amended unless a Rating Agency Confirmation has been obtained with respect to such amendment.

Section 1.22 Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Junior Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Junior Lender.

Section 1.23 Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

Section 1.24 Legal Construction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

Section 1.25 No Waiver; Remedies. No failure on the part of the Senior Lender or Junior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 1.26 No Joint Venture. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

Section 1.27 Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

Section 1.28 Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Junior Loan Documents, the terms and conditions of this Agreement shall control.

Section 1.29 No Release. Nothing herein contained shall operate to release Borrower from (a) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower under the Senior Loan Documents or to release Borrower from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Junior Loan Documents or (y) any liability of Borrower under the Junior Loan Documents.

Section 1.30 Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the earliest of (a) payment in full of the Senior Loan, (b) transfer of the Premises by foreclosure of the Senior Mortgage or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, or (c) payment in full of the Junior Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

Section 1.31 Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any

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

Section 1.32 Expenses.

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

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

Section 1.33 Injunction. Senior Lender and Junior Lender each acknowledge (and waive any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by either Senior Lender or Junior Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Junior Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party.

Section 1.34 Mutual Disclaimer.

(a) Each of Senior Lender and Junior Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Junior Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Junior Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Junior Lender deem relevant. Each of Senior Lender and Junior Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Junior Loan or the Junior Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of

Senior Lender and Junior Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Junior Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Junior Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Junior Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Junior Loan).

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

[NO FURTHER TEXT ON THIS PAGE]