

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address Daniel A. Lev (CA Bar No. 129622) <b>SulmeyerKupetz, A Professional Corporation</b> 333 S. Hope Street, Suite 3500 Los Angeles, California 90071 Telephone: 213.626.2311 Facsimile: 213.629.4520 Email: dlev@sulmeyerlaw.com</p> <p>and</p> <p>Ronald Richards (CA Bar No. 176246) Law Offices of Ronald Richards &amp; Associates, APC P.O. Box 11480 Beverly Hills, California 90213 Telephone: 310.556.1001 Facsimile: 310.277.325 Email: ron@ronaldrichards.com</p> <p><input type="checkbox"/> <i>Movant appearing without an attorney</i> <input checked="" type="checkbox"/> <i>Attorney for Movant</i></p>	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION</b>	
<p>In re:  COLDWATER DEVELOPMENT LLC  Jointly Administered With:  LYDDA LUD, LLC,  [x] Affects Both Debtors [ ] Affects Coldwater Development LLC only [ ] Affects Lydda Lud, LLC only</p>	<p>CASE NO.: 2:21-bk-10335-BB (Lead Case) CHAPTER: 11</p>
	<p><b>NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (REAL PROPERTY)</b></p>
Debtor(s).	<p>DATE: March 30, 2021 TIME: 10:00 a.m. COURTROOM: 1539</p>
<b>Movant: GIVE BACK, LLC</b>	

# **MEMORANDUM OF POINTS AND AUTHORITIES**

Give Back, LLC ("Give Back"), hereby submits the following memorandum of points and authorities in support of the foregoing "Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with supporting declarations) (Real Property)" (the "Motion").<sup>1</sup>

1

## INTRODUCTION

After defaulting on Give Back's fully-matured, almost \$30,000,000 secured claim, Coldwater Development LLC ("Coldwater") and Lydda Lud, LLC ("Lydda" and together with Coldwater, the "Debtors"), commenced these bankruptcy cases to block Give Back's impending foreclosure sale to pursue an unattainable plan to refinance the secured debt and develop six lots of environmentally sensitive land in Beverly Hills, California (collectively, the "Properties").<sup>2</sup> But with no equity in the Properties, no demonstrated means to finance development of the Properties, let alone repay Give Back's secured debt (which compounds at a monthly clip in excess of \$365,000),<sup>3</sup> and no ability to provide Give Back any form of adequate protection, the automatic stay must be lifted to permit Give Back to exercise its rights and protect its interests.

In their attempt to extend the protections of the automatic stay and further stave off the inevitable foreclosure, the Debtors surely will point to their completely bogus \$131 million valuation of the Properties to contend that Give Back enjoys an enormous equity cushion. That valuation, however, is wildly excessive and defies credulity. If the Properties truly had a value remotely close to that figure, the Debtors would have been able to refinance and repay Give Back long ago, and avoid this entire charade of a case.

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

<sup>2</sup> The six lots in question bear APN Nos. 4387-020-001, 4387-020-009, 4387-021-018, 4387-021-019, 4387-022-001, and 4387-022-002. Lydda owns the lots bearing APN Nos. 4387-020-001, 4387-020-009, 4387-022-001, and 4387-022-002, and Coldwater owns the lots bearing APN Nos. 4387-021-018 and 4387-021-019.

<sup>3</sup> Given that the interest on Give Back's debt compounds, the total amount of monthly interest that accrues increases every month the Debtors leave the debt unpaid. As a result, just between March and July 2021,

1 altogether. In fact, Give Back's debt is only 20% of the of the fabricated appraisal which  
2 was based on an appraisal for six purported luxury estate homes. Yet, despite the  
3 benefits of an extended maturity date, a forbearance agreement, and now the automatic  
4 stay, the Debtors still struggle to secure any financing. Indeed, the Debtors offer nothing  
5 but the empty unsubstantiated statements of counsel that the Debtors "expect" to receive  
6 a proposal for financing "in the near future."<sup>4</sup>

7 The Debtors' demonstrated inability to procure any refinancing by now (or  
8 ever) is not surprising given the actual market value of the Properties (as well as Hadid's  
9 history of misconduct and mismanagement of other real estate projects).<sup>5</sup> As detailed in  
10 the recent appraisal conducted by Ronald L. Buss, MAI (the "Buss Appraisal"), the true  
11 value of the Properties is only \$24,500,000, not \$131,000,000.<sup>6</sup> This leaves Give Back  
12 with no equity cushion at all to protect its quickly eroding position which is occurring from  
13 a dramatic monthly interest accrual and unpaid property taxes.<sup>7</sup> And with Coldwater and

---

15 the total monthly accrual of interest ranges from \$368,812 to \$388,827.

16 <sup>4</sup> The mythical refinancing transaction was hinted at in the "Debtors and Debtors-in-Possession's Joint  
17 Status Chapter 11 Status Report in Advance of Initial Status Conference" [Docket No. 39] (the "Status  
18 Report"), 3:14-15. The Debtors' controlling member, Mohamed Hadid ("Hadid"), reiterated this plan during  
19 the first meeting of creditors conducted on February 23, 2021. However, despite questions from the United  
20 States Trustee and Give Back, Hadid refused to state who he has received letters of intent from, what the  
21 terms of the proposed financing transactions are, or when, if ever, the refinancing transactions will be  
22 brought to the Court for approval. Instead, Hadid and his counsel hid behind the purported confidential  
23 nature of the alleged letters of intent. As such, Give Back has no choice but to pursue its rights under Rule  
24 2004 of the Federal Rules of Bankruptcy procedure to seek this crucial information.

25 <sup>5</sup> As this Court has learned, these Debtors are controlled by Hadid, who: (i) has been criminally convicted  
26 for numerous housing violations, (ii) has previously abused the bankruptcy process to block demolition of a  
27 spec home that was illegally graded and built in violation of numerous safety regulations in the case of In re  
901 Strada, LLC, bearing Case No. 2:19-bk-23962-BB, before this Court, rendering the lenders' collateral  
worthless to the tune of tens of millions of dollars, (iii) is the target of numerous unsatisfied judgments and  
liens aggregating over \$40,000,000, and (iv) has a pattern of avoiding all his other legal and financial  
obligations, including those owed to federal, state, and local taxing authorities - facts that only further  
guarantee no lender would touch these Properties or risk providing the Debtors any financing (certainly not  
with Hadid at the helm). As such, Give Back anticipates filing a separate motion seeking the appointment  
of a chapter 11 trustee.

28 <sup>6</sup> Contrary to the Debtors' skewed valuation predicated on "[t]he parcels [being] part of a gated project with  
main ingress and egress via Royalton Drive and Cedarbrook Drive," among other things, the Buss  
Appraisal recognizes that development of the Properties is limited to three large residences, has only a  
single access point at Royalton Drive, "lacks easement ingress and egress off Cedarbrook preventing the  
original six-lot development from moving forward," and will require another projected \$11,000,000 in direct  
costs to develop the three homesites.

<sup>7</sup> This is the case whether the Properties are valued collectively or as individual lots. In scheduling the

1 Lydda concededly not operating any business beyond mere ownership of the  
2 undeveloped lots, nor generating any income, the Debtors indisputably have no means of  
3 protecting Give Back's interest in the Properties through adequate protection payments  
4 or otherwise. Under such circumstances, relief from stay is required under section  
5 362(d)(1).

6 Relief from stay under section 362(d)(2) equally is mandated for the same  
7 reasons. In addition to leaving Give Back fully exposed, the Properties' true present  
8 value further confirms the Debtors have no equity in the Properties. Coupled with the  
9 Debtors' inability to attain any financing to satisfy Give Back's secured debt or redevelop  
10 the lots, the Properties cannot be deemed necessary to an effective reorganization.

11 Irrespective of whether or not the Court allows the automatic stay to remain  
12 in place as to the Debtors and the Properties, the Court should confirm that no stay exists  
13 to shield Hadid as the non-debtor guarantor of Give Back's debt. In addition to Hadid's  
14 guaranty, both Hadid and his wholly-owned entity, AM Family Fund LLC ("AM Family"),  
15 independently pledged their respective membership interests in the Debtors in  
16 consideration for the original loan. By definition, the protections of the automatic stay  
17 extend solely to the Debtors, the bankruptcy estates (collectively, the "Estates"), and their  
18 respective property, none of which would be implicated by Give Back's enforcement of its  
19 rights under those pledge agreements or against Hadid, as guarantor. Nevertheless,  
20 strictly out of an abundance of caution, Give Back seeks a comfort order confirming that  
21 no stay exists to block the exercise of any such rights and remedies.

22 For these and other reasons discussed below, the Court should grant the  
23 Motion.

24  
25 Properties' value, the Debtors simply took their \$131 million valuation and divided by six. See "Global  
26 Notes and Statement of Limitations, Methodology, and Disclaimers Regarding Debtor Coldwater  
27 Development LLC's Schedules" (Exhibit 1 to "Give Back, LLC's Request for Judicial Notice in Support of  
'Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with supporting  
declarations) (Real Property)" (the "RFJN") filed concurrently herewith, ¶ 14); "Global Notes and Statement  
of Limitations, Methodology, and Disclaimers Regarding Debtor Lydda Lud, LLC's Schedules" (RFJN,  
Exhibit 2, ¶ 14). Applying that same formula to the valuation in the Buss Appraisal results in a valuation of  
28 approximately \$4,083,333.33 per lot. Either way, the Debtors have no equity in the Properties and Give

1

## **RELEVANT FACTS**

## A. The Debtors and Their Common Principal

4 As noted, the Debtors are the owners of the Properties. In 2009, Lydda  
5 acquired the lots bearing APN Nos. 4387-020-001, 4387-020-009, 4387-022-001, and  
6 4387-022-002 (collectively, the “Lydda Lots”), and, in 2010, Coldwater acquired the  
7 contiguous lots bearing APN Nos. 4387-021-018 and 4387-021-019 (together, the  
8 “Coldwater Lots”). Beyond mere ownership of the Properties, the Debtors have no  
9 employees, no ongoing business, and generate no income. See RFJN, Exhibit 1, ¶ 15,  
10 Exhibit 2, ¶ 15.

11                   Although they own separate lots which, for all intents and purposes, are  
12 being viewed and were financed as a single redevelopment project, Coldwater and Lydda  
13 do share one thing in common - Hadid. Hadid is the sole member and 100% owner of  
14 Coldwater, and he is the sole member and 100% owner of AM Family, which is the 100%  
15 owner of Lydda. See RFJN, Exhibit 1, Exhibit 2, Exhibit 3.

16 For his part, Hadid, who creditors are being forced to rely on to shepherd  
17 these cases through chapter 11, has a history of violating multiple zoning, health and  
18 safety, and building ordinances. In addition, to his malfeasance, which resulted in a  
19 criminal conviction, Hadid has multiple outstanding judgments, federal and state tax liens,  
20 and other judgment liens against him. In fact, Hadid is subject to at least ten different  
21 judgments and other liens that have resulted in the recordation of abstracts of judgments  
22 in the aggregate of over \$40,000,000. See RFJN, Exhibit 4 through Exhibit 15, Exhibit  
23 17, and Exhibit 18. In other words, Hadid - the direct and indirect owners of the Debtors -  
24 will never be able to extract himself or these Debtors from their collective mounting debt,  
25 and no lender would ever commit to providing any form of financing to the Debtors.

26                    Aside from engaging in the wrongful conduct that led to those judgments  
27 and liens, Hadid previously abused the bankruptcy process in connection with 901

Back remains dramatically undersecured.

1 Strada, LLC ("901 Strada"), another entity he owned and controlled. As noted, Hadid  
2 commenced a chapter 11 case for 901 Strada on November 27, 2019, bearing Case No.  
3 2:19-bk-23962-BB. As the Court may recall, Hadid filed that case in an attempt to block  
4 the demolition of a spec home constructed on a steep hillside that was illegally graded  
5 and built in violation of numerous safety regulations.

6 Almost immediately, a motion to dismiss was filed since 901 Strada's  
7 bankruptcy filing, and its attendant automatic stay, were preventing the state court from  
8 moving forward with the demolition of the property that did not comply with the Los  
9 Angeles Building Code. As demonstrated in that motion to dismiss, the debtor had no  
10 employees, was never adequately capitalized, and was being exclusively funded by as-  
11 needed transfers from other Hadid-controlled companies. This Court agreed and the  
12 case was dismissed pursuant to the "Order Granting Motion to Dismiss Bankruptcy Case  
13 Pursuant to 11 U.S.C. Section 1112 With 180-Day Bar to Refiling" entered in that case.<sup>8</sup>

14 After having been criminally convicted for numerous housing violations in  
15 construction of the illegal structure, Hadid's former project remains in the hands of a  
16 court-appointed receiver who is tasked with demolishing the property. As a result,  
17 Hadid's conduct causing the state court to order the project to be torn down has made  
18 the collateral worthless, costing the lenders on that project tens of millions of dollars.

19 As is evident, the present Debtors - with Hadid in control - are using these  
20 chapter 11 cases, and the associated automatic stay, in a similar fashion; namely, as  
21 delay and litigation tactics to forestall Give Back's foreclosure sale. Following the  
22 Debtors' defaults under the Give Back Loan (discussed below), a foreclosure sale was  
23 scheduled for January 20, 2021. On January 15, 2021, to stave off the foreclosure,  
24 Lydda and Coldwater filed their respective voluntary petitions under chapter 11 of the  
25 Bankruptcy Code. Like 901 Strada, the filings are an abuse of the bankruptcy system.

26  
27 <sup>8</sup> On December 17, 2019, the Court issued its tentative rulings for the case styled, In re 901 Strada, LLC,  
28 bearing Case No. 2:19-bk-23962-BB. A true and correct copy of the tentative rulings is attached as Exhibit  
19 to the RFJN.

1           **B.     The Properties' True Fair Value**

2           The Properties are comprised of contiguous lots covering a site area that  
3 aggregates 66.79 acres. See Buss Appraisal (Exhibit 22 to Declaration of Ronald L.  
4 Buss" (the "Buss Declaration")), p. 1. The Debtors' contend that the Properties have a  
5 collective value of \$131,000,000 as of November 15, 2020, based on an appraisal report  
6 prepared by Paul Jackle & Associates, Inc. See RFJN, Exhibit 1, ¶ 14, Exhibit 2, ¶ 14.  
7 That valuation is extreme and not an accurate reflection of the realistic market value of  
8 the Properties. If this valuation were anywhere near the true market value, the Debtors  
9 would have obtained refinancing long ago and would not have been in the current  
10 financial straits they are in now.

11           Rather, as set forth in the more recent Buss Appraisal (Exhibit 22 to Buss  
12 Declaration), as of February 2021, the Properties have an "as is" market value of only  
13 \$24,500,000 (several millions of dollars less than Give Back's debt, let alone the real  
14 property tax liens). See Buss Declaration, ¶ 10; Buss Appraisal, p. 16. As detailed in the  
15 Buss Appraisal, Mr. Buss evaluated the Properties both from a development perspective,  
16 as well as consisting of hillside land within which three homesites can be created  
17 (consistent with the Debtors' new development plan). Those two approaches produced  
18 market values of \$24,175,000 and \$25,050,000, resulting in an "as is" market value of  
19 \$24,500,000.<sup>9</sup>

20           As opposed to the Debtors' "made as instructed" appraisal, the Buss  
21 Appraisal is based on real-word assumptions, not the whims and unrealistic dreams of a  
22 developer plagued with irreparable and unsolvable problems. Do these Debtors really  
23 expect this Court to believe that Original Lender sold its Note to Give Back because the  
24 Properties were worth \$131,000,000? Do the Debtors further want this Court to believe  
25 that they cannot find take out financing or a buyer for Properties worth \$131,000,000  
26

27           

---

<sup>9</sup> In arriving at a per lot valuation, the Debtors, as demonstrated, simply divided the aggregate  
28 \$131,000,000 valuation of their appraiser by six. Using this method, but with the more accurate  
\$24,500,000 valuation in the Buss Appraisal, results in a per lot valuation of approximately \$4,083,333.33.

1 given the amount of Give Back's debt? These are rhetorical questions of course, since  
2 the Properties are most certainly underwater. Give Back simply cannot risk further losses  
3 while Hadid pursues his unrealistic pipe-dream of refinancing the debt and constructing  
4 his palatial estates.

5           **C.     The Debtors' Joint Indebtedness to Give Back**

6           **1.     The Original Loan**

7           To fund Hadid's grandiose project and pay off existing debt, in March 2017,  
8 the Debtors entered a loan agreement with Romspen California Mortgage Limited  
9 Partnership, an Ontario limited partnership (the "Original Lender") for the maximum  
10 principal amount of \$25,000,000 (the "Loan Agreement"). Pursuant to the Loan  
11 Agreement, Original Lender loaned the Debtors \$19,050,898.05 through a series of  
12 advances (the "Loan").

13           The Properties act as primary security for the Loan Agreement, evidenced  
14 by two first priority deeds of trust recorded against and encumbering the Properties  
15 (together, the "Trust Deeds"). In further consideration of the Loan Agreement and to  
16 induce Original Lender to extend the Loan to the Debtors, Hadid made, executed, and  
17 delivered a written Guaranty, dated March 17, 2017 (the "Guaranty"), for the benefit of  
18 Original Lender and/or its assigns guarantying the Debtors' loan payment, performance,  
19 and other obligations as set forth therein.<sup>10</sup>

20           The original maturity date for repayment of all amounts due and owing by  
21 the Debtors under the Loan was May 1, 2018 (the "Original Maturity Date"). Pursuant to  
22 the provisions of the operative note (the "Note") and the Maturity Extension Requirements  
23 set forth in the Note, that Original Maturity Date was extended to May 1, 2019 (the  
24 "Extended Maturity Date").

25 \_\_\_\_\_  
26           <sup>10</sup> The history of the Loan Agreement and its assignment to Give Back is detailed in the accompanying  
27 supplemental declaration of Ronald Richards (the "Supplemental Richards Declaration"). Copies of the  
28 Loan Agreement, the Note, the Trust Deeds, guaranty agreements, pledge agreements, and other security  
agreements and documents relating to the Loan (collectively, the "Loan Documents"), all rights to, and title  
and interests in, which were assigned to Give Back, are attached to the Supplemental Richards  
Declaration.

1                   Not surprisingly, the Debtors defaulted on the Loan Agreement and Note on  
2 May 1, 2019, as a result of their failure to pay the entire outstanding indebtedness due  
3 and owing on the Note on the Extended Maturity Date. Following the Debtors' default,  
4 Hadid defaulted on his obligations under the Guaranty by also failing to pay the entire  
5 indebtedness due under the Loan.

6                   On or about May 1, 2019, the Debtors, Hadid, and Original Lender, among  
7 others, entered into a Forbearance Agreement (the "Forbearance Agreement") pursuant  
8 to which, among other things, Original Lender agreed to temporarily forbear from  
9 demanding or collecting payment in full of the Unpaid Loan Amount (as defined therein)  
10 and to forbear from exercising its rights and remedies under the Loan Agreement as a  
11 result of the Maturity Default (as defined therein). The Forbearance Period (as defined  
12 therein) expired at 5:00 p.m. (Eastern Time) on May 1, 2020.

13                  **2. Give Back's Acquisition of the Loan**

14                  Shortly after expiration of the Forbearance Period, in exchange for good  
15 and valuable consideration and pursuant to a Loan Purchase and Sale Agreement dated  
16 as of July 22, 2020, as amended by (i) that certain First Amendment to Loan Purchase  
17 and Sale Agreement dated as of August 7, 2020, and (ii) that certain Second Amendment  
18 to Loan Purchase and Sale Agreement dated as of September 3, 2020, Original Lender  
19 assigned and transferred to Give Back all of its rights, title, interest, and remedies in and  
20 to the Loan Agreement, Note, Guaranty, and all related security agreements, Trust  
21 Deeds, and other Loan Documents. The assignment is evidenced by an Assignment and  
22 Assumption of Deed of Trust and Other Loan Documents, executed by Original Lender  
23 and Give Back (the "Give Back Assignment"), recorded on September 11, 2020, in the  
24 Official Records, Recorder's Office, Los Angeles County, California as Document No.  
25 20201095575. In addition, on September 10, 2020, Original Lender executed and  
26 delivered to Give Back an Allonge making all amounts due and owing on the Note  
27 payable to Give Back.

1           **3. Unpaid Balance Due Under the Loan and the Stayed**  
2           **Foreclosure Sale**

3           Prior to the chapter 11 filings, Give Back made demand on the Debtors and  
4 Hadid for payment in full on the Loan Agreement, Note, and Guaranty. Despite Give  
5 Back's demands for the Debtors and Hadid to immediately pay in full all of the  
6 indebtedness and obligations, the Debtors and Hadid failed and refused to do so. As a  
7 result of the Debtors' defaults, on September 22, 2020, Give Back recorded a notice of  
8 default, followed by a notice of sale recorded on December 24, 2020. A foreclosure sale  
9 was scheduled for January 20, 2021. After unsuccessfully attempting to mollify Give  
10 Back with empty promises of an impending refinancing transaction, on January 15, 2021,  
11 the Debtors filed their chapter 11 petitions, thereby staying the foreclosure sale. A  
12 foreclosure sale currently is scheduled for March 10, 2021 (which, absent relief from the  
13 stay, will be further continued).

14           With compounding interest, as of the end of February 2021, the unpaid  
15 principal amount due and owing under the Loan is no less than \$27,730,207. In addition  
16 to this outstanding principal balance, unpaid late charges, fees, costs, and other charges  
17 due and owing are no less than the sum of \$2,024,161.30. Thus, the total amount  
18 unpaid, due, and owing, by each of the Debtors and Hadid, as guarantor, independently,  
19 amounts to no less than \$29,754,368.30 (\$5,254,368 more than the Properties collective  
20 value). Moreover, just from March through and including July 2021, compound interest  
21 will continue to accrue on the Loan at a monthly rate ranging from \$368,812 to  
22 \$388,827.<sup>11</sup>

23           **D. Other Liens Eroding Give Back's Position**

24           The Properties appear to be encumbered by multiple tax liens that further  
25 erode Give Back's senior position. As set forth in a "Trustee's Sale Guarantee," dated  
26 September 22, 2020, the Coldwater Lots are reflected as tax defaulted for non-payment

27  
28           

---

<sup>11</sup> Give Back reserves any and all rights to assert any and all other amounts that may due and owing under  
the Loan Documents.

1 of delinquent taxes in the aggregate of \$208,054.38 (if paid by November 30, 2020). See  
2 Coldwater Trustee's Sale Guarantee (Supplemental Richards Declaration, Exhibit 29), p.  
3 Sched. B, ¶ B. As set forth in a separate "Trustee's Sale Guarantee," dated September  
4 22, 2020, the Lydda Lots are reflected as tax defaulted for non-payment of defaulted  
5 taxes in the aggregate of \$58,498.82 (if paid by November 30, 2020). See Lydda  
6 Trustee's Sale Guarantee (Supplemental Richards Declaration, Exhibit 20), p. Sched. B,  
7 ¶ B

8 Further, on January 26, 2021, the County of Los Angeles filed a proof of  
9 claim in the Coldwater case showing \$510,495.52 in property taxes due and owing  
10 against the Properties. See RFJN, Exhibit 16. In addition, the Internal Revenue Service  
11 and the Franchise Tax Board are equally in position to assert tax claims and related liens  
12 against the Properties, again jeopardizing Give Back's position.

13 Considering only the Los Angeles County's tax lien brings the total debt on  
14 the Properties to at least \$30,264,863.82. This results in an "equity cushion" of negative  
15 \$5,764,863.82 (\$24,500,000 minus \$30,264,863.82). In other words, Give Back is  
16 entirely undersecured. In the face of this indisputable fact, the Court should reject the  
17 Debtors' efforts to delay the inevitable simply by relying on a misleading appraisal that  
18 has no purpose other than to create phantom valuation issues.

19 **E. The Membership Pledge Agreements**

20 As indicated earlier, Hadid owns 100% of the membership interests in  
21 Coldwater, and AM Family owns 100% of the membership interests in Lydda. As also  
22 indicated, as further consideration for the Loan, Hadid executed a Guaranty of the debt  
23 now owed to Give Back. In addition, Hadid and AM Family also each executed a  
24 "Membership Interest Pledge Agreement," dated as of March 17, 2017 (each, a  
25 "Membership Pledge Agreement"), pursuant to which they pledged their respective equity  
26 interests in the Debtors as additional security for the Loan and other Secured Obligations  
27 (as defined in the Membership Pledge Agreement).

28 The Membership Pledge Agreement confirms that Hadid and AM Family's

1 respective membership interests in the Debtors do not belong to the Debtors or their  
2 bankruptcy estates. See Membership Pledge Agreement, Recital C (Hadid “beneficially  
3 owns one hundred percent (100%) of the issued and outstanding Equity Interests . . . in  
4 Coldwater” and AM Family “beneficially owns one hundred percent (100%) of the issued  
5 and outstanding Equity Interests . . . in Lydda”), ¶ 10(b) (warranting that “Pledgor is the  
6 legal and beneficial owner of all the Collateral”).

7           Under each Membership Pledge Agreement, among other things, “[u]pon  
8 the occurrence of any Event of Default, all Secured Obligations, shall . . . immediately  
9 become due and payable without demand and without notice to Pledgor.” Membership  
10 Pledge Agreement (Supplemental Richards Declaration, Exhibit 14 and Exhibit 14, ¶  
11 6(a)(i), (b). Furthermore, among other things, “[u]pon the occurrence and during the  
12 continuation of an Event of Default and at any time thereafter, [Give Back] may. . . (i)  
13 pursue any or all rights and remedies under any or all of the Loan Documents . . . [and]  
14 (ii) realize upon the Collateral [which includes the Guarantors’ membership interests in  
15 the Debtors] or any part thereof[.]” Id., ¶ 7(b).

16           F.     The Debtors’ Visionary Scheme to Refinance and Develop the  
17               Properties

18           The Debtors’ original plan was to develop a luxury “gated project with main  
19 ingress and egress via Royalton Drive and Cedarbrook Drive,” meant to consist of six  
20 high-end residences on the contiguous lots. In response to Give Back’s recent motion to  
21 designate the Debtors as single asset real estate entities (the “SARE Motion”), the  
22 Debtors have now changed course. The Debtors now assert that they “are moving  
23 forward with developing three (not six) single family residences[.]” Opposition to SARE  
24 Motion [Docket No. 31], 2:20-21.

25           More recently, on February 17, 2021, the Debtors filed their “Joint Chapter  
26 11 Status Report in Advance of Initial Status Conference” [Docket No. 239]. In that  
27 status report, the Debtors repeat their purported intent to refinance the Loan and develop  
28 the Properties, but provide no meaningful information in that regard. Moreover, the

1 Debtors provide no supporting declarations or other evidence with their status report,  
2 relying solely on the unsubstantiated statements of their counsel.

3                    Aside from any refinancing required to satisfy Give Back's secured debt, as  
4 set forth in the Buss Appraisal, another projected \$11,000,000 in direct costs would be  
5 required to create the three single family residences. The likelihood of the Debtors  
6 achieving their lofty goal is nil. This is especially true considering the Properties' actual  
7 fair value (discussed above), coupled with Hadid's sordid past and keen ability to render  
8 projects with which he is involved worthless. Similar to 901 Strada, Hadid's dream of  
9 building a multiple-residence project here is fantastical and simply will not happen, as  
10 only the most naïve lender would loan the Debtors and Hadid a penny to complete the  
11 redevelopment. This says nothing of the strong opposition Hadid will receive from the  
12 City of Los Angeles, affected neighbors, and conservation groups to building an  
13 environmentally disastrous project with his failed track record. See Declaration of Steven  
14 L. Weinberg submitted in support of SARE Motion.

15                    In stark contrast to the Debtors' intended use and development of the  
16 Properties, in the event Give Back is permitted to foreclose and acquire the Properties, it  
17 has no intention of constructing any houses or otherwise developing the Properties in  
18 such a calamitous manner. Instead, Given Back intends to donate the Properties to be  
19 used in perpetuity by the public for nature walks, hiking trails, and other similar public  
20 uses. Give Back truly is doing a good deed by attempting to and save these hillsides  
21 from a reckless developer whose track record is one disastrous project after another.  
22 There has to be a moral compass somewhere, and Hadid cannot use the Bankruptcy  
23 Code to destroy this precious remaining green space in the hillsides of Franklin Canyon.

24                    III.

25                    **THIS COURT SHOULD LIFT THE AUTOMATIC STAY TO ALLOW GIVE BACK TO**  
26                    **EXERCISE ALL RIGHTS AND REMEDIES IN RESPECT OF THE LOAN AND THE**  
27                    **DEBTORS' RELATED OBLIGATIONS**

28                    Section 362(d) provides, in part:

1 On request of a party in interest . . . the court shall grant relief  
2 from the stay provided under subsection (a) of this section . . .

3 (1) for cause, including lack of adequate protection of an  
4 interest in property of such party in interest;

5 (2) with respect to a stay of an act against property under  
6 subsection (a) of this section if—

7 (A) the debtor does not have an equity in such  
8 property; and

9 (B) such property is not necessary to an effective  
10 reorganization.

11 U.S.C. § 362(d).

12 If any of the foregoing grounds for relief is present, the Court must grant  
13 relief from stay. As one court explained:

14 Two threshold points should be made concerning these  
15 provisions. First, Section 362(d) is mandatory, not  
16 permissive. Congress has provided that “the  
17 Court *shall* grant relief from the stay” . . . for any of the  
18 reasons stated in the three subsections. [Multiple citations  
19 omitted]. Second, the grounds for relief from stay are  
20 presented in subsections (1), (2) and (3) in the disjunctive;  
21 thus, if any one subsection applies, the Court must grant a  
22 motion for relief from stay.

23 In re Zeoli, 249 B.R. 61, 63 (Bankr. S.D.N.Y. 2000) (emphasis in original).

24 Moreover, the Debtors bear the burden of proof on all issues other than the  
25 Debtors’ equity. See 11 U.S.C. § 362(g).

26 As discussed below, relief from stay is warranted and must be granted,  
27 independently, under sections 362(d)(1) and 362(d)(2).

1           **A. Give Back is Entitled to Relief From the Automatic Stay Under 11**  
2           **U.S.C. § 362(d)(1)**

3           **1. Applicable Standard**

4           As just noted, section 362(d)(1) mandates relief from stay for “cause.” 11  
5 U.S.C. § 362(d)(1). Although the Bankruptcy Code does not define the term “cause,”  
6 courts hold it “is a broad and flexible concept that permits a bankruptcy court, as a court  
7 of equity, to respond to inherently fact-sensitive situations.” In re A Partners, LLC, 344  
8 B.R. 114, 127 (Bankr. E.D. Cal. 2006). Put another way, cause must be determined on a  
9 case-by-case basis. See In re Conejo Enter., 96 F.3d 346, 352 (9th Cir. 1996).

10          The Bankruptcy Code explicitly lists “the lack of adequate protection of an  
11 interest in property” as an example of “cause.” 11 U.S.C. § 362(d)(1). Therefore, a party  
12 with a security interest in collateral is entitled to relief from the stay pursuant to section  
13 362(d)(1) if its security interest is not adequately protected. See 11 U.S.C. § 362(d)(1); In  
14 re Arnold, 806 F.2d 937, 939 (9th Cir. 1986); In re 405 N. Bedford Dr. Corp., 778 F.2d  
15 1374, 1378 (9th Cir. 1985); In re Barry, 201 B.R. 820, 826 (C.D. Cal. 1996).

16          Just as “cause” is not specifically defined in the Bankruptcy Code, so too,  
17 no comprehensive definition of “adequate protection” has been provided by Congress.  
18 Nevertheless, the Bankruptcy Code identifies examples of proper forms of adequate  
19 protection to include a cash payment or periodic cash payments. See 11 U.S.C. §  
20 361(1)-(2).

21          In addition, courts view the existence of a sufficient equity cushion as a  
22 “classic form” of adequate protection. Pistole v. Mellor (In re Mellor), 734 F.2d 1396,  
23 1400 (9th Cir. 1984). “The ‘adequate protection’ basis establishes that the stay is not  
24 intended, and cannot by itself be applied, so as to deprive a secured creditor of the value  
25 of collateral in which the creditor has a perfected security interest . . . . To the extent the  
26 automatic stay threatens such a security interest, relief from stay *must* be granted under  
27 Section 362(d)(1).” In re Park at Dash Point L.P., 121 B.R. 850, 858 (Bankr. W.D. Wash.  
28 1990) (emphasis added).

1           In other words, for a secured creditor to establish a *prima facie* case of  
2 cause for relief from the automatic stay due to a lack of adequate protection, only two  
3 things must be shown. First, the secured creditor must prove it holds a valid claim  
4 against the debtor, with a properly perfected security interest in the collateral securing the  
5 claim. See In re Harris, 115 B.R. 376, 377 (Bankr. M.D. Fla. 1990); In re Rogers, 239  
6 B.R. 883, 887 (Bankr. E.D. Tex. 1999). Second, there must be a legally sufficient basis  
7 for the enforcement action sought, such that the creditor would be entitled, under  
8 applicable law, to take the enforcement action if relief is granted. In re Drexel Burnham  
9 Lambert Group, Inc., 113 B.R. 830, 838 (Bankr. S.D.N.Y. 1990).

10           Once a creditor establishes its perfected security interest securing a valid  
11 claim, the burden shifts to the debtor to prove that the creditor's interest in the collateral is  
12 adequately protected. See 11 U.S.C. § 362(g); In re Executive House Assoc., 99 B.R.  
13 266, 279 (Bankr. E.D. Pa. 1989); La Jolla Mortg. Fund v. Rancho El Cajon Assoc., 18  
14 B.R. 283, 288 (Bankr. S.D. Cal. 1982).

15           As discussed below, Give Back is entitled to relief from stay for "cause"  
16 under section 362(d)(1) because its interest in the Properties is not adequately protected  
17 and is severely exposed.

18           **2. Give Back Holds a Properly Perfected Lien On the Properties**

19           No dispute exists that Give Back holds a valid, properly perfected lien on  
20 the Properties, as evidenced by the Trust Deeds and all related documents to secure the  
21 Debtors' (and Hadid's) obligations under the Loan Documents. See Supplemental  
22 Richards Declaration, Exhibit 1 through Exhibit 18. Those documents, including, but not  
23 limited to, the recorded Give Back Assignment and the Allonge, reflect the transfer of all  
24 rights and interest in and to the Trust Deeds, the Loan Agreement, Note, Guaranty, and  
25 all related security agreements to Give Back, and confirm Give Back's perfected lien and  
26 interest in the Properties. In fact, the Debtors actually concede Give Back's lien, stating  
27 in papers filed with this Court that "the Property is encumbered by a deed of trust to  
28 secure a loan . . . issued by Romspen California Mortgage Limited Partnership," later

1 purchased and assigned to Give Back. See RFJN, Exhibit 3.

2 As such, Give Back has demonstrated a *prima facie* case for relief from the  
3 automatic stay.

4 **3. Give Back's Interest is Not - and Never Will Be - Adequately  
5 Protected Under the Present Circumstances**

6 Although it is not Give Back's burden to show a lack of adequate protection,  
7 no other conclusion is possible. There simply is no form of adequate protection the  
8 Debtors conceivably could offer.

9 To start, the Debtors are completely incapable of making any amount of  
10 adequate protection payments to Give Back. The Debtors expressly concede that their  
11 "primary asset is vacant land, and [they] have no employees or ongoing business [and]  
12 do[ ] not generate income." See RFJN, Exhibit 1, Exhibit 2. Whereas the Debtors  
13 contend that Hadid (or other non-debtor entities) pay the Debtors' expenses, no evidence  
14 exists to establish his ability to make any payments to Give Back (and certainly not in  
15 amounts that would qualify for adequate protection). In fact, with Hadid saddled with  
16 enormous judgment liens and other debt of his own, the evidence proves the opposite.

17 The Debtors also cannot credibly contend Give Back is protected by a  
18 sufficient equity cushion. No equity cushion, let alone an adequate cushion, exists. As  
19 set forth in the Buss Appraisal, the Properties have an "as is" collective market value of  
20 only \$24,500,000. This leaves Give Back severely undersecured. As of the end of  
21 February 2021, the unpaid principal amount alone was no less than \$27,730,207 -  
22 leaving a deficit of \$3,230,207 compared to the Properties' value. When the  
23 \$2,024,161.21 in outstanding late charges, fees, costs, and other charges are added, the  
24 shortfall balloons to over \$5,254,368. This does not even factor (i) additional interest that  
25 will continue at the alarming rate ranging from \$368,812 to \$388,827 per month (just  
26 through July 2021); or (ii) unpaid secured real estate taxes upwards of, at least, \$510,000  
27 that prime Give Back's lien.

28 While the Debtors proclaim the Properties are worth \$131,000,000, that

1 value is completely unrealistic and belied by the simple fact that the Debtors have been  
2 unable to get refinancing in the years since the Debtors defaulted. Property with that  
3 level of value surely would have garnered multiple financing offers long ago. Yet, the  
4 Debtors still remain empty-handed, purportedly having received the mere “interest” of a  
5 single prospective lender from whom the Debtors “expect to receive . . . a proposal” at  
6 some unspecified time “in the near future.”<sup>12</sup>

7           Although these bankruptcy cases may still be in their relatively early stages,  
8 under the circumstances, it makes little sense to delay the inevitable. Maintaining the  
9 stay and barring Give Back from protecting its interest in the Properties under the present  
10 situation only serves the inequitable purpose of forcing Give Back to shoulder the entire  
11 risk of these doomed cases. For example, in In re Hickory Ridge, LLC, 2012 Bankr.  
12 LEXIS 1131 (Bankr. N.D. Va. April 26, 2010), the court lifted the stay under section  
13 362(d)(1) after recognizing the inequitable consequences of leaving the secured creditors  
14 alone to bear the risk of the case:

15           Hickory Ridge [the debtor] is not an operating business and  
16 is not generating any income. The value of the property is  
17 declining by virtue of BB&T’s accruing interest, fees and  
18 charges on its three notes secured by the properties.

19           Hickory Ridge has not suffered any risk of non-payment to  
20 BB&T; all risks in this case have shifted to BB&T and  
21 Hickory Ridge’s other secured lenders. This is inequitable.

22 Id., at \*5-6.

23           Similarly, here (i) the Debtors are not operating businesses and generate  
24 no income; (ii) the value of the Properties are declining by virtue of Give Back’s quickly

---

25  
26           <sup>12</sup> Furthermore, the Debtors’ overly optimistic valuation appears to have been predicated on development  
27 of a “planned gated project” with two access points (“via Royalton Drive and Cedarbrook Drive”). The  
28 Debtors have since clarified that such a development plan is “frankly impossible,” with the lots “only  
reachable by one access point,” “prevent[ing] the Debtors from developing six separate residence on the  
lots.” This appears to confirm the Properties are significantly less valuable than the Debtors originally  
contended.

1 accruing compounding interest, fees, and other charges; (iii) Give Back's position is  
2 already irreparably eroded in light of the current outstanding and growing debt and the  
3 more accurate valuation of the Properties; (iv) the Debtors have suffered no risk from  
4 their nonpayment of Give Back's debt; and (v) the Debtors have failed to provide any  
5 evidence that they have any realistic prospects of refinancing the debt or actually  
6 developing the Properties (much less procuring funds for any such development) at any  
7 time, let alone within a reasonable timeframe.<sup>13</sup>

8 Making matters worse is Hadid's long disreputable history. As discussed  
9 above, Hadid is a convicted criminal who has pushed the development of projects that  
10 were never adequately capitalized and riddled with numerous violations of safety  
11 regulations, is saddled with tens of millions of dollars in outstanding debt and liens, and  
12 has managed to be the target of numerous lawsuits and judgments that aggregate to  
13 millions of dollars of additional debt (beyond Give Back's almost \$30,000,000 lien).

14 In sum, the present situation leaves Give Back substantially undersecured  
15 and with no source or degree of value to protect itself against the diminution in adequate  
16 protection caused by the passage of time, lack of payment of the Debtors' obligations,  
17 depreciation, and risk. The continued presence of the automatic stay precludes Give  
18 Back from taking the appropriate steps to protect its interests, and the Debtors have not  
19 and cannot adequately protect Give Back's interest. As a result, Give Back is entitled to  
20 relief from stay for "cause" under section 362(d)(1).

21 **B. Give Back is Entitled to Relief From Stay Under 11 U.S.C. § 362(d)(2)**

22 Section 362(d)(2) provides, in part, that the court "shall grant relief from the  
23 stay . . . if (A) the debtor does not have an equity in such property; and (B) such property  
24 is not necessary to an effective reorganization." 11 U.S.C. § 362(d)(2). "Equity" is  
25 defined as the "value, above all secured claims against the property, that can be realized

26  
27 <sup>13</sup> The Debtors' anticipated argument that they intend to file a plan of reorganization by May is irrelevant.  
28 The plan most likely will merely reinforce the pipe-dream that all creditors will be paid once a refinancing  
transaction is in place, leaving the timing of the transaction up in the air, perhaps for years to come.

1 from the sale of the property for the benefit of the unsecured creditors.” Mellor, 734 F.2d  
2 at 1400 n.2 (citing La Jolla, supra, 18 B.R. at 286).

3                 Once it is established that a debtor lacks equity, the burden shifts to the  
4 debtor to show that the property “is necessary to an effective reorganization.” See United  
5 Savs. Ass’n. of Tex. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 375-376,  
6 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988); Pegasus Agency, Inc. v. Grammatikakis, 101  
7 F.3d 882, 884 (2d Cir. 1996) (“the debtor must show” that property is essential to  
8 effective reorganization); In re 160 Bleeker St. Assocs., 156 B.R. 405, 410 (S.D.N.Y.  
9 1993) (“the party opposing relief from the stay has the burden of proof on all issues other  
10 than the debtor’s equity in the property”).

11                 Here, both elements are present to mandate relief from the automatic stay  
12 under section 362(d)(2). As shown above, the Debtors have no equity in the Properties.  
13 Give Back’s debt alone exceeds the fair value of the Properties by over \$5,254,368 (as of  
14 the end of February 2021). Factor in accruing interest that compounds every month, and  
15 unpaid real property taxes, and the Debtors’ already non-existent equity decreases  
16 exponentially even more.<sup>14</sup> As a result, the first prong of section 362(d)(2) is satisfied.  
17 Accordingly, the burden falls on the Debtor to show that the Properties are necessary to  
18 an effective reorganization.

19                 The Debtors, however, cannot make such a showing. The Debtors have  
20 offered this Court nothing more than a hypothetical plan that requires the refinancing of  
21 the Properties in the near term, followed by subsequent development of the Properties  
22 and sale of the constructed homes. This will never happen.

23                 For the numerous reasons discussed, the likelihood the Debtors will be able  
24 to convince a lender to provide refinancing on the Properties sufficient to payoff Give  
25 Back’s debt, and the senior tax liens, is less than zero. To date, the Debtors have not  
26

27                 <sup>14</sup> For the reasons discussed earlier, the Debtors’ asserted valuation is unfounded. At a bare minimum, if  
28 the Court does not grant the Motion under section 362(d)(1), an evidentiary hearing regarding valuation  
may be required to adjudicate the Motion under section 362(d)(2). In this event, Give Back requests that  
the Court establish an expedited discovery and briefing schedule in advance of a continued evidentiary

1 identified any lenders and, as mentioned, if the Properties truly had the value the Debtors  
2 attribute to them, lenders would be lining up to make a new loan. However, despite  
3 repeated extensions of the maturity date, forbearance agreements, and the protections of  
4 the automatic stay, the Debtors have been unable to identify a single willing lender and  
5 have provided only the unsubstantiated statements of counsel that they “expect” a  
6 refinance “proposal” in the “near future.”

7           And even if they successfully refinance Give Back’s debt, the Debtors have  
8 no chance of developing the Properties. As the Supreme Court found in Timbers,

9           Once the movant under § 362(d)(2) establishes that he is an  
10 undersecured creditor, it is the burden of the *debtor* to  
11 establish that the collateral at issue is “necessary to an  
12 effective reorganization.” See § 362(g). What this requires  
13 is not merely a showing that if there is conceivably to be an  
14 effective reorganization, this property will be needed for it;  
15 but that the property is essential for an effective  
16 reorganization that *is in prospect*. This means, as many  
17 lower courts, including the en banc court in this case, have  
18 properly said, that there must be “a reasonable possibility of  
19 a successful reorganization within a reasonable time.”

20 Timbers, 484 U.S. at 375-76 (emphasis in original).

21           No such “effective reorganization” is “conceivable” or “in prospect” here. In  
22 fact, in addition to any refinancing, which is highly unlikely, as set forth in the Buss  
23 Appraisal, the Debtors would need “another projected \$11,000,000 in direct costs . . . to  
24 create the three homesites.” Buss Appraisal, p. 8. The Debtors have provided no  
25 evidence or even information regarding whether it has access to any such financing, will  
26 be able to procure such financing, when it will be able to procure such financing or begin  
27 development, whether it has all the necessary permits, certificates, or other required  
28 hearing.

1 authorizations to pursue and complete any development, or any other information at all  
2 regarding its speculative development plans and reorganization.

3 The fact is that the Debtors, especially with Hadid in control, have no  
4 conceivable means of reorganizing effectively, or at all, to warrant the continued  
5 imposition of the automatic stay. As a result, the Properties are not necessary for an  
6 effective reorganization and this Court should grant relief from stay to Give Back under  
7 section 362(d)(2).

8 **IV.**

9 **THE AUTOMATIC STAY DOES NOT BAR GIVE BACK FROM EXERCISING ITS**  
10 **RIGHTS AND REMEDIES AGAINST HADID AND AM FAMILY**

11 Hadid, as the non-debtor guarantor, is separately and independently liable  
12 to Give Back on account of the Loan. As illustrated, to secure the Debtors' obligations,  
13 Hadid not only executed a Guaranty, but Hadid and AM Family also executed an identical  
14 Membership Pledge Agreement, pursuant to which, among other things, Give Back holds  
15 liens against their membership interests in the respective Debtors (collectively, the  
16 "Membership Interests"). As the Membership Pledge Agreements provide:

17 As security for the prompt payment and performance of the  
18 Secured Obligations . . . in full when due, whether at stated  
19 maturity, by acceleration or otherwise . . . Pledgor by this  
20 Agreement pledges, grants, transfers, and assigns to Lender  
21 a security interest in all of Pledgor's rights, title, and interest  
22 in and to the Collateral[.]

23 Membership Pledge Agreement, ¶ 1.<sup>15</sup>

24 In addition to seeking the right to continue with its foreclosure proceedings,  
25 Give Back seeks to enforce all rights and remedies available to it under the Membership

27 <sup>15</sup> The Pledge Agreements define Collateral to include "Pledgor's interest in the Pledged Interests," which,  
28 includes, among other things, "all securities, shares, units, options, warrants, interests, participations, or  
other equivalents of" each of the Debtors. Pledge Agreements, ¶ 1.

1 Pledge Agreements or otherwise against Hadid under his Guaranty. Give Back does not  
2 believe the provisions of section 362(a) prohibit such enforcement remedies, however,  
3 solely out of an abundance of caution, to ensure Give Back does not run afoul of the  
4 automatic stay, Give Back seeks an order confirming that the automatic stay does not  
5 apply to such actions. The Court should issue such a comfort order.

6 Generally, the automatic stay only applies to protect a debtor, its  
7 bankruptcy estate, and its property. See In re Advanced Ribbons & Office Products, Inc.,  
8 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991) (“The automatic stay of section 362(a) protects  
9 only the debtor, property of the debtor or property of the estate”). None of those criteria  
10 exists here.

11 First, neither Hadid nor AM Family (Hadid’s wholly-owned entity) are  
12 debtors in these cases. Second, the Membership Interests are not property of the  
13 Debtors or their bankruptcy estates; those interests belong exclusively to Hadid and AM  
14 Family. Both Hadid and AM Family concede as much. For example, in the Membership  
15 Pledge Agreements, Hadid and AM Family warranted that “Pledgor is the legal and  
16 beneficial owner of all the Collateral.” Membership Pledge Agreement, ¶ 10(b). See also  
17 Membership Pledge Agreement, Recital, ¶ C (“Pledgor beneficially owns one hundred  
18 percent (100%) of the issued and outstanding Equity Interests . . . in [the Debtors] and  
19 will derive substantial direct and indirect benefits from the Loan and the transactions  
20 contemplated by the Loan Agreement”).

21 The Debtors, likewise, declared under penalty of perjury that the  
22 Membership Interests belong to AM Family and Hadid. The Membership Interests are  
23 not listed as property of the Debtors anywhere in the Debtors’ respective bankruptcy  
24 schedules, and they have identified Hadid and AM Family as owning 100% of the  
25 respective Membership Interests. See, e.g., Schedules (RFJN, Exhibit 1, Exhibit 2).

26 In light of the foregoing, the automatic stay does not prevent Give Back  
27 from enforcing its rights against Hadid or AM Family or their Membership Interests. This  
28 includes Give Back’s right to foreclose on its security interest in the Membership Interests

1 and take control of those Membership Interests.<sup>16</sup> The Bankruptcy Appellate Panel's  
2 decision in Advanced Ribbons is directly on point

3 In that case, exactly like here, the debtor's sole shareholder pledged his  
4 stock in the debtor to secure performance of the debtor's obligations to its lenders. After  
5 the debtor filed bankruptcy, the lenders foreclosed on their security interest in the stock.  
6 The shareholder moved to void the foreclosure sale violative of the automatic stay and to  
7 recover damages arising from the sale. Concluding "that the stock is not property of the  
8 estate and that the automatic stay did not apply to prevent the stock foreclosure," the  
9 bankruptcy court denied that motion. Advanced Ribbons, 125 B.R. at 262.

10 In affirming the bankruptcy court's ruling, the Panel explained:

11 The automatic stay of section 362(a) protects only the  
12 debtor, property of the debtor or property of the estate. See,  
13 e.g., In re Casgul of Nevada, Inc., 22 Bankr. 65, 66 (9th Cir.  
14 BAP 1982). It does not protect non-debtor parties or their  
15 property. See, e.g., Credit Alliance Corp. v. Williams, 851  
16 F.2d 119, 121-22 (4th Cir. 1988); Casgul of Nevada, 22  
17 Bankr. at 66. Thus, section 362(a) does not stay actions  
18 against guarantors, sureties, corporate affiliates, or other  
19 nondebtor parties liable on the debts of the debtor. See,  
20 e.g., Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817  
21 F.2d 1424, 1427 (9th Cir. 1987) (guarantors); In re Lockard,  
22 884 F.2d 1171 (9th Cir. 1989) (automatic stay did not

23  
24 <sup>16</sup> Aside from seeking the unfettered right to foreclose on its security interests in the Membership Interests,  
25 on March 1, 2021, the Superior Court for the State of California, County of Los Angeles, entered its "Right  
26 to Attach Order and Order for Issuance of Writ of Attachment After Hearing" (the "Right to Attach Order")  
27 against Hadid in the action styled Give Back, LLC v. Mohamed Hadid, et al., bearing Case No.  
28 20SMCV01315, in the amount of \$19,050,898.05. The Right to Attach Order allows Give Back the right to  
attach all property of Hadid that is subject to attachment pursuant to California Code of Civil Procedure §  
487.010, as more particularly described in Exhibit "A" to the Right to Attach Order. See RFJN, Exhibit 17.  
On March 3, 2021, a Writ of Attachment After Hearing (the "Writ of Attachment") was issued against Hadid  
in the same action. The Writ of Attachment also is in the amount of \$19,050,898.05 and affects all property  
of Hadid that is subject to attachment pursuant to California Code of Civil Procedure § 487.010, as more

1 prevent an action against a surety on a contractor's bond);  
2 see also 2 Collier on Bankruptcy, para. 362.02[1] at 362-28-  
3 29 (15th ed. 1990). *Similarly, the automatic stay does not*  
4 *protect the property of parties such as officers of the debtor,*  
5 *see, e.g. Casgul of Nevada*, 22 Bankr. at 66, even if the  
6 *property in question is stock in the debtor corporation.* See  
7 In re Calamity Jane's, Inc., 22 Bankr. 5 (Bankr. D. N.J.  
8 1982).

9 Id., at 263 (emphasis added).

10 The Panel also disposed of any concerns regarding the creditor's ability to  
11 gain control of the debtor and its assets by virtue of foreclosure on the debtor's stock:

12 Finally, interspersed throughout appellant's briefs are  
13 essentially policy arguments in which the debtor argues for a  
14 broad application of the automatic stay and argues that  
15 declining to apply the automatic stay would allow some  
16 creditors - the appellees - to obtain preferential treatment by  
17 allowing them to obtain control of the debtor and ultimately  
18 its assets. There are also, however, countervailing policy  
19 concerns. Essentially, this is a dispute between non-debtor  
20 parties as to who owns property that is not an asset of the  
21 estate. The fact that the asset is the stock of the debtor and  
22 the fact that control of that asset allows for control of the  
23 debtor implicate, to a certain extent, the policies and  
24 purposes of the Bankruptcy Code. This dispute, however,  
25 has no impact upon the estate that will be available for  
26 distribution to the creditors because whoever controls the  
27 debtor will be held to fiduciary standards in its dealing with

28 particularly described in Exhibit "A" to the Writ of Attachment. See RFJN, Exhibit 18.

1                   the debtor's assets. To the extent the appellees receive  
2                   preferential treatment, they do so only by virtue of their  
3                   enforcement of state law and contractual rights against a  
4                   non-debtor party. The cases allowing actions to proceed  
5                   against non-debtor guarantors implicitly recognize that such  
6                   preferential treatment is permitted by the Bankruptcy Code.

7        Id., at 266. See also Xtra Petroleum Transp., Inc. v. Brad Hall & Assocs. (In re Xtra  
8        Petroleum Transp., Inc.), 473 B.R. 430, 433 (Bankr. D.N.M. 2012) (holding that sale of  
9        stock in debtor did not violate automatic stay as an act to obtain property of estate or to  
10      exercise control over property of estate under subsection (a)(3), an act to enforce a lien  
11      against property of estate under subsection (a)(4), or an act to attempt to collect or  
12      recover on a prepetition claim under subsection (a)(1)).

13                   So too, here, the Membership Interests are not property of the Debtors or  
14      their estates, and Give Back's enforcement of its rights against such interests are not  
15      subject to, and would not violate, the automatic stay. See In re Chugach Forest Prods.,  
16      Inc., 23 F.3d 241, 246 (9th Cir. 1994) (noting that bankruptcy "does not stay actions  
17      against guarantors"); In re Johnson, 209 B.R. 499 (Bankr. D. Neb. 1997) (creditor is  
18      permitted to sue a guarantor or a co-debtor and to collect from property of a third party  
19      that is pledged to secure debts of the debtor without fear of violating automatic stay); In  
20      re The Russell Corp., 156 B.R. 347, 350 (Bankr. N.D. Ga. 1993) (refusing to extend the  
21      automatic stay to guarantors, noting that "Congress intended the automatic stay of  
22      section § 362 to protect the debtor . . . It was not designed to benefit third parties . . .  
23      Congress did not enact a codebtor stay in Chapters 7 and 11"); In re Hoffert Marine, Inc.,  
24      64 B.R. 409 (Bankr. M.D. Fla. 1986) (cause existed to grant relief from stay to allow  
25      creditor to enforce stock pledge agreement, rejecting argument that such an action would  
26      prejudice right of debtor to reorganize).

27                   The Court should confirm this unassailable conclusion.  
28

1 V.  
2

**CONCLUSION**

3 Based on the foregoing, Give Back respectfully requests that the Motion be  
4 granted in all respects, that the Court lift the automatic stay to allow Give Back to  
5 exercise any and all rights and remedies as to the Properties, that the Court enter an  
6 order confirming that the automatic stay does not restrict Give Back from enforcing its  
7 rights and remedies under the Membership Pledge Agreements or against Hadid, as  
8 guarantor, and for such other and further relief as the Court deems just and proper under  
9 the circumstances.

10 DATED: March 9, 2021

**SulmeyerKupetz**  
A Professional Corporation

11  
12

13 By: /s/ Daniel A. Lev  
14 Daniel A. Lev  
Attorneys for Give Back, LLC

15 DATED: March 9, 2021

Law Offices of Ronald Richards & Associates, APC

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By: /s/ Ronald Richards  
Ronald Richards  
Attorneys for Give Back, LLC

## **SUPPLEMENTAL DECLARATION OF RONALD RICHARDS<sup>17</sup>**

I, Ronald Richards, declare and state as follows:

3           1. At all times relevant hereto, I have been the non-member, manager  
4 for Give Back, LLC, a California limited liability company ("Give Back"). In this capacity, I  
5 have personal knowledge of the facts set forth in this declaration, and if called as a  
6 witness for this purpose, I could and would testify competently under oath to them.

7                   2. I make and execute this declaration in support of Give Back's "Notice  
8 of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with  
9 supporting declarations) (Real Property)" (the "Motion").

10           3. I am not a member or owner of Give Back, but I am the only one who  
11 is authorized to execute settlements or act on behalf of the entity.

12           4. Effective as of September 10, 2020, Give Back is the beneficiary and  
13 owner of all right, title, interest, and remedies in and to that certain Loan Agreement,  
14 dated March 17, 2017, by and between Romspen California Mortgage Limited  
15 Partnership, an Ontario limited partnership (the “Original Lender”) and Coldwater  
16 Development LLC and Lydda Lud, LLC, for the maximum principal amount of  
17 \$25,000,000 (the “Loan Agreement”). Pursuant to the Loan Agreement, Original Lender  
18 loaned the Debtors \$19,050,898.05 through a series of advances (the “Loan”). A true  
19 and correct copy of the Loan Agreement is attached hereto as Exhibit 1.

20               5. The Loan is further evidenced by, *inter alia*, that certain Promissory  
21 Note, dated March 17, 2017, in the original principal amount of \$25,000,000 executed by  
22 the Debtors in favor of Original Lender (the “Note”). A true and correct copy of the Note  
23 is attached hereto as Exhibit 2.

24                 6.         As security for the Loan, Note, and Loan Agreement, Coldwater, as  
25 grantor, granted and conveyed to Original Lender, as beneficiary, a Deed of Trust,  
26 Assignment of Leases and Rents, Security Agreement and Fixture Filing on certain

<sup>28</sup> <sup>17</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the foregoing memorandum of points and authorities.

1 property, rights, interests, and estates identified therein recorded in the Los Angeles  
2 County Recorder's Office on March 20, 2017, as Document Number 20170310859 (the  
3 "Coldwater DOT"). A true and correct recorded copy of the Coldwater DOT is attached  
4 hereto as Exhibit 3. In sum, the lots bearing APN Nos. 4387-021-018 and 4387-021-019  
5 serve as security of the Loan, Note, and Loan Agreement pursuant to the Coldwater  
6 DOT.

7       7. As further security for the Loan, Note, and Loan Agreement, Lydda,  
8 as grantor, granted and conveyed to Original Lender, as beneficiary, a Deed of Trust,  
9 Assignment of Leases and Rents, Security Agreement and Fixture Filing on certain  
10 property, rights, interests, and estates identified therein recorded in the Los Angeles  
11 County Recorder's Office on March 20, 2017, as Document Number 20170310860 (the  
12 "Lydda DOT"). A true and correct recorded copy of the Lydda DOT is attached hereto as  
13 Exhibit 4. In sum, the lots bearing APN Nos. 4387-020-001, 4387-020-009, 4387-022-  
14 001, and 4387-022-002 serve as security of the Loan, Note, and Loan Agreement  
15 pursuant to the Lydda DOT.

16       8. As further security for the Loan, Note, and Loan Agreement, 901  
17 Strada, LLC, as grantor, granted and conveyed to Original Lender, as beneficiary, a Deed  
18 of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing  
19 recorded in the Los Angeles County Recorder's Office on March 20, 2017, as Document  
20 Number 20170310861 (the "Strada DOT"). A true and correct recorded copy of the  
21 Strada DOT is attached hereto as Exhibit 5.

22       9. As further consideration and security for the Loan, Note, and Loan  
23 Agreement, Coldwater, as grantor, granted and conveyed to Original Lender, as  
24 beneficiary, an Assignment of Leases and Rents recorded in the Los Angeles County  
25 Recorder's Office on March 20, 2017, as Document Number 20170310862 (the  
26 "Coldwater Assignment of Leases and Rents"). A true and correct recorded copy of the  
27 Coldwater Assignment of Leases and Rents is attached hereto as Exhibit 6.

28       10. As further consideration and security for the Loan, Note, and Loan

1 Agreement, Lydda, as grantor, granted and conveyed to Original Lender, as beneficiary,  
2 an Assignment of Leases and Rents recorded in the Los Angeles County Recorder's  
3 Office on March 20, 2017, as Document Number 20170310863 (the "Lydda Assignment  
4 of Leases and Rents"). A true and correct recorded copy of the Lydda Assignment of  
5 Leases and Rents is attached hereto as Exhibit 7.

6           11. As further consideration and security for the Loan, Note, and Loan  
7 Agreement, the Debtors executed in favor of Original Lender an Assignment of  
8 Agreements, Licenses, Permits and Contracts, dated March 17, 2017 (the "Assignment of  
9 Contracts"). A true and correct copy of the Assignment of Contracts is attached hereto  
10 as Exhibit 8.

11           12. In further consideration of the Loan Agreement and to induce  
12 Original Lender to extend the Loan to the Debtors, Hadid made, executed, and delivered  
13 a written Guaranty, dated March 17, 2017 (the "Guaranty"), for the benefit of Original  
14 Lender and/or its assigns guarantying the Debtors' loan payment, performance, and other  
15 obligations as set forth therein. A true and correct copy of the Guaranty is attached  
16 hereto as Exhibit 9.

17           13. As further consideration and security for the Loan, Note, and Loan  
18 Agreement, and a condition thereto, Coldwater and Original Lender entered into a  
19 Security Agreement, dated March 17, 2017 (the "Coldwater Security Agreement"). A true  
20 and correct copy of the Coldwater Security Agreement is attached hereto as Exhibit 10.

21           14. As further consideration and security for the Loan, Note, and Loan  
22 Agreement, and a condition thereto, Lydda and Original Lender entered into a Security  
23 Agreement, dated March 17, 2017 (the "Lydda Security Agreement"). A true and correct  
24 copy of the Lydda Security Agreement is attached hereto as Exhibit 11.

25           15. As further consideration and security for the Loan, Note, and Loan  
26 Agreement, and a condition thereto, Hadid and Original Lender entered into a Security  
27 Agreement, dated March 17, 2017 (the "Hadid Security Agreement"). A true and correct  
28 copy of the Hadid Security Agreement is attached hereto as Exhibit 12.

1           16. As further consideration and security for the Loan, Note, and Loan  
2 Agreement, the Debtors executed in favor of Original Lender a Pledge and Collateral  
3 Assignment of Economic Incentives, dated March 16, 2017, and recorded in the Los  
4 Angeles County Recorder's Office on March 20, 2017, as Document Number  
5 20170310864 (the "Pledge Agreement"). A true and correct copy of the Pledge  
6 Agreement is attached hereto as Exhibit 13.

7           17. As further consideration and security for the Loan, Note, and Loan  
8 Agreement, and a condition thereto, AM Family Fund LLC, a Virginia limited liability  
9 company, and Original Lender entered into a Membership Interest Pledge Agreement,  
10 dated March 17, 2017 (the "AM Membership Pledge Agreement"). A true and correct  
11 copy of the AM Membership Pledge Agreement is attached hereto as Exhibit 14.

12          18. As further consideration and security for the Guaranty, Loan, Note,  
13 and Loan Agreement, and a condition thereto, Hadid and Original Lender entered into a  
14 Membership Interest Pledge Agreement, dated March 17, 2017 (the "Hadid Membership  
15 Pledge Agreement"). A true and correct copy of the Hadid Membership Pledge  
16 Agreement is attached hereto as Exhibit 15.

17          19. The original maturity date for repayment of all amounts due and  
18 owing by the Debtors under the Loan was May 1, 2018 (the "Original Maturity Date").  
19 Pursuant to the provisions of the Note and the Maturity Extension Requirements set forth  
20 in the Note, that Original Maturity Date was extended to May 1, 2019 (the "Extended  
21 Maturity Date").

22          20. The Debtors defaulted on the Loan Agreement and Note on May 1,  
23 2019, as a result of their failure to pay the entire outstanding indebtedness due and  
24 owing on the Note on the Extended Maturity Date. Following the Debtors' default, Hadid  
25 defaulted on his obligations under the Guaranty by also failing to pay the entire  
26 indebtedness due under the Loan.

27          21. On or about May 1, 2019, the Debtors, Hadid, and Original Lender,  
28 among others, entered into a Forbearance Agreement (the "Forbearance Agreement")

1 pursuant to which, among other things, Original Lender agreed to temporarily forbear  
2 from demanding or collecting payment in full of the Unpaid Loan Amount (as defined  
3 therein) and to forbear from exercising its rights and remedies under the Loan Agreement  
4 as a result of the Maturity Default (as defined therein). A true and correct copy of the  
5 Forbearance Agreement is attached hereto as Exhibit 16. The Forbearance Period (as  
6 defined therein) expired at 5:00 p.m. (Eastern Time) on May 1, 2020.

7           22. As noted, in exchange for good and valuable consideration and  
8 pursuant to a Loan Purchase and Sale Agreement dated as of July 22, 2020, as  
9 amended by (i) that certain First Amendment to Loan Purchase and Sale Agreement  
10 dated as of August 7, 2020, and (ii) that certain Second Amendment to Loan Purchase  
11 and Sale Agreement dated as of September 3, 2020 (as amended, the “PSA”), Original  
12 Lender assigned and transferred to Give Back all of its rights, title, interest, and remedies  
13 in and to, *inter alia*, the Loan, Loan Agreement, Note, Guaranty, related security  
14 agreements, deeds of trust, and all of the Loan Documents. Said assignment is  
15 evidenced by, *inter alia*, an Assignment and Assumption of Deed of Trust and Other Loan  
16 Documents, executed by Original Lender and Give Back (the “Give Back Assignment”),  
17 recorded on September 11, 2020, in the Official Records, Recorder’s Office, Los Angeles  
18 County, California as Document No. 20201095575. A true and correct recorded copy of  
19 the Give Back Assignment is attached hereto as Exhibit 17.

20           23. In exchange for good and valuable consideration and pursuant to  
21 the Give Back Assignment and PSA, on or about September 10, 2020, Original Lender  
22 executed and delivered to Give Back an Allonge (the “Allonge”) making all amounts due  
23 and owing on the Note payable to Give Back. A true and correct copy of the Allonge is  
24 attached hereto as Exhibit 18.

25           24. Therefore, effective as of September 10, 2020, Give Back is the  
26 beneficiary and owner of all right, title, interest, and remedies in and to, *inter alia*, the  
27 Loan, Loan Agreement, Note, Guaranty, and all of the Loan Documents. I know this  
28 based on my review of the relevant Loan Documents, the PSA, the Give Back

1 Assignment, and because of my direct participation in this transaction and preparation  
2 and review of the necessary documentation to close the transaction consummating the  
3 sale and assignment to Give Back.

4           25. Subsequent to Original Lender's sale and assignment to Give Back  
5 of all of its right, title, interest, and remedies in and to the Note and Loan Agreement, the  
6 Debtors have remained in default of their obligations thereunder by, among other things,  
7 failing to pay the total indebtedness due and owing to Give Back under the Note and  
8 Loan Agreement.

9           26. Subsequent to Original Lender's sale and assignment to Give Back  
10 of all of its right, title, interest, and remedies in and to the Guaranty, Hadid has remained  
11 in default of his obligations to Give Back, as assignee, under the Guaranty by, *inter alia*,  
12 failing to pay the entire indebtedness on the Note and Loan Agreement due and owing  
13 upon the Debtors' default as guaranteed by Hadid.

14           27. Prior to the chapter 11 filings, I made demand on the Debtors and  
15 Hadid, as guarantor, for payment in full on the Loan, Loan Agreement, Note, and  
16 Guaranty. Despite Give Back's demands for the Debtors and Hadid to immediately pay  
17 in full all of the indebtedness and obligations of the Debtors and Hadid, as guarantor, the  
18 Debtors and Hadid failed and refused to do so.

19           28. As a result of the Debtors' defaults, on September 22, 2020, Give  
20 Back recorded a notice of default, followed by a notice of sale recorded on December 24,  
21 2020. A foreclosure sale was scheduled for January 20, 2021. On January 15, 2021, the  
22 Debtors filed their chapter 11 petitions, thereby staying the foreclosure sale. A  
23 foreclosure sale currently is scheduled for March 10, 2021.

24           29. With compounding interest, as of the end of February 2021, the  
25 unpaid principal amount due and owing under the Loan is no less than \$27,730,207. In  
26 addition to this outstanding principal balance, unpaid late charges, fees, costs, and other  
27 charges due and owing are no less than the sum of \$2,024,161.30. As of the end of  
28 February 2021, this brings the total amount unpaid, due, and owing, by each of the

Debtors and Hadid, independently, to no less than \$29,754,368.30.

30. Moreover, from March through and including July 2021, compound interest will continue to accrue on the Loan at a monthly rate ranging from \$368,812 to \$388,827.

5           31. The Debtors and Hadid, as guarantor, also are liable for any  
6 additional amounts on the Note, Loan Agreement, and Guaranty for interest, default  
7 interest, late fees, and costs and attorneys' fees incurred by Original Lender and Give  
8 Back in connection with collection and enforcement of, *inter alia*, the Note, Loan  
9 Agreement, and Guaranty. These amounts are preserved by Give Back, and are not  
10 waived in any action or proceeding as a result of these cases.

11                   32. A true and correct copy of a "Trustee's Sale Guarantee," dated  
12 September 22, 2020, relating to the Coldwater Lots is attached hereto as Exhibit 19. A  
13 true and correct copy of a "Trustee's Sale Guarantee," dated September 22, 2020,  
14 relating to the Lydda Lots is attached hereto as Exhibit 20.

15                   33. At my request, on January 21, 2021, Aram Ordubegian, counsel for  
16 the Debtors, sent me a copy of the Appraisal Report prepared by Paul Jackle &  
17 Associates, Inc. (the “Jackle Appraisal”), with date of value of November 15, 2020. A true  
18 and correct copy of page 30 of the Jackie Appraisal is attached hereto as Exhibit 21.

19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct.

21 Executed this 9<sup>th</sup> day of March, 2021, at Los Angeles, California.

/s/ Ronald Richards  
Ronald Richards

## **DECLARATION OF RONALD L. BUSS**

I, Ronald L. Buss, declare:

3           1. I make this declaration on the basis of personal knowledge of the  
4 truth of the matters stated herein, unless otherwise stated. If called to testify, I could, and  
5 would, testify truthfully as to the contents of this declaration.

6               2. I make and execute this declaration in support of Give Back's "Notice  
7 of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with  
8 supporting declarations) (Real Property)" (the "Motion").

9           3. I am licensed by the State of California as a real estate appraiser,  
10 license/state certificate number 009146. I am the President and a principal in the firm of  
11 Buss-Shelger Associates ("BSA"), whose business address is 970 W. 190th Street, Suite  
12 350, Torrance, California 90502.

13                  4. BSA was founded in 1984 and provides consulting, investment, and  
14 valuation services with regards to all types of vacant and improved real property. For  
15 more than thirty years, I have provided real estate valuation services to clients including  
16 financial institutions, developers, law firms, and individuals. I have extensive experience  
17 in valuing residential real properties in the Los Angeles area.

18               5. Prior to founding BSA, I was employed by the real estate consulting  
19 firm of Landauer Associates, Inc., from 1975-1984, where I rose to the position of Senior  
20 Vice President. From 1971-1975, I was employed by the Shattuck Company as a Real  
21 Estate Counselor and Consulting Appraiser. During the period from 1963-1970, I was  
22 employed as an appraiser by the California State Board of Equalization.

23               6. I received my Bachelor of Science Degree from California State  
24 Polytechnic College in 1963, and received my Certificate in Real Estate from the  
25 University of California University Extension, in 1971. I have also successfully completed  
26 a number of courses and examinations given by the Appraisal Institute.

27           7. I am currently certified as a General Real Estate Appraiser in the  
28 State of California (OREA Appraiser Certification No. AG0091246). I am also currently

1 certified under the Appraisal Institute's voluntary program of continuing education for its  
2 members.

8. The following is a list of some of my professional affiliations:

- a. Member: Appraisal Institute, 1976 - Present  
Southern California President, 1987
  - b. Member: Lambda Alpha International, 2007 - Present
  - c. Member: Counselors of Real Estate, 1983 - 2004  
Southern California Chapter President, 1988
  - d. Member: Los Angeles Board of Realtors
  - e. Member: California Real Estate Association
  - f. Member: Urban Land Institute, 1998 - To date
  - g. Member: Assessment Practices Advisory Council  
Los Angeles County Assessor's Office, 1980 - 1986

9. I have been qualified as an expert witness in the fields of real estate and real estate appraisal, and have so testified in deposition and in various state court and bankruptcy court matters hundreds of times.

18               10. BSA was retained to provide an appraisal and to determine the fair  
19 market value of 66.79 acres of residential land entitled for three homesites located off  
20 Royalton Drive in Coldwater Canyon, Los Angeles. More specifically, I was retained to  
21 provide an appraisal of the lots bearing APN Nos. 4387-020-001, 4387-020-009, 4387-  
22 022-001, 4387-022-002, 4387-021-018, and 4387-021-019 (collectively, the "Properties").

23                   11. In this regard, BSA prepared a written appraisal report (the  
24 "Appraisal Report") with respect to its appraisal of the Properties. A true and correct copy  
25 of this Appraisal Report is attached hereto as Exhibit 22. The attached Appraisal Report  
26 accurately reflects my expert opinion of value of the Properties, including, but not limited  
27 to, the valuation methods utilized to arrive at such opinion of value. As more completely  
28 described in the attached Appraisal Report, as a result of my personal physical inspection

1 of the Properties and my investigation and analysis of the factual data stated in the  
2 Appraisal Report, it is my expert opinion that the "as-is" fair market value of the  
3 Properties, as of February 4, 2021, the date of inspection, is twenty four million five  
4 hundred thousand dollars (\$24,500,000).

5 I declare under penalty of perjury under the laws of the United States of  
6 America that the foregoing is true and correct.

7 Executed this 9<sup>th</sup> day of March, 2021, at Torrance, California.

8   
9 Ronald L. Buss

# EXHIBIT 1

**LOAN AGREEMENT**

Between

**COLDWATER DEVELOPMENT LLC, and**  
**LYDDA LUD, LLC,**  
individually and collectively, jointly and severally,  
as Borrower

and

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
as Lender

Dated: March 17, 2017

## TABLE OF CONTENTS

	Page
I DEFINITIONS; PRINCIPLES OF CONSTRUCTION .....	5
Section 1.1 Capitalized Terms .....	5
Section 1.2 Principles of Construction .....	5
II GENERAL TERMS .....	5
Section 2.1 Loan Commitment; Disbursement to Borrower .....	5
Section 2.2 Loan Advances .....	6
Section 2.3 Mandatory Principal Payments .....	9
Section 2.4 Application of Payments .....	9
Section 2.5 Fees .....	9
Section 2.6 Taxes .....	9
Section 2.7 Road Security .....	10
III CONDITIONS PRECEDENT .....	11
IV REPRESENTATIONS AND WARRANTIES .....	11
Section 4.1 Borrower Representations .....	11
Section 4.2 Survival of Representations .....	19
V BORROWER COVENANTS .....	19
Section 5.1 Existence; Compliance with Legal Requirements .....	19
Section 5.2 Hazardous Materials .....	19
Section 5.3 Certain Prohibited Actions .....	19
Section 5.4 Taxes and Other Charges .....	20
Section 5.5 Performance of Agreements .....	20
Section 5.6 Notices .....	20
Section 5.7 Access to Property .....	20
Section 5.8 Compliance .....	21
Section 5.9 Cooperate in Legal Proceedings .....	21
Section 5.10 Insurance Benefits and Condemnation Awards .....	21
Section 5.11 Further Assurances .....	21
Section 5.12 Financial Reporting .....	21
Section 5.13 Title to the Property .....	22
Section 5.14 Estoppel Statements .....	22
Section 5.15 Business Purposes; Use of Property .....	22
Section 5.16 Contracts .....	23
Section 5.17 Maintenance of Property; Payment for Labor and Materials; Alterations .....	23
Section 5.18 Transfer or Encumbrance of the Property .....	24
Section 5.19 ERISA .....	25
Section 5.20 Affiliate Transaction .....	25
Section 5.21 Service Rights .....	25
Section 5.22 Purchase Options .....	25
Section 5.23 Confirmation of Representations, Warranties and Covenants .....	26
Section 5.24 Subdivision Maps .....	26
Section 5.26 Intentionally Omitted .....	26
Section 5.27 Anti-Terrorism .....	26

Section 5.28	Leases .....	27
Section 5.29	After Acquired Property .....	28
Section 5.30	Independent Consultant .....	28
Section 5.31	Licenses .....	28
Section 5.32	Lot Sales and Releases.....	29
VI	CASUALTY; CONDEMNATION; ESCROWS .....	30
Section 6.1	Insurance; Casualty and Condemnation. ....	30
Section 6.2	Tax and Insurance Escrows .....	35
Section 6.3	Intentionally Omitted.....	36
Section 6.6	Interest Reserve .....	36
VII	DEFAULTS .....	36
Section 7.1	Event of Default.....	36
Section 7.2	Remedies.....	38
Section 7.3	Right of Entry .....	41
Section 7.4	Costs of Enforcement .....	41
Section 7.5	Violation of Legal Requirements.....	41
Section 7.6	Remedies Cumulative.....	41
VIII	TRANSFER OF LOAN AND REFINANCING .....	41
Section 8.1	Lender's Transfers .....	41
Section 8.2	Register .....	42
Section 8.3	Participations .....	42
Section 8.4	Waiver.....	42
Section 8.5	Collateral.....	43
Section 8.6	Right of First Opportunity; Right of First Refusal .....	43
IX	EXCULPATION. ....	43
Section 9.1	Full Recourse.....	43
Section 9.2	No Waiver.....	43
X	INDEMNIFICATION. ....	43
Section 10.1	Indemnification.....	43
Section 10.2	Duty to Defend; Attorneys' Fees and Other Fees and Expenses.....	43
Section 10.3	Changes in Laws Regarding Taxation.....	44
Section 10.4	No Credits on Account of the Debt .....	44
Section 10.5	Recording of Security Instrument.....	44
Section 10.6	Brokers and Financial Advisors.....	44
Section 10.7	Currency Adjustment.....	45
XI	WAIVERS .....	45
Section 11.1	Waiver of Counterclaim .....	45
Section 11.2	Marshalling and Other Matters.....	45
Section 11.3	Waiver of Notice.....	45
Section 11.4	Trial by Jury.....	46
Section 11.5	Credit Authorization and Consent to Disclosure.....	47
Section 11.6	California Civil Code.....	47
XII	MISCELLANEOUS .....	48

Section 12.1	Survival.....	48
Section 12.2	Governing Law.....	48
Section 12.3	Modification; Waiver in Writing .....	48
Section 12.4	Delay Not a Waiver .....	48
Section 12.5	Notices .....	48
Section 12.6	Headings .....	49
Section 12.7	Severability .....	50
Section 12.8	Preferences.....	50
Section 12.9	Expenses .....	50
Section 12.10	Relationship of Borrower and Lender .....	50
Section 12.11	No Joint Venture or Partnership; No Third Party Beneficiaries.....	51
Section 12.12	Publicity.....	51
Section 12.13	Subrogation.....	51
Section 12.14	Duplicate Originals; Counterparts .....	51
Section 12.15	Liability.....	52
Section 12.16	Prior Agreements .....	52
Section 12.17	No Usury.....	52
Section 12.18	Construction.....	53
Section 12.19	Invalidity of a Provision, Principles of Construction, Lender's Discretion	53
Section 12.20	Lender .....	53
Section 12.21	Limitation on Liability.....	54
Section 12.22	Tax Withholding.....	54
Section 12.23	Full Repayment And Reconveyance .....	54
Section 12.23	Intentionally Omitted.....	54
Section 12.24	Delay Outside Lender's Control .....	54
Section 12.25	Modification, Waiver in Writing .....	54
Section 12.26	Set-Off .....	54
Section 12.27	Judicial Reference; Referee; Costs .....	55
Section 12.28	Release of Outparcels; Sale Proceed Escrow .....	56
Section 12.30	California Waivers.....	56
Section 12.30	California Waivers.....	60

**SCHEDULES AND EXHIBITS**

SCHEDULE I	DEFINITIONS
SCHEDULE II	CONDITIONS PRECEDENT
SCHEDULE III	PENDING LITIGATION
SCHEDULE IV	DISCLOSURE SCHEDULE
SCHEDULE V	ORGANIZATIONAL STRUCTURE CHARTS
SCHEDULE VI	SOURCES AND USES OF FUNDS
SCHEDULE VII	PLANS AND SPECIFICATIONS

## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of March 17, 2017 (as such agreement may be amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), is between **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5 ("Lender"), and **COLDWATER DEVELOPMENT LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077, and **LYDDA LUD, LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077 (individually and collectively, jointly and severally, "Borrower").

## WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents.

NOW, THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

### **I DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1** Capitalized Terms. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Schedule I attached hereto.

**Section 1.2** Principles of Construction. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the context requires, each gender shall include all other genders. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. The parties hereto acknowledge that the defined term "Borrower" has been defined to collectively include each Borrower. It is the intent of the parties hereto in making any determination under this Agreement, including, without limitation, in determining whether (a) a breach of a representation, warranty or a covenant has occurred or (b) there has occurred a Default or Event of Default, that any such breach, occurrence or event with respect to any Borrower shall be deemed to be such a breach, occurrence or event with respect to each Borrower and that each Borrower need not have been involved with such breach, occurrence or event in order for the same to be deemed such a breach, occurrence or event with respect to each Borrower.

### **II GENERAL TERMS**

#### **Section 2.1** Loan Commitment; Disbursement to Borrower.

**Section 2.1.1** The Loan. Subject to the terms and conditions set forth herein, including satisfaction of the conditions precedent set forth in Schedule II hereof and the requirements of Section 2.2, Lender agrees to make the Loan to Borrower in multiple advances from time to time during the Availability Period in a maximum aggregate principal amount ("Maximum Principal Amount") not to exceed at any time

the lesser of (i) sixty-five percent (65%) of the value of the Property as determined by the most recent appraisal received by Lender (at Borrower's cost) performed by an appraiser satisfactory to Lender, and (ii) Twenty-Five Million and No/100 Dollars (\$25,000,000.00). The Note evidences the Loan, and the Loan shall bear interest and otherwise be payable as provided in the Note and this Agreement; provided, however, that in any event, the principal balance, all accrued but unpaid interest and all other sums owing on the Loan shall be due and payable in full on the Maturity Date or earlier, if the Loan is accelerated pursuant to this Agreement or any of the other Loan Documents. The holder of the Note shall be entitled to the benefits of this Agreement and the other Loan Documents. Borrower may not reborrow any principal amount repaid in respect of the Loan.

**Section 2.1.2 Use of Proceeds.** Borrower shall use the proceeds of the Loan in accordance with the terms of the Loan Documents, including, without limitation, the Sources and Uses of Funds, and for no other purpose.

**Section 2.2 Loan Advances.** Subject to compliance by Borrower with the terms and conditions of this Agreement, including but not limited to, satisfaction of the conditions precedent set forth in **Schedule II** hereof, (a) Lender shall advance to Borrower, as of the Closing Date, proceeds of the Loan in an amount not to exceed \$15,737,128.51, and (b) after the Closing Date, Borrower may request additional advances of the Loan by submitting to Lender a written request in form and substance satisfactory to Lender signed by an authorized representative of Borrower (each a "Request for Advance"), subject to the following:

(i) each Request for Advance shall state the purpose and use of the funds to be received as a result of such advance, which shall be for the purpose of payment of Project Expenditures or Working Capital Expenditures;

(ii) each Request for Advance shall include, without limitation, the proposed amount of the requested advance and the proposed disbursement date of the requested advance, which disbursement date must be a Business Day and must be at least ten (10) Business Days after the date of delivery to Lender of the Request for Advance (and delivery of all documents in order for Lender to make such disbursement), and no Request for Advance shall be delivered or advanced for an amount less than \$200,000.00 (other than the last requested Request for Advance with respect to any given item if less);

(iii) a Request for Advance, once delivered to Lender, shall not be revocable by Borrower provided, that if Borrower does revoke such request Borrower shall deliver to Lender all costs and expenses incurred by Lender as a result of such revocation;

(iv) each Request for Advance, once delivered to Lender, shall, unless otherwise stated, constitute a representation, warranty, and certification by Borrower as of the date of that Request for Advance that:

(A) both before and after the making of the requested advance, all of the Loan Documents are valid, binding, and enforceable against each Borrower Party, as applicable;

(B) all terms and conditions precedent to the making of the requested advance, including the applicable conditions precedent set forth in **Schedule II** hereof are satisfied, and shall remain satisfied through the date of the requested advance;

(C) the making of the requested advance shall not cause (i) the aggregate principal amount of all advances under the Loan to exceed the Maximum Principal Amount, (ii) the aggregate amount of all advances for Hard Costs to exceed \$4,035,000.00, (iii) the aggregate amount of all advances for Soft Costs to exceed \$2,000,000.00, or (iv) the aggregate amount of all advances for Working Capital Expenditures to exceed \$1,000,000.00, unless otherwise approved by Lender;

(D) no Default or Event of Default has occurred or is in existence, and no Default or Event of Default exists or will arise on the making of the requested advance;

(E) the representations and warranties contained in this Agreement and the other Loan Documents are true and correct in all material respects and will be true and correct in all material respects upon the making of the requested advance, including without limitation the representation that the Property is in compliance with all Legal Requirements;

(F) the requested advance does not violate the terms or conditions of any contract, indenture, agreement, or other borrowing of any Borrower Party; and

(G) the requested advance will be used for the items set forth on the Sources and Uses of Funds for which Borrower is requesting such advance, and such request shall not exceed the amount allocated for such purpose set forth on the Sources and Uses of Funds (unless otherwise approved by Lender);

(v) if proceeds from the requested advance will be used to pay contractors for materials or labor at the Property, Lender may require lien waivers, and if Borrower requests a direct payment to such contractors (rather than reimbursement), Lender may make such payment to such contractors, as requested by Borrower, and following receipt of a conditional lien waiver conditioned solely upon payment of the invoices then due, followed by a lien waiver (with no conditions) following such direct payment;

(vi) each request for advance shall include delivery of copies of all invoices that will be paid upon such advance or that Borrower will receive reimbursement for prior to payment, upon receipt of such advance;

(vii) each request for advance shall include a title search that shall reflect no liens or encumbrances on the Property (other than the Permitted Encumbrances), and an endorsement to the Title Insurance Policy acceptable to Lender (each at Borrower's cost) and Borrower shall deliver payment to Lender of all Lender's fees and expenses (including the out of pocket fees and expenses of Lender's construction consultants and other costs and expenses relating to the Loan to the extent then due and payable;

(viii) each Request for Advance for Project Expenditures shall be subject to satisfaction of the following:

(A) Lender shall have (1) received the Road Security, (2) approved all Plans and Specifications, (3) approved the Project Schedule or any modifications thereto, (4) approved the General Contractor Agreement executed by Borrower with a Lender-approved General Contractor and received a General Contractor Consent from such party, (5) approved the Architect Agreement and Engineer Agreement and received a Consent from each applicable party, (6) approved of any Change Order (to the extent Lender's approval is required hereunder) with respect to an item set forth on the Project Budget for which Borrower is requesting a payment, or confirmed that the request for reimbursement of such Project Expenditure is consistent with the Project Budget; and (7) received confirmation that all Taxes that have become due and payable through such date have been paid and all insurance premiums attributable to any insurance required under the Loan Documents that have become due and payable as of such date have been paid;

(B) Lender shall have received a certificate of Borrower with respect to any applicable Project Expenditures to be funded by such Request for Advance (1) certifying that whatever portion of such work has been completed to date has been completed in good and workmanlike manner in accordance with all applicable Legal Requirements and the Plans and Specifications, (2) including (in the first Request for Advance for any particular Project Expenditures) a copy of any license, permit or other approval by any Governmental Authority required to commence the applicable Project Expenditures, (3) including copies of all bills, invoices, receipts and other documentation requested by Lender to be reimbursed or paid by the Request for Advance, (4) identifying each Person that supplied materials or labor in connection with the Project Expenditures to be funded by the requested Request for Advance, (5) certifying that each such Person has been paid in full or will be paid in full in respect of such work promptly after receipt of such Request for Advance, (6) accompanied by conditional lien waivers or other evidence of lien release upon payment

LOAN AGREEMENT – Page 7

satisfactory to Lender, (7) stating that all prior Request for Advances have been spent on the expenses for which such Request for Advances were made, (8) including a reconciliation by Borrower of the progress and cost of the completion of the Project through the date of the Request for Advance with the Project Budget, together with a projection of such progress and cost through to Completion, (9) including an anticipated cost report in a form reasonably acceptable to Lender, which indicates the costs anticipated to Complete the Project, after giving effect to costs incurred during the previous month (or the date of the last preceding Advance Request, as the case may be) (including a description of any reasonably projected cost overruns), (10) including a list of reasonably anticipated Change Orders that may be made within the ensuing sixty (60) days after such Request for Advance (regardless as to whether Lender's approval is required for any such Change Order), and (11) certifying that no Balancing Event then exists;

(C) Lender shall have determined that the applicable work with respect to which the Request for Advance has been requested has been completed in good and workmanlike manner in accordance with all applicable Legal Requirements and the Plans and Specifications

(D) If Lender shall have determined that either (1) the sum of the amount of unfunded Request for Advances available to Borrower hereunder for the payment of all of the work comprising the Project set forth in the Project Budget that has not yet been paid for is less than the amount actually necessary (as determined by Lender) to pay for the cost of all such uncompleted work (the failure of the foregoing to be true, a "**Balancing Event**") or (2) the Project is more than three months behind schedule as set forth in the Project Schedule, then Borrower shall have delivered immediately available funds (the "**Project Shortfall Reserve Funds**") to Lender in the amount determined by Lender as necessary to cause the sum of the Project Shortfall Reserve Funds plus the amount of unfunded Request for Advances to equal the cost of all such work that has not yet been paid for, which funds shall be held in a reserve account (the "**Project Shortfall Reserve Subaccount**") set up by Lender to hold such funds and disbursed to Borrower for the payment of Project Expenditures prior to the making of any further Request for Advances for the payment of Project Expenditures);

(E) Upon Completion, the amount of the final advance for the Project shall be equal to the sum of the amount necessary to complete payment of all of the work comprising the Project set forth in the Project Budget that have not been completed plus any amount remaining in the Project Shortfall Reserve Subaccount; and

(F) Lender shall not be required to disburse any funds for any materials, machinery or other personality not yet incorporated into the Project (the "**Stored Materials**") or for deposits, unless the following conditions are satisfied: (1) Borrower shall deliver to Lender bills of sale or other evidence reasonably satisfactory to Lender of the cost of, and, subject to the payment therefor, Borrower's title in and to such Stored Materials; (2) the Stored Materials are identified to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower's title in and to such materials, and are components in substantially final form ready for incorporation into the Property; (3) the Stored Materials are stored at the Property or at such other third-party owned and operated site as Lender shall reasonably approve, and are protected against theft and damage in a manner reasonably satisfactory to Lender, including, if requested by Lender, storage in a bonded warehouse in the greater metropolitan area in which the Property is located; (4) the Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment; (5) Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials; (6) the Stored Materials are insured for an amount equal to their replacement costs in accordance with Section 6.1 of this Agreement; and (7) the aggregate cost of Stored Materials stored on the Property at any one time for which disbursements have been made shall not exceed ten percent (10%) of the maximum amount of the Loan and the aggregate cost of Stored Materials stored off the Property at any one time shall for which disbursements under the Loan have been made shall not exceed ten percent (10%) of the maximum amount of the Loan unless otherwise approved by Lender; and

(ix) each Request for Advance for Working Capital Expenditures shall include delivery by Borrower of a draw fee in the amount of 2% of the amount of the Request for Advance.

LOAN AGREEMENT – Page 8

57513357

Notwithstanding anything to the contrary set forth in the Agreement or the Sources and Uses of Funds, Lender is not obligated to make any advance under this Agreement and each advance shall be in the sole discretion of Lender. Even if Borrower is divested, for whatever reason, of any portion of Borrower's interest in the Property, Lender may, at Lender's sole option, but without any obligation to do so, continue to make advances under this Agreement to Borrower or, subject to all terms and conditions of this Agreement, to that Person or Persons that succeed to Borrower's title and interest in the Property; *provided, however,* that all sums so disbursed shall be deemed advances under this Agreement and be secured by the Security Instrument and all other Liens or security interests securing the Debt.

(b) Record of Advances. The amount and date of each advance under this Agreement, the amount from time to time outstanding under the Note, the interest rate with respect to the Loan, and the amount and date of any repayment under this Agreement or under the Note shall be noted on Lender's books and records, which, absent manifest error, shall be conclusive evidence of each such advance; *provided, however,* that any failure by Lender to make that notation or any error in that notation, shall not relieve Borrower of its obligation to pay to Lender all amounts owed to Lender when due under the terms of the Loan Documents.

**Section 2.3 Mandatory Principal Payments.** If the outstanding principal amount of the Loan at any time exceeds the Maximum Principal Amount, Borrower shall immediately upon Lender's request pay to Lender in immediately available funds an amount sufficient to reduce the outstanding principal amount of the Loan so that it does not exceed the Maximum Principal Amount. Furthermore, Borrower shall promptly pay to Lender all Insurance Proceeds and Awards as more particularly provided in Article VI of this Agreement.

**Section 2.4 Application of Payments.** All payments received by Lender, whether or not received during the continuation of a Default or Event of Default, shall be applied by Lender to payment of the Debt in any order or priority that Lender in its sole discretion may elect.

**Section 2.5 Fees.** On the date of execution of this Agreement, Borrower shall pay to Lender all fees incurred by Lender, including but not limited to the Origination Fee as a fee for Lender arranging the Loan and all other fees listed in the Loan Term Sheet. Borrower shall pay to Lender an advance fee of \$1,000 on the date of each advance of the Loan under this Agreement.

**Section 2.6 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower or Lender) requires the deduction or withholding of any Taxes from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower. Borrower shall indemnify Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant

Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.6, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(e) Reserved.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.6 (including by the payment of additional amounts pursuant to this Section 2.6), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Survival. Each party's obligations under this Section 2.6 shall survive any assignment of rights by Lender, the termination of this Agreement, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

## **Section 2.7 Road Security.**

(a) If Borrower delivers to Lender a Letter of Credit for the Road Security, Lender shall have the right immediately to draw down upon the Letter of Credit in full (i) if at any time the bank issuing any such Letter of Credit ceases to satisfy Lender's underwriting criteria as to its debt rating, (ii) with respect to an evergreen Letter of Credit, if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire, (iii) with respect to any Letter of Credit with a stated expiration date, if Lender has not received a notice from the issuing bank that it has renewed the Letter of Credit at least thirty (30) days prior to the date on which such Letter of Credit is scheduled to expire and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire, (iv) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if the termination of such Letter of Credit is permitted pursuant to the terms and conditions of this Agreement or a substitute Letter of Credit is provided prior to such termination), or (v) if Borrower fails to cause Completion in accordance with the Project Schedule, unless otherwise approved by Lender. Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw upon the Letter of Credit upon the happening of any of the foregoing events and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

(b) Borrower does hereby irrevocably grant and assign to Lender a security interest in the Road Security, whether in form of the Letter of Credit or the cash deposit (and any reserve fund account created by Lender to hold such cash deposit or the proceeds of the Letter of Credit), as additional collateral for LOAN AGREEMENT – Page 10

the Loan. Lender may hold the cash or draw upon the Letter of Credit (in accordance with Section 2.7(a) above) and hold the proceeds thereof in a reserve fund account created by Lender, or apply such funds to the completion of the Project or against the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to draw upon the Letter of Credit and apply the proceeds thereof or apply the cash deposit shall be in addition to all other rights and remedies provided to Lender under the Loan Documents. Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake any work in order to cause Completion of the Project in the name of Borrower, and to use the proceeds of the Letter of Credit or the cash deposit in order to do so. Borrower empowers Lender as its attorney-in-fact as follows: (i) to draw upon the Letter of Credit as applicable; (ii) to make such additions, changes and corrections to the Project to cause Completion as Lender deems necessary; (iii) to employ contractors, subcontractors, agents, architects and inspectors as may be required or desirable for such purposes; (iv) to pay, settle or compromise all bills and claims for materials and work performed; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; and (vi) to prosecute and defend all actions or proceedings in connection with the Property. This power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Nothing in this Section 2.7 shall (i) make Lender responsible for performing or completing any of the Project, (ii) require Lender to expend funds to complete any of the Project, or (iii) obligate Lender to proceed with the Completion of the Project.

(c) If payment and performance bonds are delivered to Lender, once Lender has determined that Completion has occurred, the payment bond shall be released; provided however, the performance bond shall not be released until expiration of the warranty period following Completion.

### III CONDITIONS PRECEDENT

**Section 3.1** As a material inducement to Lender to make the initial advance under the Loan on the Closing Date, Borrower hereby represents and warrants to Lender that Borrower has satisfied all of the conditions precedent set forth in Part A on Schedule II attached hereto, and Borrower acknowledges that Lender would not fund the initial advance under the Loan on the Closing Date unless all of such conditions precedent were satisfied (or waived by Lender) by the Closing Date. The obligation of Lender to make the initial advance under the Loan on the Closing Date is subject to the condition precedent that Borrower has satisfied all of the conditions precedent set forth in Part A on Schedule II attached hereto. Furthermore, the obligation of Lender to make any advances under the Loan after the Closing Date is subject to, in addition to the requirements set forth in Section 2.2 hereof, the condition precedent that Borrower has satisfied all of the conditions set forth in Parts A and B on Schedule II attached hereto prior to each additional advance.

### IV REPRESENTATIONS AND WARRANTIES

**Section 4.1** Borrower Representations. Borrower represents and warrants to the Lender as of the date hereof and as of the Closing Date (if such date is different), except as otherwise disclosed on the Disclosure Schedule attached hereto as Schedule IV that:

(a) Organization. Borrower has been duly organized and is validly existing and in good standing in the jurisdiction in which it is organized. Borrower is duly qualified to do business and is in good standing in the state in which the Property is located and in each jurisdiction where Borrower is required to be so qualified in connection with its properties, businesses and operations. Borrower has all necessary rights, Licenses, permits, authorizations, approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted. Borrower has the full right, power and authority to operate, construct and develop the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Loan Documents. The sole business of Borrower is the ownership, construction, development, management and operation of the Property.

(b) Enforceability. Each Borrower Party has taken all necessary action to authorize the execution, delivery and performance of the obligations of this Agreement and the other Loan Documents to LOAN AGREEMENT – Page 11

which it is a party, and such obligations shall be the valid and binding obligations of the respective Borrower Parties. This Agreement and such other Loan Documents to which each Borrower Party is a party have been duly executed and delivered by or on behalf of each Borrower Party and each Borrower Party has obtained or received all required consents and approvals, corporate, governmental or otherwise, and this Agreement and such other Loan Documents to which each Borrower Party is a party constitute legal, valid and binding obligations of each such Borrower Party enforceable against each such Borrower Party in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization and similar laws affecting rights of creditors generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by any Borrower Party, including the defense of usury or similar doctrines, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable except to the extent such unenforceability may be the result of bankruptcy, insolvency, reorganization or similar laws affecting rights of creditors generally or general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

(c) No Conflicts. The execution and delivery of this Agreement and the other Loan Documents and the performance of the obligations thereunder by the Borrower Parties will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, operating agreement, certificate of incorporation, bylaws or any other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any court or Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, License, registration or qualification of or with any court or any such regulatory authority or other Governmental Authority or body required for the execution, delivery and performance by the Borrower Parties of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

(d) Litigation. There are no actions, suits, proceedings or investigations at law or in equity now pending or, to Borrower's best knowledge, threatened against or affecting any Borrower Party or the Property, other than as described on Schedule III.

(e) Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction, which could have a Material Adverse Effect on Borrower or the Property. Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Borrower is a party or by which Borrower or the Property is bound. Borrower has no Indebtedness under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation, construction and development of the Property and (b) obligations under the Loan Documents.

(f) Title. Borrower has good, marketable and insurable fee simple title to the real property comprising the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. There are no options, rights of first refusal, rights of first offer or similar rights, which affect the Property or any portion thereof except as previously disclosed to Lender in writing.

(g) Boundaries. All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances affecting the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property, except those which are insured against by the Title Insurance Policy.

(h) Purchase Options. Neither the Property nor any part thereof or interest therein are subject to any purchase options, rights of first refusal or offer to purchase or other similar rights in favor of third parties.

(i) No Bankruptcy Filing. (A) (i) Borrower is solvent (within the meaning of all Bankruptcy Laws) and no bankruptcy, reorganization, insolvency or similar proceeding with respect to any Borrower Party under any Bankruptcy Law has been initiated, and (ii) the entering into the Loan Documents to which any Borrower Party is a party does not constitute a fraudulent conveyance by any Person; and (B) no petition in bankruptcy has been filed by or against Borrower in the last seven (7) years, and Borrower has not, in the last seven (7) years, ever made any assignment for the benefit of creditors or taken advantage of any applicable Bankruptcy Laws. No Borrower Party has entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and each Borrower Party has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities and its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of the obligations of Borrower).

(j) Full and Accurate Disclosure. No statement of fact made by any of the Borrower Parties in this Agreement or in any of the other Loan Documents, nor any written materials relating to the business, operations or condition (financial or otherwise) of any of the Borrower Parties or the Property that were supplied to Lender in connection with Lender's due diligence investigation contains (or, in the case of such written material, at the time supplied contained) any untrue statement of a material fact or omits (or omitted, as the case may be) to state any material fact necessary to make the statements contained therein or in any of the Loan Documents not misleading.

(k) Regulatory. None of the Borrower Parties is an "employee benefit plan" (as defined in Section 3(3) of ERISA), subject to Title I of ERISA, and none of the assets of the Borrower Parties constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (i) none of the Borrower Parties is a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with any of the Borrower Parties are not subject to state statutes regulating investments of, and fiduciary obligations with respect to, governmental plans. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents. Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code. Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (ii) subject to any other federal or state law or regulation which purports to restrict or regulate Borrower's ability to borrow money.

(l) FIRPTA. Borrower is not a "foreign person" within the meaning of Sections 1445 or 7701 of the Code.

(m) Compliance. Borrower and the Property and the uses thereof comply with all applicable Legal Requirements. Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, and all required zoning, building code, land use, environmental, development plan, preliminary site plan, subdivision, and other similar permits or approvals (collectively, the "Licenses") necessary for the operation, construction and development of the Property for its current uses and for the

conduct of Borrower's business and all such Licenses remain in full force and effect. None of the foregoing are subject to revocation, suspension, forfeiture or modification. Neither Borrower nor the Property is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation, construction, development, or use of the Property any act or omission affording the federal government or any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. The use and development of the Property contemplated thereby comply and shall at all times comply with applicable Legal Requirements, including all applicable zoning resolutions, zoning ordinances, development requirements, building codes and environmental laws. There are no outstanding notices of any uncorrected violations of any Legal Requirements with respect to the Property, and Borrower is not aware of the threat of any such notices.

(n) Financial Information.

(i) The balance sheet, income statement and statements of cash flow and other financial data that have been delivered to Lender in respect of the Property and each applicable Borrower Party, including those required under Article III (A) are true, complete and correct, (B) accurately represent the financial condition of the Property and/or the applicable Borrower Party as of the date of such reports or statements and contain no misrepresentation or omission, and (C) have been prepared in accordance with Acceptable Accounting Principles consistently applied throughout the periods covered, except as disclosed therein, and (D) have not been amended, modified or revised in any manner. Borrower does not have any Indebtedness, liabilities, contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that could have a Material Adverse Effect, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no Material Adverse Change in the financial condition, operations or business of Borrower, each Borrower Party, or the Property from that set forth in said financial statements.

(ii) Each Borrower Party has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. No Borrower Party knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

(o) Casualty; Condemnation and Assessments. The Property is free from any material damage by Casualty. No Condemnation or other proceeding has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of any roadways providing access to the Property or for any easements or public right-of-ways. There are no pending or proposed special or other assessments for public improvements affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments, and to Borrower's knowledge, there are no other facts or circumstances which would cause the Taxes and Other Charges for the Property for the Fiscal Year in which the Closing Date occurs or the next following Fiscal Year to be significantly higher than the Taxes and Other Charges for the Property assessed and imposed for the Fiscal Year prior to the Fiscal Year in which the Closing Date occurs.

(p) Insurance. Borrower has obtained and has delivered to Lender a certificate of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Agreement and there have been no acts or omissions that would impair the coverage of any such Policies or the benefits of the mortgagee endorsements, and Borrower shall deliver to Lender certified copies of all such Policies within five (5) Business Days following the date of this Agreement.

(q) Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if any portion of the Improvements or the Property is located within such area, Borrower has obtained and will maintain the insurance prescribed in Section 6.1.1(a)(iv).

(r) Filing and Recording Taxes, Taxes. All transfer taxes, recording taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes or recording taxes, charges or fees or similar charges required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid or will be paid on the Closing Date. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid.

(s) Single-Purpose.

(i) Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(A) Borrower has not owned, does not own and will not own any asset or property other than (1) the Property, and (2) incidental personal property necessary for the ownership, construction, development, management, or operation of the Property.

(B) Borrower has not engaged in and will not engage in any business other than the ownership, construction, development, management, and operation of the Property and will continue to conduct and operate its business in accordance with the terms of the Loan Documents.

(C) Borrower has not incurred and will not incur any Indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (1) the Debt and, prior to the date hereof, the Prior Loan, and (2) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding one percent (1%) of the outstanding principal amount of the Loan at any time; provided that any Indebtedness incurred pursuant to subclause (2) shall be (x) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and (y) incurred in the ordinary course of business. No Indebtedness other than the Debt may be secured (superior, subordinate or *pari passu*) by the Property. With respect to the Prior Loan, Borrower hereby represents and warrants that the Prior Loan has been repaid in full with the proceeds of the Loan and none of Borrower, Guarantor or any of their respective direct and indirect constituent owners has any remaining liabilities or obligations in connection with the Prior Loan (other than environmental and other limited and customary indemnity obligations which, in each case and by their express terms, survive the repayment of the Prior Loan).

(D) Borrower has not entered into, is not a party to and will not enter into or be a party to any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except in the ordinary course of business and on terms and conditions that are disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(E) Borrower has not made and will not make any loans or advances to any Person (including any Affiliate or constituent party), and has not acquired and shall not acquire obligations or securities of any Borrower Party or any Affiliate of Borrower or any Borrower Party.

(F) Borrower is and will remain solvent and Borrower has at all times during its existence paid and will continue to pay Borrower's debts, liabilities and expenses (including, as applicable, shared personnel and overhead expenses) only from Borrower's assets as the same shall become due.

(G) Borrower has not undertaken and will not undertake any Material Action without the prior unanimous written consent of all of its partners or members, as applicable;

(H) Borrower has done or caused to be done and will do all things necessary to observe all organizational formalities and preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, and will not amend, modify, terminate or fail to comply with the provisions of its Organizational Documents.

(I) Borrower has at all times during its existence maintained and will continue to maintain all of Borrower's accounts, books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Borrower's assets have not been and will not be listed as assets on the financial statement of any other Person, provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates if (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has and will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person. Borrower has at all times during its existence maintained and will continue to maintain Borrower's books, records, resolutions and agreements as official records.

(J) Borrower has been and will be, and has held and at all times will hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate of Borrower or any constituent party of Borrower), has at all times conducted and will continue to conduct business in Borrower's own name, has at all times corrected and shall correct any known misunderstanding regarding Borrower's status as a separate entity, has not identified and shall not identify itself or any of its Affiliates as a division or part of any other Person and has maintained and shall continue to maintain and utilize separate stationery, invoices and checks bearing Borrower's own name.

(K) Borrower has maintained and will continue to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of Borrower's contemplated business operations.

(L) Neither Borrower nor any constituent party of Borrower has sought or will seek or effect the liquidation, dissolution, winding up, consolidation, or merger, in whole or in part, of Borrower.

(M) Borrower has not commingled and will not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party or any other Person, and Borrower has not controlled and will not control the decisions with respect to the daily affairs of any other Person.

(N) Borrower has maintained and will continue to maintain Borrower's assets in such a manner that it would not be costly or difficult to segregate, ascertain or identify Borrower's assets from those of any Affiliate or constituent party of Borrower or any other Person.

(O) Borrower has not assumed or guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, and Borrower will not assume or guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(P) Borrower has at all times during its existence held, and will continue to hold, all of Borrower's assets in Borrower's own name.

(Q) Except as specifically provided in the Loan Documents or Borrower's Organizational Documents, no other Person has ever guaranteed or become obligated for Borrower's debts at any time during Borrower's existence, and except as specifically provided in the Loan Documents or Borrower's Organizational Documents, Borrower will not permit any other Person to guarantee or become obligated for Borrower's debts at any time in the future.

(R) No other Person has ever held, and Borrower will not permit any other Person to hold, out Borrower's credit as being available to satisfy the obligations of any other Person.

(S) Borrower has not at any time during Borrower's existence bought or held, and will not in the future buy or hold, evidence of Indebtedness issued by any of Borrower's Affiliates or equity interest holders (direct or indirect).

(T) Borrower has at all times during Borrower's existence allocated fairly and reasonably (and paid or charged for, as applicable), and will continue to allocate fairly and reasonably (and pay or charge for, as applicable), any overhead expenses that are shared with an Affiliate of Borrower, including paying for office space provided by and services performed by any employee of an Affiliate of Borrower.

(U) Borrower will comply with or cause the compliance with all the representations, warranties and covenants in this Section 4.1(s).

(V) Borrower has not permitted and will not permit any Affiliate or constituent party independent access to its bank accounts.

(W) Borrower has paid and shall pay the salaries of its own employees (if any) from its own funds and has and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(X) Borrower has compensated and shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred.

(Y) Except as provided in the Loan Documents or in connection with the Prior Loan, Borrower has not at any time during its existence pledged, and will not in the future pledge, Borrower's assets for the benefit of any other Person.

(Z) No other Person has ever pledged, and Borrower will not permit any other Person to pledge, Borrower's assets for such other Person's benefit.

(AA) No other Person has ever identified, and Borrower will not permit any other Person to identify, Borrower as a division of any other Person.

(BB) Borrower either (i) has no, and will have no, obligation to indemnify its officers, directors, managers, members, shareholders or partners, as the case may be, or (ii) if it has any such obligation, such obligation is fully subordinated to the Debt and will not constitute a claim against Borrower if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation.

(CC) Borrower will consider the interests of Borrower's creditors in connection with all corporate, limited liability company or limited partnership actions

(t) Hazardous Materials. Borrower hereby represents and warrants to Lender that the representations and warranties contained in the Environmental Indemnity are true and correct. Except for any specific limitation contained in the Environmental Indemnity, this representation and warranty shall survive

any termination, satisfaction, or assignment of this Agreement and the exercise by Lender of any of its rights or remedies hereunder, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

(u) Contracts. Except as set forth on Schedule IV, there are no service, maintenance or other contracts affecting the use, operation or maintenance of the Property that are not terminable on one month's notice or less without cause and without a termination fee, penalty or premium. True and correct copies of all contracts affecting the use, operation or maintenance of the Property (regardless of the dollar amount of such contracts or the termination provision set forth therein) (together with all amendments, modifications or supplements thereto) have been delivered to Lender. All service, maintenance or other contracts affecting the Property entered into by Borrower or its Affiliates have been entered into at arm's-length in the ordinary course of Borrower's business.

(v) Principal Place of Business. Borrower's principal place of business as of the date hereof is: 630 Nimes Road, Bel Air, California 90077.

(w) Borrower's Ownership Structure. Borrower has provided to Lender the structure chart attached hereto as Schedule V, which structure chart is a true and correct description of Borrower's ownership structure, setting forth all Persons who own, directly or indirectly, ownership interests in Borrower and no other Person (whether disclosed or undisclosed) directly or indirectly owns any ownership interest in Borrower.

(x) Service Rights. Except as set forth on Schedule IV, no Service Rights have been granted to any Person in connection with or relating to the Property. To the extent Service Rights have been granted to any Person as set forth on Schedule IV, Borrower (and no other Person) is entitled to receive any and all compensation with respect to the Service Rights.

(y) Affiliate Transaction. Except as set forth on Schedule IV, Borrower has not entered into any Affiliate Transactions. Any agreement with an Affiliate of Borrower shall provide that such agreement may be terminated on no more than thirty (30) days prior notice, with or without cause, and without penalty, and providing that if Lender acquires the Property or an ownership interest in Borrower, directly or indirectly, then Borrower and such Affiliate agrees that Lender (or such purchaser at foreclosure) may terminate the subject agreement at any time upon notice to the Affiliate with or without cause or the payment of any premium or penalty. If such agreement is not terminated in accordance with the immediately preceding sentence, Lender shall have the right, and Borrower hereby irrevocably authorizes Lender and irrevocably appoints Lender as Borrower's attorney-in-fact coupled with an interest, at Lender's sole option, to terminate the agreement on behalf of and in the name of Borrower, and Borrower hereby releases and waives any claims against Lender arising out of Lender's exercise of such authority.

(z) Conditions Precedent. Borrower has fulfilled and satisfied all of the conditions precedent set forth in Part A on Schedule II and will fulfill and satisfy all other conditions precedent set forth on Schedule II before obtaining any advances after the Closing Date.

(aa) Easements; Utilities and Public Access. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, "Easements"), if any, necessary for the full development of the Property for its intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located in the public right-of-way abutting the Property, and all such utilities are connected so as to serve the Property without passing over other property absent a valid easement. All roads necessary for the use and development of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

(bb) Separate Lots. The Property is comprised of one (1) or more parcels which constitute separate tax lots and do not constitute a portion of any other tax lot not a part of the Property.

(cc) Taxes and Assessments. All Taxes and governmental assessments owing in respect of the Property have been paid or an escrow of funds in an amount sufficient to cover such payments has been established hereunder. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

**Section 4.2 Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents, and as set forth in the Loan Term Sheet shall survive for so long as any Obligations remain owing to Lender under this Agreement or any of the other Loan Documents by Borrower; provided, however, that those particular representations and warranties set forth in this Agreement and/or in the other Loan Documents which by their terms expressly survive the repayment of the Debt shall survive the complete payment of the Debt. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf. Borrower acknowledges that the representations and warranties contained in the Loan Documents are a material inducement to Lender to make the Loan.

## V BORROWER COVENANTS

From the date hereof and until payment and performance in full of all Obligations of Borrower under the Loan Documents, Borrower hereby covenants and agrees with Lender that:

**Section 5.1 Existence; Compliance with Legal Requirements.** Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect Borrower's existence, rights, Licenses, permits and franchises and to promptly comply with all Legal Requirements applicable to Borrower and the Property. Borrower shall not dissolve, terminate, liquidate, merge with, consolidate into or acquire another Person, and Borrower shall continue to comply with the provisions of Section 4.1(s) throughout the Term. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all of Borrower's property used or useful in the conduct of Borrower's business. Borrower will not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without Lender's prior written consent, except as otherwise expressly provided herein. Borrower will qualify to do business and will remain in good standing under the laws of the state in which the Property is located and in each jurisdiction as and to the extent the same is required for the ownership, maintenance, management and operation of the Property.

**Section 5.2 Hazardous Materials.** Borrower shall comply strictly and in all respects with the covenants set forth in the Environmental Indemnity.

**Section 5.3 Certain Prohibited Actions.**

(a) Borrower shall not make any change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not directly or indirectly do any of the following: (i) change its principal place of business or chief executive office without first giving Lender thirty (30) days' prior written notice thereof and executing, if necessary, and delivering to Lender such additional UCC Financing Statements or financing statement amendments as Lender may require in order to reflect such change in Borrower's principal place of business or chief executive office and to maintain the perfection of all Liens and security interests created by the Loan Documents; or (ii) take any action or permit any action or inaction which could result in Borrower not being in compliance with Section 4.1(s); or (iii) cancel or otherwise forgive or release any claim or debt owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business in its reasonable judgment. Borrower shall comply in all respects with Section 4.1(s) of this Agreement.

(b) Borrower shall not and shall not permit any Borrower Party to make any change, amendment or modification to the Organizational Documents of any Borrower Party without Lender's prior written consent.

**Section 5.4 Taxes and Other Charges.** Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof prior to delinquency. Borrower will deliver to Lender or Lender's designee receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien which may be or become a Lien against the Property, other than Permitted Encumbrances, and shall promptly pay for all utility services provided to the Property. 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 Taxes or Other Charges or the existence of any Lien, provided that (i) no Default or Event of Default exists, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of all Leases and other documents or instruments to which Borrower is subject and shall not constitute a default thereunder, and such proceeding shall be conducted in accordance with all Legal Requirements, (iii) Borrower shall notify Lender in writing of any such contest and shall diligently and in good faith contest such Taxes, Other Charges or Lien by appropriate legal proceedings which shall operate to prevent the enforcement or collection thereof and the sale of the Property or any part thereof, in satisfaction thereof; (iv) Borrower shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety satisfactory to Lender, in an amount equal to 125% of the Taxes, Other Charges or Lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof; and (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or Lien(s), together with all costs, interest and penalties which may be payable in connection therewith. In addition, if the Taxes, Other Charges or Lien(s) are not paid in full when Borrower commences such contest, then such proceeding shall suspend the collection of Taxes, Other Charges or Lien from the Property. Lender may pay over any such cash deposit or part thereof held by Lender or liquidate any other security and pay same over to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established. Notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay (and if Borrower shall fail so to do, Lender may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or Lien claim notwithstanding such contest, if in the good faith opinion of Lender, the Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. In addition, Borrower shall pay to Lender upon demand, any reasonable costs incurred by Lender in ensuring compliance by Borrower with this Section 5.4, including reasonable attorneys' fees, monitoring and evaluating expenses and any tax service fees.

**Section 5.5 Performance of Agreements.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all principal, interest, costs, fees and expenses to the extent required under, the Loan Documents. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any other agreement or recorded instrument affecting or pertaining to Borrower or the Property, or given by Borrower to Lender for the purpose of further securing the Obligations.

**Section 5.6 Notices.** Borrower shall immediately upon receipt give written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower or the Property. Borrower shall promptly advise Lender of any Material Adverse Change and of the occurrence of any Default or Event of Default.

**Section 5.7 Access to Property.** Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon not less than forty-eight hours (48) hours advance notice or such shorter period of notice as circumstances may dictate. Without limiting the

generality of the foregoing, Borrower agrees that Lender will have the same right, power and authority to enter into and inspect the Property as is granted a secured lender under Section 2929.5 of the California Civil Code and under Section 564(c) of the California Code of Civil Procedure.

**Section 5.8 Compliance.** Borrower shall not commit and shall use its best efforts not to allow any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**Section 5.9 Cooperate in Legal Proceedings.** Borrower shall reasonably cooperate with Lender with respect to any proceedings before any court, board or other Governmental Authority, which may in any way affect the rights of Lender hereunder, or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**Section 5.10 Insurance Benefits and Condemnation Awards.** Borrower shall reasonably cooperate with Lender in obtaining for Lender the benefits of any Insurance Proceeds and Awards lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any reasonable expenses incurred in connection therewith (including attorneys' fees and disbursements, expense of an appraisal on behalf of Lender in case of a fire or other Casualty affecting the Property or any part thereof) out of such Insurance Proceeds or Awards, as applicable.

**Section 5.11 Further Assurances.** 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, boundary surveys, footing or foundation surveys, plans and specifications, appraisals, title and other insurance reports and agreements and assurances as Lender shall, from time to time, 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 Borrower's covenants under this Agreement or for filing or recording the Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver one or more financing statements, chattel mortgages or other instruments, to evidence or perfect more effectively the security interest of Lender in the Property, and if Borrower fails to execute and deliver any of the foregoing within five (5) Business Days after such request by Lender, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the sole purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 5.11, 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, any such financing statements, chattel mortgages or other instruments, and Borrower hereby acknowledges and agrees that Borrower shall have no claim or cause of action against Lender arising out of Lender's exercise of Lender's rights under this Section 5.11 or the execution and/or recordation of any instruments by or on behalf of Borrower pursuant to the foregoing power of attorney, unless such claim or cause of action results from Lender's gross negligence or willful misconduct.

**Section 5.12 Financial Reporting.**

(a) Borrower will keep and maintain or will cause to be kept and maintained in accordance with Acceptable Accounting Principles, proper and accurate books, records and accounts reflecting all of the financial affairs, income and expenses of Borrower and the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Borrower shall furnish or make available to Lender and its agents convenient facilities for the examination and audit of any of Borrower's books and records.

(b) Borrower will furnish to Lender annually, within ninety (90) days following the end of each Fiscal Year, a complete copy of Financial Statements for Borrower for such Fiscal Year prepared by Borrower and in accordance with Acceptable Accounting Principles. Borrower's annual Financial Statements shall be accompanied by an Officer's Certificate stating that such annual Financial Statements present fairly the financial condition of Borrower and the Property and that the Leases have not been amended, modified or canceled.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before forty-five (45) days after the end of each calendar quarter the following items accompanied by an Officer's Certificate stating that such items are true, correct and complete in all respects and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: (A) quarterly and year to date Financial Statements; (B) intentionally omitted; and (C) the actual capital expenditures for the Property with respect to such period; (D) all new Leases, Lease amendments or other documents affecting the Rents executed since the last such statement; and (E) a comparison of the budgeted income and expenses and the actual income and expenses for such period.

(d) Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible) such further detailed information, including Borrower's tax returns, with respect to the operation of the Property and the financial affairs of Borrower or the Property as may be requested by Lender.

**Section 5.13 Title to the Property.** Borrower will warrant and defend (i) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances), and (ii) the validity and priority of the Lien of the Security Instrument on the Property and the perfection and priority of the Liens created by the Loan Documents, including any UCC Financing Statements, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender on demand for any losses, costs, damages or expenses (including attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

**Section 5.14 Estoppel Statements.**

(a) At any time within ten (10) days after request by Lender, Borrower shall furnish Lender or any proposed assignee of Lender with a written statement, duly acknowledged and certified by Borrower, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Note, (C) the then current rate of interest of the Note, (D) the terms of payment, (E) the date installments of interest and/or principal were last paid, (F) 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 Loan Documents, (G) that the Loan Documents are valid, legal and binding obligations of the Borrower Parties and have not been modified or if modified, giving particulars of such modification, (H) whether any offsets or defenses exist with respect to the Loan or Lender and, if any are alleged to exist, a detailed description thereof, (I) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, and (J) as to any other matters reasonably requested by Lender.

(b) Borrower shall deliver to Lender, upon request, an estoppel certificate from each Tenant under any Lease in form and substance reasonably satisfactory to Lender (provided that Borrower shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease); provided that such certificate may be in the form required under such Lease; and further, that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

**Section 5.15 Business Purposes; Use of Property.** The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes. Borrower shall not change the LOAN AGREEMENT – Page 22

current use of the Property in any material respect, nor shall Borrower initiate or consent to any zoning reclassification of any portion of the Property or seek any variance as to the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or other applicable land use law, without Lender's prior consent.

**Section 5.16 Contracts.** Borrower shall deliver or cause to be delivered to Lender copies of all contracts or other agreements (and all amendments, modifications or supplements thereto), whether now existing or hereafter entered into, affecting Borrower or the use, maintenance, construction, development, management or operation of the Property, including any options to purchase or rights of first offer or first refusal to purchase the Property or any portion of the Property. Borrower shall not enter into any service, maintenance construction, development or other contracts affecting the Property without Lender's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, Lender's prior consent shall not be required with respect to any contracts or agreements unless such contracts or agreements (a) could have a Material Adverse Effect, (b) are not terminable on one month's notice or less without cause and without penalty or premium or (c) are for a period in excess of one year (unless cancellable with thirty (30) days notice), or for an aggregate amount in excess of \$50,000.00.

**Section 5.17 Maintenance of Property; Payment for Labor and Materials; Alterations.**

(a) 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 and shall complete and pay for any structure at any time in the process of construction or repair on the Property. 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 subordinate to the Liens and the security interests of the Security Instrument, 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 Lien created by the Loan Documents and the Permitted Encumbrances.

(b) Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements shall not be removed, demolished or altered in any material respect nor shall any additional improvements be constructed without the prior, written consent of Lender.

(c) **Alterations.** Lender's prior approval shall be required in connection with (a) any alterations to any Improvements (i) that may have a Material Adverse Effect, (ii) that could adversely affect any structural component or the exterior of any Improvements or any utility or HVAC system at the Property, or (iii) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold, or (b) any alteration to any Improvements during the continuance of an Event of Default (any of the foregoing, a "Material Alteration"). If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's Obligations under the Loan Documents any of the following: (1) cash, (2) a Letter of Credit, or (3) other securities acceptable to Lender. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Alteration Threshold. Upon substantial completion of any Material Alteration, Borrower shall provide evidence satisfactory to Lender that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements, (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of liens, and (iii) all material licenses and permits necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued.

**Section 5.18 Transfer or Encumbrance of the Property.**

(a) Borrower acknowledges that Lender, in agreeing to make the Loan, has examined and relied on the creditworthiness and experience of the Borrower Parties in owning and operating and developing properties such as the Property, and that Lender will continue to rely on Borrower's ownership, operation, and development of the Property as a means of maintaining the value of the Property as security for repayment of the Debt. 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, Lender can recover all or a portion of the Debt by a sale of the Property. Accordingly, subject to the terms of this Section 5.18, Borrower shall not, without the prior written consent of Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise Transfer the Property, or any part thereof or any interest therein, directly or indirectly, or permit the Transfer of the Property, or any part thereof or any interest therein.

(b) A Transfer of the Property within the meaning of this Section 5.18 shall be deemed to include: (A) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof or any interest therein for a price to be paid in installments; (B) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder, or 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, except as specifically permitted by the Loan Documents; (C) if Borrower or any partner or member of Borrower (or any indirect owner of an interest in Borrower or any constituent partner or member of Borrower no matter how remote) is a corporation, the Transfer of such corporation's stock or any portion thereof (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which any of such corporation's stock or any portion thereof shall be vested in a party or parties who are not now existing stockholders as of the date hereof or results in any change in the ultimate ownership or control of such corporation (no matter how remote); (D) if Borrower or any partner or member of Borrower (or other indirect owner of an interest in Borrower or any constituent partner or member of Borrower no matter how remote) is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a partner, joint venturer or member or the Transfer of the partnership or membership interest of any partner or any member or the Transfer of the interest of any joint venturer, partner or member; (E) if Borrower is a limited or general partnership, joint venture, limited liability company, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership interest, the Transfer of any interest (including any economic or profits interest) of any Person having a direct or indirect legal or beneficial ownership interest in Borrower, including any legal or beneficial interest in any constituent partner or member of Borrower; (F) except as otherwise provided in the Loan Documents, any instrument subjecting the Property to a condominium regime or transferring ownership to a cooperative corporation; (G) the dissolution or termination of Borrower or any general partner or managing member of Borrower or any constituent member or partner of Borrower or the merger or consolidation of Borrower or any general partner or member of Borrower with any other Person; (H) any transfer of a direct or indirect ownership interest in Borrower; (I) any other transaction pursuant to which any Person not holding a direct or indirect ownership interest in Borrower on the Closing Date acquires a direct or indirect (and no matter how remote) ownership interest in Borrower; (J) any swap, derivative or other transaction shifting the risks and rewards of ownership of the Property, unless otherwise expressly required by the Loan Documents; (K) any transaction pursuant to which any Person is granted an option to purchase all or any portion of the Property or any direct, indirect or beneficial interest in Borrower; and (L) any transaction, agreement or arrangement pursuant to which any Person is given any right to control, direct or veto any material actions or decisions by Borrower, directly or indirectly, whether through an ownership interest, contract right or otherwise.

(c) Lender shall not be required to demonstrate any actual impairment or prejudice of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon any Transfer (other than a Transfer specifically permitted by this Agreement) without Lender's prior written consent which may be granted, withheld, delayed or conditioned in Lender's sole and absolute

discretion. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(d) Lender's consent to one Transfer of the Property shall not be deemed to be a waiver of Lender's right to require such consent to any future Transfer. Any Transfer of the Property made in contravention of this Section 5.18 shall be null and void and of no force and effect.

(e) Borrower agrees to bear and shall pay or reimburse Lender on demand for all costs and expenses (including title search costs, title insurance endorsement premiums and reasonable attorneys' fees and disbursements) incurred by Lender in connection with the review, approval and documentation of any proposed Transfer, whether or not such consent is granted, withheld, conditioned or denied and whether or not such transfer is expressly permitted herein.

(f) Borrower shall not create, incur, assume or permit to exist (i) any lien on the Property or any portion of the Property, except for Permitted Encumbrances or (ii) any lien on any direct or indirect interest in Borrower (other than pursuant to a Pledge Agreement).

**Section 5.19 ERISA.**

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, under the Loan Documents (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA or treats as holding assets of any such plan by reason of such plans ownership of an interest in Borrower; (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) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

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

**Section 5.20 Affiliate Transaction.** Borrower shall not enter into any Affiliate Transaction unless such agreement is on such 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 such Affiliate.

**Section 5.21 Service Rights.** Borrower shall not allow any Service Rights to be granted by any Person other than Borrower, and any Service Rights granted by any Person other than Borrower shall be null and void ab initio.

**Section 5.22 Purchase Options.** Borrower shall deliver to Lender true and correct copies of any option agreement and any rights of first offer or rights of first refusal to purchase the Property or any portion thereof, or any other similar agreement, together with all amendments and modifications thereto, within five (5)

days after the execution thereof. The requirement for delivery of the foregoing shall not be deemed to imply Lender's consent thereto.

**Section 5.23 Confirmation of Representations, Warranties and Covenants.** In addition to and not in limitation of the covenants and agreements of Borrower contained in this Agreement, if requested by Lender, Borrower shall deliver, one or more Officer's Certificates certifying as to the accuracy of all representations and warranties made by Borrower in the Loan Documents as of the Closing Date.

**Section 5.24 Subdivision Maps.** Prior to entering into, agreeing to or recording any map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property (collectively, "Subdivision Map"), or amending, modifying, terminating or taking any action with respect to any Subdivision Map, Borrower shall submit such Subdivision Map to Lender for Lender's review and approval, which approval may be withheld in Lender's reasonable discretion. As a condition precedent to approval by Lender, if required by Lender, (i) Borrower shall execute, acknowledge and deliver to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map, and (ii) Borrower shall deliver to Lender, at Borrower's sole expense, a title endorsement to the Title Policy in form and substance satisfactory to Lender insuring the continued first priority lien of the Security Instrument. Subject to the execution and delivery by Borrower of any documents required under this Section 5.24, Lender shall, if required by applicable law, sign any Subdivision Map approved by Lender pursuant to this Section 5.24.

**Section 5.25 Intentionally Omitted.**

**Section 5.26 Anti-Terrorism.**

(a) Neither Borrower nor any other Person owning a direct or indirect interest in Borrower is in violation of any Legal Requirements, including requirements of The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Regulations, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act").

(b) None of Borrower, the direct members of Borrower, Guarantors, nor any of their respective constituents, investors or affiliates, any of their respective brokers or other agents, if any, acting or benefiting in any capacity in connection with the Loan is a "Prohibited Person" which is defined as follows:

(i) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering Legal Requirements, including the Executive Order and the Patriot Act;

(iv) a Person who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(v) a Person 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; and

(vi) a Person who is affiliated with a Person listed above.

(c) None of Borrower, the direct members of Borrower, Guarantors or any of their respective affiliates, investors or constituents or any of their respective brokers or other agents, if any, acting in any capacity in connection with the Loan are or will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

(d) Borrower covenants and agrees to deliver to Lender any certification or other evidence requested from time to time by Lender in its reasonable discretion, confirming compliance with this Section.

(e) None of the funds or other assets of Borrower, the sole member of Borrower or Guarantors constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as defined below); (ii) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable (whether directly or indirectly); and (iii) none of the funds of Borrower, the sole member of Borrower or Guarantors, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, the sole member of Borrower or Guarantors, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. "Embargoed Person" means 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, the sole member of Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of Applicable Law.

#### **Section 5.27 Leases.**

(a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for economic terms, including rental rates and term, comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage and the Assignment of Leases and that the Tenant thereunder will attorn to Lender and any purchaser at a foreclosure sale, (iv) be written substantially in accordance with the standard form of Lease which shall have been approved by Lender (subject to any commercially reasonable changes made in the course of negotiations with the applicable Tenant)], (v) not be to an Affiliate of Borrower, Guarantor or Manager, (vi) provide that the beneficiary of any mortgage may at any time unilaterally record, in its sole and absolute discretion, a declaration that subordinates and has the effect of subordinating the lien of the mortgage to such Lease, and (vii) not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation of substantially all of the Property), any requirement for a non-disturbance or recognition agreement, or any other terms which would materially adversely affect Lender's rights under the Loan Documents. Further, all Major Leases and all renewals, amendments and modifications thereof and waivers thereunder executed after the date hereof shall be subject to Lender's prior approval, which approval shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed. Lender shall execute and deliver its standard form of subordination, non-disturbance and attornment agreement to Tenants under any future Major Lease approved by Lender promptly upon request, with such commercially reasonable changes as may be requested by such Tenants, and which are reasonably acceptable to Lender. Borrower shall pay Lender's costs and expenses in connection with any such subordination, non-disturbance and attornment agreement, including, without limitation, reasonable legal fees and expenses.

(b) Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenants thereunder to be observed or performed in a commercially

LOAN AGREEMENT – Page 27

reasonable manner; provided, however, Borrower shall not terminate or accept a surrender of a Lease without Lender's prior approval; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the Tenant or increase the obligations of the lessor; and (vi) shall promptly furnish to Lender any notice of default or termination received by Borrower from any Tenant, and any notice of default or termination given by Borrower to any Tenant. Upon request, Borrower shall promptly furnish Lender with executed copies of all Leases and a statement of all Tenant security or other deposits.

(c) All security deposits of Tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at a separately designated account under Borrower's control. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable Legal Requirements (i) shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, (ii) shall be issued by an institution reasonably satisfactory to Lender, (iii) shall, if permitted pursuant to any Legal Requirements, name Lender as payee or mortgagee thereunder (or at Lender's option, be fully assignable to Lender), and (iv) shall in all respects comply with any applicable Legal Requirements and otherwise be satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence satisfactory to Lender of Borrower's compliance with the foregoing.

(d) Borrower shall not permit or consent to any assignment or sublease of any Major Lease without Lender's prior approval (other than any assignment or sublease expressly permitted under a Major Lease pursuant to a unilateral right of Tenant thereunder not requiring the consent of Borrower).

(e) Notwithstanding anything to the contrary contained in this Section 5.28, provided no Event of Default shall have occurred and remain uncured, Borrower shall have the right, without the consent or approval of Lender in any instance, to terminate or accept a surrender of any Lease that is not a Major Lease, except that no termination by Borrower or acceptance of surrender by a Tenant of any Leases shall be permitted unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property.

**Section 5.28 After Acquired Property.** Borrower will grant to Lender a first lien security interest in and to all Property, easements, entitlements, equipment, licenses, authorizations, permits, and any other personal property owned by Borrower, whether or not used in the construction, maintenance and/or operation of the Improvements, immediately upon acquisition of same or any part of same.

**Section 5.29 Independent Consultant.** Borrower will pay the reasonable fees and expenses of, and will at all times promptly cooperate with, Lender's independent consultant (if any) and, upon request, will promptly furnish to Lender's independent consultant any documents, instruments, agreements or other information requested by such independent consultant in connection with the performance of such independent consultant's duties relating to the Property.

**Section 5.30 Licenses.** Borrower will timely obtain all Licenses necessary for the development of the Property and the sale of Lots, and all such Licenses will timely be in full force and effect. Borrower will deliver to Lender copies of all Licenses or other agreements with a Governmental Authority related to the development of the Property.

**Section 5.31 Dividends and Distributions.** Borrower will not declare or pay any dividends or distributions on any class of its membership interests or shares, as applicable, make any payment on account of the purchase, redemption or other retirement of any such membership interests or shares, as applicable, or make any distribution in respect thereof, either directly or indirectly, at any time during the existence and continuance of any Default or Event of Default under this Agreement or the other Loan Documents or otherwise in any situation or circumstance where such dividend, distribution or payment would (a) violate or constitute a breach

LOAN AGREEMENT – Page 28

57513357

of any representation or warranty of Borrower under this Agreement or the other Loan Documents; (b) violate or constitute a breach of any covenant, condition or other term or provision of this Agreement or the other Loan Documents, or (c) otherwise cause, create or constitute a Default or Event of Default under this Agreement or the other Loan Documents.

**Section 5.32 Lot Sales and Releases.** Notwithstanding the provisions of Section 5.18, Borrower may, with the prior written consent of Lender, sell Lots, and Lender will release its Lien on such Lots in connection with such sale, which consent will not be unreasonably withheld or delayed so long as Borrower has satisfied the following conditions:

(a) any and all sums then due and payable to Lender under the Loan Documents shall be fully paid;

(b) no Default or Event of Default exists or would occur upon such sale;

(c) Borrower has furnished to Lender the applicable Lot Sale Agreement and all other documentation relating to the sale of such Lots, and Lender has had a reasonable time to review such documents and is satisfied with the terms and conditions of such documents;

(d) Borrower has paid all reasonable costs and expenses incurred by Lender (including reasonable attorneys' fees, recording fees, title search and title endorsement fees) in connection with its review and consideration of the documentation relating to the sale of such Lots and the preparation of any Lien releases and other documentation in connection with such sale, whether or not such sale is consummated;

(e) Borrower pays to Lender at the closing of the sale of such Lots an administrative fee in the amount of \$500.00 per Lot sold;

(f) the sale of such Lots will not violate any applicable land use, zoning requirement or ordinance, planning requirement or any other Legal Requirement;

(g) Borrower shall have provided evidence and documentation satisfactory to Lender that (1) the Lots being sold will be assessed as a separate tax parcel (apart from all remaining Property owned by Borrower) with respect to all property taxes and assessments, and (2) that the remaining Property will comply with all Legal Requirements (including setback, lot size, subdivision, and other zoning and land use requirements);

(h) the Property remaining subject to the Security Instrument shall abut a duly dedicated, physically open public right-of-way and have direct access thereto, or Borrower shall have delivered easement agreements acceptable to Lender indicating an irrevocable and unconditional easement for such direct access as an appurtenance to such remaining Property and such other rights as may be requested by Lender;

(i) Borrower has delivered to Lender a satisfactory legal description of the portion of the Property to be sold;

(j) Borrower has delivered to Lender an endorsement to the Title Insurance Policy insuring the lien priority of the remaining Property in at least the same priorities that existed on the Closing Date, and updating the Title Insurance Policy by endorsement acceptable to Lender, with no additional title exceptions, liens or encumbrances unacceptable to Lender;

(k) the Loan-to-Value Ratio shall be no greater than sixty-five percent (65%) after giving effect to the release of the Lots sold, and there shall be no material adverse effect to Lender's overall security position as a result of such sale, such determinations to be made in Lender's discretion based on an appraisal of the remaining Property obtained at Borrower's expense; and

(l) Borrower pays to Lender at the closing of the sale of such Lots a release price equal to one hundred percent (100%) of the Net Lot Sales Proceeds for the Lots.

## VI CASUALTY; CONDEMNATION; ESCROWS

### Section 6.1 Insurance; Casualty and Condemnation.

#### Section 6.1.1 Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, during all times that any sum is outstanding under the Note or the other Loan Documents (the "Term"), insurance for Borrower and the Property providing at least the following coverages or such other coverages required by and acceptable to the Lender and its insurance consultant:

(i) Property insurance coverage on a Special Cause of Loss form, including windstorm, in an amount not less than 100% of the replacement cost (as determined by an appraiser approved by Lender) of all insurable elements of the Property and of all tangible personal property, with coinsurance waived, or if a coinsurance clause is in effect, with an agreed amount endorsement acceptable to Lender. Coverage shall extend to the Property and to all tangible personal property and be on a replacement cost basis. The deductible shall not exceed \$25,000 per loss without prior approval by Lender.

(ii) If any boiler, pressure vessel or other large machinery is located on or about the Property, broad form boiler and machinery/equipment breakdown coverage, including a form of business income coverage.

(iii) A form of business income coverage in the amount of 100% of one year's gross income from the Property, including a 60-day extended period of indemnity. Any time element deductible shall not exceed a 72-hour waiting period without prior approval of Lender.

(iv) If the Property is located in a special flood hazard area (that is, an area within the 100-year floodplain) according to the most current flood insurance rate map issued by the Federal Emergency Management Agency and if flood insurance is available, flood insurance coverage on all insurable elements of the Property and of all tangible personal property in an amount equal the maximum coverage available through the National Flood Insurance Program.

(v) In the event that the Property is located in a geographic area which is considered "high risk" by Lender for potential earthquake damage, a Special Earthquake Hazard Report will be ordered by Lender, at Borrower's cost. The Special Earthquake Hazard Report must be received and approved by Lender in its sole and absolute discretion prior to closing. The Special Earthquake Hazard Report must indicate that the potential risk of earthquake damage is acceptable to Lender and/or can be adequately insured against. Earthquake coverage shall be required if the Special Earthquake Hazard Report determines that a material risk exists that a significant earthquake may occur and result in a "probable maximum loss" or "Scenario Expected Loss" due to earthquake in excess of 20% of the value of the Property.

(vi) Commercial general liability coverage (which may be in the form of umbrella/excess liability insurance) with a \$1,000,000 combined single limit per occurrence and a minimum aggregate limit of \$2,000,000.

(vii) Workers compensation insurance, 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 \$1,000,000.00 per accident and per disease per employee, and \$1,000,000.00 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).

(viii) If applicable, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.00.

(ix) Such other insurance and in such amounts as Lender from time to time may reasonably request 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. Additional coverages may include earthquake, mine subsidence, sinkhole, mold, personal property, supplemental liability, or coverages of other property-specific risks.

(b) All insurance provided for in Section 6.1.1(a) shall be obtained under valid and enforceable policies ("Policies" or in the singular, "Policy"), and shall be subject to the approval of Lender as to form and substance including deductibles, loss payees and insureds. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance and, if requested by Lender, other documentation, in each case acceptable to Lender evidencing the Policies, accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender.

(c) All Insurance policies must require the insurance carrier to give the Lender a minimum of ten (10) days' notice in the event of cancellation or termination for non-payment of premium and a minimum of thirty (30) days' notice of non-renewal. Borrower shall provide current policy documents confirming all required coverages and conditions and Acord 27, Acord 28 (Evidence of Property Insurance), and Acord 25 (Certificate of Liability Insurance), or another document satisfactory to the Lender conferring on the Lender rights and privileges of mortgagee. Upon the request of the Lender, Borrower shall supply an original or certified copy of the original policy within ninety (90) days. Borrower must also provide Lender with a paid insurance agent's receipt for all current coverages. All insurance policies required hereunder shall be carried by companies rated A-VIII or better by A.M. Best Company and shall not contain exclusions for terrorism coverage. All binders, certificates of insurance, and policies must name Borrower as the insured, or as an additional insured, must include the complete and accurate property address and must bear the original signature of the issuing insurance agent. On all property insurance policies and coverages required under this Section (including coverage against loss of business income), the Lender must be named as "Lenders Loss Payable" under standard mortgagee clause. On all liability policies and coverages, the Lender must be named as an "additional insured." The Lender should be referred to verbatim as follows: "Romspen California Mortgage Limited Partnership, its successors and assigns."

(d) Each coverage required under this Section shall be primary rather than contributing or secondary to the coverage that Borrower may carry for other properties or risks, provided however, that blanket coverage shall be acceptable if Lender determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy.

(e) Borrower shall furnish to Lender, on or before thirty (30) days after the close of each calendar year, an Officer's Certificate stating the amounts of insurance maintained in compliance herewith, the risks covered by such insurance and the insurance company or companies which carry such insurance and, if requested by Lender, verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender.

(f) 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, after five (5) Business Days' notice to Borrower, to take such action as Lender deems necessary to protect Lender's interest in the Property, including the obtaining of such insurance coverage as Lender in Lender's 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 the Loan Documents and shall bear interest at the Default Rate.

(g) In the event of foreclosure of any Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to such Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

(h) Within thirty (30) days after written request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices of similarly situated lenders, and the like.

(i) If the Property or any portion of the Property is materially damaged or destroyed, in whole or in part, by fire or other casualty, whether insured or uninsured (a "Casualty"), Borrower shall give prompt written notice thereof to Lender. Following the occurrence of a Casualty, Borrower shall, regardless of whether Insurance Proceeds are available, promptly proceed 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 the terms and conditions of the Loan Documents. The reasonable expenses incurred by Lender in the adjustment and collection of Insurance Proceeds shall become part of the Debt and be secured by the Loan Documents and shall be reimbursed by Borrower to Lender upon demand.

(j) Borrower shall comply with all insurance requirements of any insurer of the Property or any portion thereof and shall not bring or keep or permit to be brought or kept any article upon any of the Property or any portion thereof or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate any Policies then in effect or any of the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Agreement.

(k) Any reimbursement due to Lender pursuant to this Section 6.1.1 must be paid within ten (10) Business Days (or sooner if required), or such amount shall accrue interest at the Default Rate until paid to Lender.

(l) Lender shall not be responsible for nor incur any liability for the insolvency of any insurer or other failure of any insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is named insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein.

(m) Borrower acknowledges that Lender has disclosed to Borrower the contents of California Civil Code Section 2955.5(a), which states that no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

#### **Section 6.1.2 Casualty and Application of Proceeds.**

(a) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of a Casualty that is less than \$250,000, Borrower may settle and adjust any claim without the consent of Lender and retain the proceeds thereof.

(ii) In the event of a Casualty in excess of \$250,000 if each of the following is true at all times: (A) the Insurance Proceeds are sufficient to pay for the Restoration as reasonably determined by Lender; (B) after such Restoration the Property will adequately secure the outstanding balance of the Loan; (C) no Default or Event of Default exists; (D) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements; and (E) the Casualty does not result in the loss of access to the Property or the Improvements, then the Insurance Proceeds shall be deposited with Lender and after reimbursement of any expenses incurred by Lender, such Insurance Proceeds shall be maintained and applied to pay for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof subject to the Casualty ("Restoration"), in the manner set forth herein. Borrower hereby covenants and agrees to commence and diligently to prosecute such Restoration; provided that: (A) Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such Restoration in excess of the net Insurance Proceeds made available pursuant to the terms hereof; (B) the Restoration shall be done in compliance with all applicable Legal Requirements; (C) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than thirty (30) days after settlement with the applicable insurance carrier regarding the Insurance Proceeds arising from the Casualty) and shall diligently pursue the same to satisfactory completion; (D) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements, including any applicable Environmental Laws; and (E) Lender shall have received evidence satisfactory to Lender that, during the period of the Restoration, the sum of (A) income derived from the Property, as reasonably determined by Lender, plus (B) proceeds of rent loss insurance or business interruption insurance, if any, to be paid, will equal or exceed the sum of (1) expenses in connection with the operation of the Property, (2) the required payments of principal and interest on the Loan, and (3) the other payments required pursuant to this Agreement or the Loan Documents.

(b) Except as provided above in Section 6.1.2(a), the Insurance Proceeds collected upon any Casualty shall be deposited with Lender and at Lender's option (in its reasonable discretion), be applied to the payment of the Debt after reimbursement of any reasonable expenses incurred by Lender or, if Lender so elects (without any obligation to do so), after reimbursement of any reasonable expenses incurred by Lender, Lender shall hold such amount and such proceeds shall be maintained and applied in accordance with the Loan Documents to pay for the cost of any Restoration in the manner set forth herein. Any such application to the Debt shall be at Lender's reasonable discretion, except as specifically provided herein to the contrary, and shall be applied in accordance with the provisions of this Agreement.

(c) In the event Borrower is eligible for reimbursement out of Insurance Proceeds held by Lender, such Insurance Proceeds shall be disbursed from the Lender from time to time (but not more than once per month) upon Lender being furnished with: (i) evidence satisfactory to Lender of the estimated cost of completion of the Restoration; (ii) evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Insurance Company; (iii) sufficient funds, or at Lender's option, assurances satisfactory to Lender that such funds are available, in addition to the Insurance Proceeds, to complete the proposed Restoration; (iv) 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 (v) all plans and specifications for such Restoration, such plans and specifications to be delivered and approved by Lender prior to commencement of any work.

(d) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and, if required by Lender, by an independent consulting engineer selected by Lender. Lender shall have the use of the plans and specifications and all permits, Licenses and approvals required or obtained in connection with the Restoration. The identity of the

general contractor engaged in the Restoration, as well as the general contract under which it has been engaged, shall be subject to prior review and acceptance by Lender. All reasonable costs and expenses incurred by Lender in connection with making the insurance proceeds available for the Restoration, including reasonable counsel fees and disbursements, shall be deducted by Lender from such insurance proceeds.

(e) In addition, no payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than Insurance Proceeds shall be disbursed prior to disbursement of such Insurance Proceeds; and at all times, the undisbursed balance of such Insurance 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, free and clear of all Liens or claims for Lien. Any surplus which may remain out of Insurance Proceeds after payment of such costs of Restoration shall be applied to the Loan in accordance with the provisions of this Agreement.

#### **Section 6.1.3 Condemnation.**

(a) Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding against the Property or the Improvements or any part thereof (a "Condemnation") and shall deliver to Lender copies of any and all papers served by or on or received by any of the Borrower Parties in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether an Award is available, shall promptly proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with all Legal Requirements.

(b) 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 ("Award") for any taking accomplished through a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Notwithstanding any taking in connection with a Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Debt at the time and in the manner provided for in the Note and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Lender to expenses of collecting the Award and to 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 in the Note. Borrower shall cause any Award that is payable to Borrower to be paid directly to Lender.

(c) The proceeds of the Award collected upon any Condemnation shall be deposited directly with Lender pursuant to Section 6.1.3(b) and at Lender's option (in its sole discretion), shall be applied to the payment of the Debt (after reimbursement of any expenses incurred by Lender) or, if Lender so elects (without any obligation to do so), (after reimbursement of any expenses incurred by Lender), Lender shall hold such amount and such proceeds shall be maintained and applied in accordance with the Loan Documents to pay for the cost of any Restoration in the manner set forth herein. Any such application to the Debt shall be at Lender's sole discretion and shall be applied in accordance with the provisions of this Agreement. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the outstanding balance of the Debt.

(d) In the event Borrower is entitled to reimbursement out of the Awards held by Lender, such Awards shall be disbursed from Lender from time to time (but not more than once per month) upon Lender being furnished with: (i) evidence satisfactory to Lender of the estimated cost of completion of the Restoration; (ii) evidence satisfactory that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same,

or any other Liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Insurance Company; (iii) sufficient funds, or at Lender's option, assurances satisfactory to Lender that such funds are available, in addition to the Awards, to complete the proposed Restoration; (iv) 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 (v) all plans and specifications for such Restoration, such plans and specifications to be delivered and approved by Lender prior to commencement of any work.

(e) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and, if required by Lender, by an independent consulting engineer selected by Lender. Lender shall have the use of the plans and specifications and all permits, Licenses and approvals required or obtained in connection with the Restoration. The identity of the general contractor engaged in the Restoration, as well as the general contract under which it has been engaged, shall be subject to prior review and acceptance by Lender. All costs and expenses incurred by Lender in connection with making the Awards available for the Restoration, including reasonable counsel fees and disbursements, shall be deducted by Lender from such Awards.

(f) In addition, no payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than Awards shall be disbursed prior to disbursement of such Awards; and at all times, the undisbursed balance of such Awards 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, free and clear of all Liens or claims for Lien. Any surplus, which may remain out of the Awards after payment of such costs of Restoration, shall be applied to the Loan in accordance with the provisions of this Agreement.

**Section 6.2 Tax and Insurance Escrows.** Lender shall have the right to require the establishment of a tax reserve by Borrower ("Tax Reserve Right"). In the event that Lender exercises the Tax Reserve Right, Borrower shall pay to Lender on each Scheduled Payment Date (a) one-twelfth of the Taxes that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates and (b) one-twelfth of the Insurance Premiums that Lender reasonably estimates will be payable for the renewal of the coverage afforded by the Policies for the succeeding annual period upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (all amounts in clauses (a) and (b) above hereinafter called the "Tax and Insurance Escrow Fund"). Borrower shall also deposit with Lender on the Closing Date such amount as is required by Lender in order to provide adequate funds therefor on the first payment date for such Taxes and Insurance Premiums. The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Borrower to Lender in immediately available funds. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.4 and under the other Loan Documents provided no Event of Default has occurred and is continuing. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax Lien or title or claim thereof. Borrower shall arrange for any such bills, statements or estimates to be delivered to Lender at least fifteen (15) Business Days prior to the date any such payment is due. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.4, Lender shall, in its sole discretion, return any excess to Borrower or, at Lender's option, credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be

returned to Borrower, or at Lender's option, may be deducted from the Loan payoff amount. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay the items set forth in clauses (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be. Borrower hereby pledges, assigns, and grants a security interest to Lender, as security for the Loan in all of Borrower's right, title, and interest in and to the Tax and Insurance Escrow Fund, the Interest Reserve Fund and any other Reserve Fund and all monies, and deposits contained therein.

**Section 6.3** Intentionally Omitted.

**Section 6.4** Interest Reserve. Contemporaneously with the first advance of the Loan, Borrower will establish with Lender a reserve in the aggregate amount of approximately Two Million Three Hundred Thousand and No/100 Dollars (\$2,300,000.00) (the "Interest Reserve Fund") payable from the Loan proceeds. For so long as no Event of Default has occurred hereunder or under any of the other Loan Documents, Lender shall on each Scheduled Payment Date (or such other dates as it shall determine) advance from the Interest Reserve Fund to itself the amount of the Monthly Debt Service Payment (as defined in the Note) and other accrued interest then due and payable under the Note, and interest on any amounts advanced from the Interest Reserve Fund shall not accrue until the date of such advance. Once there are no funds remaining in the Interest Reserve Fund or upon an Event of Default, Lender shall have no further obligation for funding of accrued and unpaid interest, or amounts payable and unpaid, whereupon Borrower shall be and remain responsible for the continuation of all such Monthly Debt Service Payments from funds other than proceeds of the Loan.

## VII DEFAULTS

**Section 7.1** Event of Default.

(a) Each of the following shall constitute an event of default hereunder (an "Event of Default"):

(i) if (A) any payment due pursuant to the Note, this Agreement or any of the other Loan Documents, including the payment due on the Maturity Date (or, if the Maturity Grace Period defined and described in the Note is applicable, due at the end of such Maturity Grace Period), is not paid on or before the date the same is due or (B) any other portion of the Debt is not paid on or before the date the same becomes due and payable by the terms of the Loan Documents;

(ii) subject to Borrower's right to contest Taxes and Other Charges pursuant to Section 5.4 above, any of the Taxes or Other Charges (other than any of the same payable on a Scheduled Payment Date) are not paid on or before the date the same are due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with terms of this Agreement and Lender fails to pay same;

(iii) the Policies are not kept in full force and effect, or copies of the Policies are not delivered to Lender within ten (10) days of written request by Lender;

(iv) a Transfer (other than a Transfer specifically authorized and permitted by Section 5.18) shall occur without Lender's prior written consent;

(v) any representation or warranty made by Borrower or any of the Borrower Parties herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender in connection with the Loan, shall have been false or misleading in any respect as of the date the representation or warranty was made; provided, however, if such false or misleading representation or warranty is susceptible of being cured within thirty (30) days, the same

shall be an Event of Default hereunder only if the same is not cured within a reasonable time, not to exceed thirty (30) days after notice from Lender;

(vi) if (a) Borrower or any Borrower Party shall commence any case, proceeding or other action (1) under any existing or future Bankruptcy Laws, or (2) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for Borrower or any Borrower Party or for all or any substantial part of the assets of Borrower or any Borrower Party, or Borrower or any Borrower Party shall make a general assignment for the benefit of creditors; or (b) there shall be commenced against Borrower or any Borrower Party any case, proceeding or other action of a nature referred to in clause (a) above which (1) results in the entry of an order for relief or any such adjudication or appointment or (2) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (c) there shall be commenced against Borrower or any Borrower Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distress 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 ninety (90) days from the entry thereof; or (d) Borrower or any Borrower Party 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 (a), (b), or (c) above; or (e) Borrower or any Borrower Party shall generally not, or shall be unable to, or shall admit in writing or in any proceeding its inability to, pay its debts as they become due; or (f) Borrower or any Guarantor files a petition, complaint, answer or other instrument which seeks to effect a suspension of or which has the effect of suspending any of the rights or powers of Lender granted in this Agreement or in any of the other Loan Documents;

(vii) if Borrower shall be in default under any other permitted mortgage, deed of trust or security agreement covering any part of the Property whether it be superior or junior in Lien to the Security Instrument and whether it be permitted under the Loan Documents or if Borrower shall be in default of any other Indebtedness, secured or unsecured, owed by Borrower to any Person; provided, however, the foregoing shall not be deemed to permit Borrower to incur any other Indebtedness unless expressly permitted by the Loan Documents;

(viii) if Borrower or any Person owning a direct or indirect interest in Borrower shall be in default under any pledge agreement or security agreement covering any part of the equity interests in Borrower and whether it be permitted or prohibited under the Loan Documents;

(ix) subject to Borrower's right to contest set forth in the Security Instrument, if the Property becomes subject to any mechanic's or materialman's lien or other Lien except 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) days;

(x) an event of default under the terms of any other loan made by Lender or any of its Affiliates to Borrower, any Guarantor or any of their respective Affiliates;

(xi) if any term, covenant or provision of this Agreement or of any of the other Loan Documents specifies a cure period for any breach thereof, if Borrower shall continue to be in default under such term, covenant, or provision of any of the Loan Documents (including this Agreement), beyond such applicable cure periods contained herein or in those documents, or if no cure period is provided by this Agreement or the other Loan Documents, any other default hereunder or thereunder, which default is not cured (i) in the case of any default which can be cured by the payment of a sum of money, within three (3) Business Days after receipt of written notice from Lender to Borrower, or (ii) in the case of any default which cannot be cured by the payment of a sum of money, within fifteen (15) days after written notice from Lender to Borrower; provided, however, if such default is reasonably susceptible of cure, but not within such fifteen (15) day period, then Borrower may be permitted up to an additional thirty (30) days to cure such default provided that Borrower diligently and continuously pursues such cure;

(xii) if Borrower violates or does not comply with any of the provisions of Section 4.1(s) or if any general partner, managing member or manager of Borrower violates or does not comply with any of the provisions of Section 4.1(s);

(xiii) the prohibition, enjoining or interruption of Borrower's right to occupy, use or lease the Property for a continuous period of more than thirty (30) days;

(xiv) the sequestration or attachment of, or any levy or execution upon any of the Property, any other collateral provided by Borrower under any of the Loan Documents, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby;

(xv) the failure at any time of the Security Instrument to be a valid first lien upon the Property or any portion thereof, other than as a result of any release or reconveyance of the Security Instrument with respect to all or any portion of the Property pursuant to the terms and conditions of this Agreement;

(xvi) the discovery of any significant Hazardous Materials in, on or about the Property subsequent to the Closing Date which did not exist in, or about the Property prior to the Closing Date. Any such Hazardous Materials shall be "significant" for this purpose if the presence of said Hazardous Materials, in Lender's reasonable discretion, have, or could have, a Material Adverse Effect on the value of the Property;

(xvii) a Material Adverse Change in the financial condition, operations or business of Borrower, any Borrower Party, or any portion of the Property;

(xviii) except as permitted herein, the alteration, demolition or removal of any improvements at the Property without Lender's prior consent;

(xix) if a Balancing Event is not cured within five (5) Business Days after written notice thereof from Lender;

(xx) if there shall be a default under any other Loan Document beyond any applicable notice and cure period, if any, or if any other event shall occur or condition shall exist; and the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the Maturity of any or all of the Debt;

(xxi) the liquidation, death, termination, dissolution, merger or consolidation of Borrower or any Guarantor;

(xxii) if Borrower or any Guarantor, or any party acting on behalf of Borrower or any Guarantor, shall take any action which seeks to cause any Loan Document or the liens, mortgages or security interests of Lender in any of the Property to cease to be in full force and effect, be declared null and void or unenforceable in whole or in part, cease to have the priority required herein, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Borrower, any Guarantor or any party acting on behalf of Borrower or any Guarantor; or

(xxiii) if Guarantor fails to prepay the Loan in the amount of \$1,000,000.00 as required by § 7(k) of the Security Agreement executed by Guarantor.

## Section 7.2 Remedies.

(a) Upon the occurrence of any Event of Default, Lender may take such action, without notice, demand presentment, protest or other requirements of any kind (all of which are expressly

waived by Borrower), as Lender deems advisable to protect and enforce its rights and remedies against Borrower and/or any Borrower Party and in and to the Property, including 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 (provided that upon the occurrence of an Event of Default under Section 7.1(a)(vi), all commitments to make further advances shall automatically terminate, and the Debt shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind (all of which are hereby expressly waived by Borrower)):

- (i) declare the entire Debt to be immediately due and payable;
- (ii) terminate all commitments to make further advances;
- (iii) exercise any of the rights or remedies specified in the Security Instrument;

(iv) apply any sums then deposited with Lender or any third party under the control of Lender and any other sums held in escrow or otherwise by Lender, including the Reserves, in accordance with the terms of this Agreement or any other Loan Document to the payment of the following items in any order in Lender's 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 Agreement and the other Loan Documents, including advances made by Lender pursuant to the terms of this Agreement;

(v) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including the right to receive and/or establish a lock box for all Rents, proceeds from the Intangibles (as defined in the Security Instrument) and any other receivables or rights to payments of Borrower relating to the Property;

(vi) with or without actual or threatened waste to the Property, Lender shall, at Lender's discretion, be entitled, and is hereby expressly and irrevocably authorized, upon application to a court of competent jurisdiction, without notice to Borrower, or any other party (any and all such notice being waived hereby) and without regard to the adequacy of any security for the Debt or the solvency of Borrower or any other party liable for payment of the Debt, to appoint a receiver(s), on an emergency basis or otherwise (and if allowed by applicable law, on an ex parte basis), to take possession of and to operate the Property, and at Lender's option, to collect the Rents. Borrower irrevocably waives all notice of and defenses and objections to the appointment of such receiver. Borrower further irrevocably agrees that the occurrence of any Event of Default per se would create an emergency and the necessity for immediate actions; and

(vii) pursue any other right or remedy allowed by any Loan Document or applicable law.

(b) Upon the occurrence and during the continuance of an Event of Default, interest on the outstanding principal balance and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan, shall accrue at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Debt, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default; the acceptance of any payment by Lender shall not be deemed to cure or constitute a waiver of any Event of Default; and Lender retains its rights under this Agreement and the other Loan Documents to accelerate and to

continue to demand payment of the Debt upon the happening of any Event of Default, despite any payments made to Lender after the occurrence of such Event of Default.

(c) Lender may resort to any remedies and the security given by any of the Loan Documents in whole or in part, and in such portions and in such order as determined by Lender in its sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, the Security Instrument or any of the other Loan Documents. The failure of Lender to exercise any right, remedy or option provided in any of the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, the Security Instrument or the other Loan Documents. No acceptance by Lender of any payment after the occurrence of any Event of Default and no payment by Lender of any obligation for which Borrower is liable hereunder shall be deemed to waive or cure any Event of Default, or Borrower's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Lender to Borrower, shall operate to release or in any manner affect the interest of Lender in the remaining Property or the liability of Borrower to pay the Debt. No waiver by Lender shall be effective unless it is in writing signed by Lender and then only to the extent specifically stated.

(d) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt, and Lender may seek satisfaction out of the Property or any part thereof or decline to do so, in Lender's sole and absolute discretion. In addition, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in Lender's sole and absolute sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(e) Additionally, upon the occurrence of any Event of Default or if any Borrower Party fails to make any payment or to do any act as required in any of the Loan Documents, Lender may, but without any obligation to do so and without notice to or demand on any Borrower Party and without releasing any Borrower Party from any obligation under the Loan Documents, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Following an Event of Default, Lender is authorized to enter upon the Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose the Loan Documents or collect the Debt, and the reasonable cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender, shall constitute a portion of the Debt, shall be secured by the Loan Documents and shall be due and payable to Lender upon demand.

(f) No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power of Lender. Notwithstanding any other provision of this Agreement, Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of the

Security Instrument to the extent necessary to foreclose on all or any portion of the Property, the Rents or any other collateral.

**Section 7.3 Right of Entry.** In addition to any other rights or remedies granted under this Agreement, in the event of any default by Borrower hereunder, Lender and its agents shall have the right without notice to enter and inspect the Property at any reasonable time during the Term. The reasonable cost of such inspections or audits, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Lender, shall be borne by Borrower. The cost of such inspections, if not paid for by Borrower following demand, may, at Lender's option, be added to the principal balance of the sums due under the Note and shall bear interest thereafter until paid at the Default Rate.

**Section 7.4 Costs of Enforcement.** In the event of the (i) exercise of any remedy by Lender under this Agreement or the other Loan Documents or following the occurrence of an Event of Default, (ii) foreclosure of any mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, (iii) bankruptcy, insolvency, reorganization, rehabilitation, liquidation or other similar proceeding in respect of any Borrower Party or an assignment by any Borrower Party for the benefit of its creditors, (iv) enforcement of any obligations of or collection of any payments due from any Borrower Party under this Agreement, the other Loan Documents or with respect to the Property, or (v) incurring of any costs or expenses by Lender in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out," then Borrower, its successors or assigns, shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting Lender's interest in the Property or in collecting any amount payable hereunder or in enforcing Lender's rights hereunder with respect to the 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 paid or incurred by Lender until such expenses are paid by Borrower.

**Section 7.5 Violation of Legal Requirements.** If the Property is not in compliance with one, some or all of the Legal Requirements, Lender may impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents.

**Section 7.6 Remedies Cumulative.** The rights, powers and remedies of Lender under this Agreement and the other Loan Documents shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower or any of the Borrower Parties pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. Any and all amounts collected or retained by Lender after an Event of Default has occurred, including interest at the Default Rate, late charges or any escrowed amount, may be applied by Lender to payment of the Debt in any order or priority that Lender in its sole discretion may elect.

## VIII TRANSFER OF LOAN AND REFINANCING

**Section 8.1 Lender's Transfers.** Lender may, at any time and at its sole cost and expense, (i) sell, transfer or assign the Loan Documents and any servicing rights with respect thereto or (ii) 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 (collectively, the "Securities"). Lender may forward to any purchaser, transferee, assignee, servicer, participant, or investor in such Securities (collectively, "Investors"), to any Rating Agency (defined below) rating such Securities and to any prospective Investor, all documents and information which Lender now has or may later acquire relating to the Obligations, Borrower, guarantor(s), any indemnitor(s), the Leases, and the Property, whether furnished by Borrower, any guarantor(s), any indemnitor(s) or otherwise, as Lender determines advisable. Borrower, any guarantor and any indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section 8.1 including the delivery of an estoppel certificate and such other documents as may be reasonably requested by Lender. Borrower shall also furnish consent of any guarantor and any indemnitor in order to permit Lender to furnish such Investors or such prospective Investors or such Rating Agency with any and all information

LOAN AGREEMENT – Page 41

concerning the Property, the Leases, the financial condition of Borrower, any guarantor and any indemnitor, as may be reasonably requested by Lender, any Investor, any prospective Investor or any Rating Agency and which may be complied with without undue expense. “**Rating Agency**” shall mean any one or more credit rating agencies approved by Lender.

**Section 8.2 Register.** Lender, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices a register for the recordation of the names and addresses of each Lender, and principal amounts (and stated interest) of the Loans or other Obligations owing to such Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and Borrower and Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

**Section 8.3 Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural Person or Borrower or any Affiliate of Borrower) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrower shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant and (i) reduces or forgives the principal amount of any Loan or reduces the rate of interest thereon, or reduces or forgives any interest or fees payable hereunder, (ii) postpones any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, (iii) releases any Guarantor from its obligation under its Guaranty (except as otherwise permitted herein or in the other Loan Documents), or (iv) releases all or substantially all of the collateral securing any Loan. Borrower agrees that each Participant shall be entitled to the benefits of Section 2.6 to the same extent as if it were the Lender and had acquired its interest by assignment; provided that such Participant shall not be entitled to receive any greater payment under Section 2.6, with respect to any participation, than Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loan or other Obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 8.4 Waiver.** Borrower agrees that upon any assignment or transfer of the Loan Documents by Lender to any third party, Borrower is hereby waiving notice of any such transfer, Lender shall have no obligations or liabilities under the Loan Documents, such third party shall be substituted as the lender under the Loan Documents for all purposes, and Borrower shall look solely to such third party for the performance of any obligations under the Loan Documents or with respect to the Loan.

**Section 8.5 Collateral.** Upon an assignment or other transfer of the Loan Documents, Lender may, at its discretion, deliver all collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred to Borrower or to the assignee or transferee of the Loan Documents. This provision shall apply to every transfer of any collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to a new assignee or transferee.

**Section 8.6 Right of First Opportunity; Right of First Refusal.** Lender shall have a right of first opportunity to finance or arrange any replacement financing for the Property, or for any further development of the Property or any improvements to be developed on the Property (herein referred to as the "Permanent Financing"). If Borrower intends to enter into Permanent Financing, no later than ninety (90) days prior to the Maturity Date, Borrower shall provide to Lender in writing, a request for Permanent Financing together with all information requested by Lender to process such request and within a commercially reasonable period of time after delivery of all said information, Lender shall be given a first opportunity to provide an offer of Permanent Financing. Lender shall also be given a continuing right of first refusal to provide an offer of Permanent Financing to Borrower on terms substantially the same as any other written offer of financing received from a third party lender, which Borrower is prepared to accept and a copy of which has been provided to Lender.

**Section 8.7 Strada Deed of Trust.** Lender shall release the lien of the Strada Deed of Trust and file, at Borrower's expense, all such documentation necessary to reflect the release and termination of the Strada Deed of Trust upon Lender's satisfaction that Guarantor has, or has caused Borrower to, contribute an additional \$1,000,000.00 of equity to the Property.

## IX EXCULPATION.

**Section 9.1 Full Recourse.** The Debt shall be fully recourse to Borrower. Borrower shall be fully personally liable for all of the Debt. Each Guarantor shall be, jointly and severally with Borrower, fully personally liable for all of the Debt in accordance with the Guaranty.

**Section 9.2 No Waiver.** Notwithstanding anything to the contrary in this Agreement or any of the other Loan Documents (including the provisions of this Article IX) Lender shall not be deemed to have waived any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents.

## X INDEMNIFICATION.

**Section 10.1 Indemnification.** Borrower shall, at Borrower's sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly.

**Section 10.2 Duty to Defend; Attorneys' Fees 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 reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any of the 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; provided, however, that all of the Indemnified Parties shall be defended by one firm of attorneys unless Lender in good faith determines that more than one law firm should be retained because of conflicts of interest or potential conflicts of interest.

**Section 10.3 Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by Lender that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**Section 10.4 No Credits on Account of the Debt.** 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 the Loan Documents or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**Section 10.5 Recording of Security Instrument.** Borrower forthwith upon the execution and delivery of this Agreement and thereafter, from time to time upon five (5) Business Days' notice from Lender, will cause the Security Instrument, and any other Loan Document creating a Lien or security interest or evidencing the Lien thereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by Lender or by any present or future law in order to publish notice of and fully to protect the Lien or security interest thereof upon, and the interest of Lender in, the Property or to correct any error in the legal description of the Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of the Security Instrument, any mortgage supplemental thereto, any security instrument with respect to the Property, any such other Loan Document and any instrument of further assurance, 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 the Security Instrument, any mortgage supplemental thereto, any security instrument with respect to the Property, any such other Loan Document or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of the Security Instrument or any other Loan Document. If at any time any Governmental Authority shall require revenue or other stamps to be affixed to any of the Loan Documents, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any. Borrower hereby absolutely and irrevocably appoints Lender as Borrower's true and lawful attorney, coupled with an interest, in Borrower's name and stead to make and execute all documents necessary or desirable to effect the provisions of this Section 10.5 if Borrower fails to do so for five (5) days after demand by Lender. Borrower hereby ratifies all that Borrower's said attorney shall do by virtue of such power or authority. Borrower hereby acknowledges and agrees that Borrower shall have no claim or cause of action against Lender arising out of Lender's execution and/or recordation of any instruments by or on behalf of Borrower pursuant to the foregoing power of attorney.

**Section 10.6 Brokers and Financial Advisors.** Borrower hereby represents that, except as previously disclosed to Lender, Borrower has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 10.6 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.7 Currency Adjustment.** Borrower agrees to pay an additional amount to Lender (the "Currency Adjustment") in the event that Lender incurs any currency exchange losses when the Loan is repaid by Borrower and then converted to Canadian dollars by Lender upon such repayment. The Currency Adjustment, if any, will be determined by subtracting the amount of Canadian dollars received by Lender after converting U.S. dollar repayment(s) from Borrower from the aggregate cost in Canadian dollars required to fund the advances under the Loan. A positive difference represents a currency loss to be covered by Borrower by paying a Currency Adjustment to Lender. Lender shall convert funds at the offered or prevailing exchange rate of a financial institution or exchanger of its choosing, on a date within 30 days after repayment, and Lender shall have no obligation to ensure that it is obtaining the most favorable exchange rate available on the date of conversion. Lender will provide Borrower with a reconciliation of the Currency Adjustment calculation, and the payment by Borrower of the Currency Adjustment, if any, will be a condition of Lender providing Borrower with a release or discharge of its collateral.

## XI WAIVERS

**Section 11.1 Waiver of Counterclaim.** All amounts due under this Agreement or the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against Borrower by Lender or its agents, or otherwise offset any obligations to make payments required under the Loan Documents. Any Investor or assignee of Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which Borrower may otherwise have against any assignor of the Loan Documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon the Loan Documents, and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower. If Borrower is indebted to Lender pursuant to more than one note or pursuant to any subordinate loan documents, (i) the preceding provisions shall apply to any note or other loan documents assigned or transferred by Lender, even if one or more notes are retained by Lender, and (ii) Borrower waives and releases any right to assert any claim, cause of action, offset or defense against Lender with respect to the Loan or the Loan Documents which is any way related to such other note or subordinate loan documents.

**Section 11.2 Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, 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 and the pleading of any statute of limitations as a defense to payment of the Debt or performance of the Obligations. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of the 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 Agreement and on behalf of all Persons to the extent permitted by applicable law. Borrower hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part thereof. The interests and rights of Lender under the Note, the Security Instrument or in any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Lender may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Borrower Party or surety of any of the Debt.

**Section 11.3 Waiver of Notice.** Borrower shall not be entitled to, and hereby waives the right to receive, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 11.4 Trial by Jury. BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, THE MORTGAGE, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, BORROWER HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE (PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO JUDICIAL REFERENCE SHALL BE APPLICABLE WITH RESPECT TO ANY ACTION IN RESPECT OF THE FORECLOSURE OF THE MORTGAGE). PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640 TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. BORROWER ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER. BORROWER HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARMS-LENGTH BASIS, WITH BORROWER AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN.**

  
\_\_\_\_\_  
**Borrower's Initials**

  
\_\_\_\_\_  
**Borrower's Initials**

**Section 11.5 Credit Authorization and Consent to Disclosure.** Lender may collect, retain, release, disclose, exchange, share, transfer and assign from time to time, as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by it relating to Borrower, Property or the Loan (both before and after the disbursement of funds and/or default thereunder) without restriction and without notice to or the consent of Borrower and/or any guarantor (and each Borrower hereby irrevocably consents thereto):

- (a) to any other Lender or investor who has an interest in the Loan;
- (b) to any proposed purchaser or subsequent owner of the Loan including any subsequent or proposed Lender and their respective third party advisors and agents, such as lawyers, accountants, auditors, consultants, appraisers and credit verification sources;
- (c) to the public or any private group in any offering memorandum, prospectus or other disclosure document relating to any sale, syndication or securitization of the Loan (including all initial and continuing disclosure requirements), regardless of format or scope of distribution;
- (d) to the public or other interested persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or any related securitization or any interest therein, regardless of format or scope of distribution;
- (e) to any governmental authority having jurisdiction over any sale, syndication or securitization of the Loan or any trade of any interest therein;
- (f) to any other Person in connection with the sale, syndication or securitization of the Loan, including insurers and rating agencies; and
- (g) to any other Person in connection with the collection or enforcement proceedings taken under or in respect of the Loan.

Without limiting the foregoing, Borrower hereby consents to the Lender obtaining all information as may be necessary from all available sources as to the creditworthiness of Borrower and acknowledges that the Lender may collect or come into possession of personal information relating to certain individuals either comprising or otherwise connected with the Borrower which information may include contact information (mailing address, e-mail address, telephone number or fax number), financial information and status (bank account numbers, existing debts, personal net worth or credit history), date of birth, place of employment and social security number. Borrower acknowledges and agrees that such personal information may be used by Lender in connection with the processing, approving, funding, servicing and administering the Loan and any sale, syndication or securitization of the Loan, and in so doing the Lender may disclose and otherwise deal with personal information in the same manner and to the same Persons as provided in the preceding paragraph without restriction and without notice to or the consent of Borrower or any related individual. Borrower for itself and on behalf of its directors, officers, shareholders and principals, hereby consents to and authorizes such use and disclosure of all such personal information by the Lender and represents and warrants that it has full power and authority to give such consent and authorization.

**Section 11.6 California Civil Code.** Borrower hereby waives any rights or defenses available to Borrower based upon Section 2822 of the California Civil Code.

## XII MISCELLANEOUS

**Section 12.1 Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant to any of the Loan Documents, including the Sources and Uses of Funds and the Loan Term Sheet, shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 12.2 Governing Law.** Except as otherwise expressly set forth herein, this Agreement shall be governed, construed, applied and enforced in accordance with the laws of the state where the Land is located without regard to the conflicts of law provisions thereof ("Governing State"). Borrower hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Borrower hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

**Section 12.3 Modification; Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of any other Loan Document, nor consent by Lender to any departure by any Borrower Party from the Obligations, shall in any event be effective unless the same shall be in a writing signed by the Person against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on any Borrower Party shall entitle any Borrower Party to any other or future notice or demand in the same, similar or other circumstances.

**Section 12.4 Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance or compliance of any term, condition, covenant or agreement, or Lender's delay in exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right, in its complete and sole discretion, to waive or reduce any time periods to which Lender is entitled under the Loan Documents.

**Section 12.5 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing (including by facsimile) and shall be effective for LOAN AGREEMENT – Page 48

all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid) answer back acknowledged), addressed as follows:

If to Borrower:                   Coldwater Development LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

Lydda Lud, LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

with a copy to:                   Law Offices of Abdulaziz, Grossbart & Rudman  
6454 Coldwater Canyon Avenue  
North Hollywood, California 91606  
Telephone: (818) 760-2000  
Facsimile: (818) 760-3908  
Email: bdr@agrlaw.com

If to Lender:                   Romspen California Mortgage Limited Partnership  
162 Cumberland Street, Suite 300  
Toronto, Ontario M5R 3N5  
Attention: Joel Mickelson and Blake Cassidy  
Telephone: (416) 928-4870  
Facsimile: (416) 966-1161  
JoelMickelson@romspen.com  
BlakeCassidy@romspen.com

with a copy to:                   Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
Attention: Marla R. Bell  
Telephone: (816) 360-4286  
Facsimile: (816) 753-1536  
mbell@polsinelli.com

or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day, in the case of facsimile, upon completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) with receipt acknowledged by the recipient thereof.

**Section 12.6 Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. "Section" refers to the entire section and not to any particular subsection,

paragraph of other subdivision. Reference to days for performance shall mean calendar days unless Business Days are expressly indicated.

**Section 12.7 Severability.** If any provision or obligation under this Agreement and the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents.

**Section 12.8 Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by any of the Borrower Parties to any portion of the Obligations. To the extent any of the Borrower Parties makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Bankruptcy Law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 12.9 Expenses.** Borrower covenants and agrees to pay to Lender upon receipt of written notice from Lender for all costs and expenses (including attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for the Borrower Parties (including any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) the ongoing performance of and compliance with the respective agreements and covenants of the Borrower Parties contained in this Agreement and the other Loan Documents; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents, including Lender's administration and servicing of the Loan; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing compliance with any requests made by any Borrower Party pursuant to any provision of any of the Loan Documents; (vi) the filing and recording of the Loan Documents, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting any Borrower Party, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; (viii) costs incurred by Lender in the review of easements, lot line agreements or similar matters, the review and approval of or consent to Leases and the negotiation of subordination, non-disturbance and attornment agreements, and other similar items required by Borrower in connection with Borrower's use and enjoyment of the Property; (ix) costs incurred by Lender in responding to any subpoena or participating in, observing or preparing for any deposition or other legal or quasi-legal process; and (x) the amounts described in Section 7.4. Any cost and expenses due and payable to Lender shall be payable within five (5) Business Days of demand, shall be secured by the Loan Documents, and if not paid when due, shall bear interest at the Default Rate until paid. Borrower hereby agrees that Lender, in its sole discretion, may make advances under the Loan to pay any costs and expenses due and payable to Lender under the Loan Documents.

**Section 12.10 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, the Security Instrument, this Agreement and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of the debtor and creditor relationship established pursuant to the Loan Documents. The relationship of Borrower and Lender is created and governed solely by the Loan Documents.

**Section 12.11 No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Any provision herein or in any of the other Loan Documents to the contrary notwithstanding, Lender, by virtue of its acceptance of this Agreement and the making of the Loan or any approval rights Lender may have herein or in any of the Loan Documents shall not be deemed to constitute Lender a mortgagee-in-possession, tenant-in-common, or in control of, or a partner or joint venturer with, or insider (within the meaning of Section 101(31) of the Bankruptcy Code) of, any Borrower Party or any other Person; and Borrower shall indemnify Lender against, shall hold Lender harmless from, and shall reimburse Lender for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and reasonable attorneys' fees incurred by Lender (whether incurred in connection with nonjudicial action, prior to trial, at trial, or on appeal or review) in any action against or involving Lender resulting from such a construction of the Loan Documents.

(b) Any inspection of the Property, any review or approval of any plans, contracts, subcontracts (including environmental reviews, audits, assessments and/or reports relating to the Property), and review or approval of budgets, expenses or obligations or any analysis of the Property made by Lender or any of its agents, architects or consultants is intended solely for the benefit of Lender and shall not be deemed to create or form the basis of any warranty, representation, covenant, implied promise or liability to Borrower or any of its employees or agents, any guest or invitee upon the Property, or any other Person.

(c) Except as otherwise provided in Article VIII hereof, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained in the Loan Documents. Except as otherwise provided in Article VIII hereof, all conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 12.12 Publicity.** All news releases, publicity or advertising by the Borrower Parties or their Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents or to Lender, or any of their Affiliates shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld. Borrower hereby agrees Lender (together with its Affiliates, "Romspen") may publicly identify details of the Loan in Romspen's advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property. Lender shall be entitled to place on the Property signage indicating Lender's participation in the funding of the Property.

**Section 12.13 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 the Obligations.

**Section 12.14 Duplicate Originals; Counterparts.** For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall

LOAN AGREEMENT – Page 51

constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

**Section 12.15 Liability.** If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

**Section 12.16 Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including any term sheets, discussion outlines or commitment letters (as same may be amended) between any of the Borrower Parties and Lender are superseded by the terms of this Agreement and the other Loan Documents. In the event of any conflict between the terms of this Agreement and the Loan Term Sheet, Lender reserves the right to determine in its sole discretion whether the terms of this Agreement or the Loan Term Sheet control.

**Section 12.17 No Usury.** Any provision herein, in any Loan Document or any other document executed or delivered in connection with the Loan, or in any other agreement or commitment, whether written or oral, expressed or implied, to the contrary notwithstanding, Lender shall not in any event be entitled to receive or collect, nor shall or may amounts received hereunder be credited, so that Lender shall be paid, as interest, a sum greater than the maximum amount permitted by applicable law to be charged to the Person primarily obligated to pay the Debt and the Obligations at the time in question. If any construction of this Agreement, any other Loan Document, or any other document executed or delivered in connection herewith, indicates a different right given to Lender to ask for, demand or receive any larger sum as interest, such is a mistake in calculation or wording which this clause shall override and control, it being the intention of Borrower and Lender that this Agreement, any other Loan Document and any other documents executed in connection herewith conform strictly to applicable usury laws. In no event shall the amount treated as the total interest exceed the maximum amount of interest which may be lawfully contracted for, charged, taken, received or reserved by Lender in accordance with the applicable usury laws, taking into account all items which are treated as interest under applicable law, computed in the aggregate over the full term of the Loan evidenced hereby. In the event that the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Agreement, any other Loan Document and any other documents executed in connection herewith shall ever exceed the maximum nonusurious rate under applicable law, any sum in excess thereof shall be applied to the reduction of the unpaid principal balance of the Debt and the Obligations, and if the Debt and the Obligations are paid in full, any remaining excess shall be paid to Borrower. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the maximum nonusurious rate under applicable law, if any, Borrower and Lender shall, to the maximum extent permitted under applicable law, (a) characterize any nonprincipal amount as an expense or fee rather than as interest, (b) exclude voluntary prepayments and the effects thereof, or (c) "spread" the total amount of interest throughout the entire term of the Debt and the Obligations so that the interest rate is uniform throughout the entire term of the Debt and the Obligations; provided, however, that if the Debt and Obligations are paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the maximum nonusurious rate, if any, Lender shall refund to Borrower the amount of such excess. If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any applicable law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the Lender; and

(ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

**Section 12.18 Construction.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender by virtue of the fact that this Agreement or any of the Loan Documents has originated with Lender as drafter. Borrower acknowledges that Borrower has reviewed this Agreement and the other Loan Documents and has had the opportunity to consult with counsel on same. This Agreement and the other Loan Documents, shall therefore be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties to the Loan Documents. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender.

**Section 12.19 Invalidity of a Provision; Principles of Construction; Lender's Discretion.** If any clause or provision shall be deemed invalid or unenforceable, then this Agreement shall be construed without such clause or provision and the remainder of such provision and this Agreement shall be given full force and effect to the greatest extent permissible by law. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "including" is not limiting (and shall mean "including but not limited to"), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Wherever Lender's judgment, consent, approval or discretion is required under this Agreement or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Agreement, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Agreement may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent.

**Section 12.20 Lender.** The rights of Lender pursuant to this Agreement and the other Loan Documents are in addition to all of the rights of Lender or any Affiliate of Lender may now or hereafter have by virtue of any ownership, directly or indirectly, in Borrower or any Affiliate of Borrower. In acting as Lender pursuant to this Agreement or the Loan Documents, Borrower acknowledges that Lender shall owe no duties of any kind to Borrower or any other Person (other than those specifically stated in the Loan Documents) on account of such role of Lender or any Affiliate of Lender or by virtue of any ownership interest in Borrower or such Affiliates (directly or indirectly) or otherwise, and there shall be no limitations on Lender's rights or remedies or Lender's ability to act solely in Lender's best interests or in Lender's discretion, notwithstanding the role Lender or any such Affiliate of Lender may have by virtue of any ownership interest in Borrower or any Affiliate of Borrower. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to Lender under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by Lender or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire (directly or indirectly) in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. No assignee of any of Lender's rights with respect to the Loan or the Loan Documents shall be prejudiced or affected by any actions taken or not taken by Lender or its Affiliates prior to the assignment to the then current Lender and upon any such assignment, such assignee shall be in the same position as if such assignee had originated the Loan itself as of the date of such assignment and shall not be subject to any offsets, counterclaims or defenses to which Lender, any other Person which may from time to time be the "Lender" hereunder or their respective Affiliates might be subject. Borrower acknowledges that

Lender and its Affiliates engage in the business of real estate financings and other real estate transactions and investments, which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 12.21 Limitation on Liability.** Notwithstanding anything contained herein to the contrary, Borrower agrees that none of Lender, or its agents or employees shall be liable to Borrower for any monetary damages (including any special, consequential or punitive damages whatsoever), whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle and Borrower's sole remedies shall be limited to commencing an action for specific performance.

**Section 12.22 Tax Withholding.** Borrower shall deliver to Lender any necessary documentation to obtain reduced or no withholding tax as portfolio interest under the Code or any applicable income tax treaty, including Lender providing IRS Form W 8BEN to Borrower. Under the United States – Canada Income Tax Treaty as in effect on the date of this Agreement, Lender and Borrower agree that there is currently no withholding required on the interest for the Loan. In order for the interest to qualify as portfolio interest, the Note shall be in registered form as to both principal and interest. In addition, the Note may be assigned or transferred only by the Lender, and Borrower must either reissue the Note to the new holder or issue a new note to the new holder, if so required by Lender or Lender's assignee.

**Section 12.23 Full Repayment And Reconveyance.** Upon receipt of all sums owing and outstanding under the Loan Documents, Lender shall issue a full reconveyance of the Property from the Lien of the Security Instrument; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Lender shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Loan Documents; and (b) Lender shall have received a written release satisfactory to Lender of any set aside letter, letter of credit or other form of undertaking which Lender has issued to any surety, governmental agency or any other party in connection with the Loan and/or the Property. Lender's obligation to make further disbursements under the Loan shall terminate as to any portion of the Loan undisbursed as of the date of issuance of such release or reconveyance, and any commitment of Lender to lend any undisbursed portion of the Loan shall be cancelled.

**Section 12.24 Delay Outside Lender's Control.** Lender shall not be liable in any way to Borrower or any third party for Lender's failure to perform or delay in performing under the Loan Documents (and Lender may suspend or terminate all or any portion of Lender's obligations under the Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any Governmental Authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockage (whether presently in effect, announced or in the sole judgment of Lender deemed probable), or from any Act of God or other cause or event beyond Lender's control.

**Section 12.25 Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of any Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party or parties against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the specific purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

**Section 12.26 Set-Off.** In addition to any rights and remedies of Lender provided by this Agreement and by law, Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by Legal Requirements, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in accordance with Legal Requirements, in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrower. Lender

agrees promptly to notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

**Section 12.27 Judicial Reference; Referee; Costs.**

(a) **Controversies Subject to Judicial Reference; Conduct of Reference.** In the event that any action, proceeding and/or hearing on any matter whatsoever, including all issues of fact or law arising out of, or in any way connected with, the Note, this Agreement or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation (hereinafter, a "Controversy"), is to be tried in a court of the State of California and the jury trial waiver provisions set forth in Section 11.4 are not permitted or otherwise applicable under then-prevailing law:

(i) Each Controversy shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of California Code of Civil Procedure §§ 638 et seq., as such statutes may be amended or modified from time to time.

(ii) Upon a written request, or upon an appropriate motion by either Lender or Borrower, any pending action relating to any Controversy and every Controversy shall be heard by a single Referee (the "Referee") who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Controversy. Lender and Borrower agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before him/her.

(iii) Lender and Borrower shall promptly and diligently cooperate with one another and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of each Controversy.

(iv) Either Lender or Borrower may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it.

(v) Lender and Borrower will each have such rights to assert such objections as are set forth in California Code of Civil Procedure §§ 638 et seq.

(vi) All proceedings shall be closed to the public and confidential and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) **Selection of Referee; Powers.**

(i) Lender and Borrower shall select a single neutral referee ("Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts).

(ii) If within ten (10) days after the request or motion for the Reference, Lender and Borrower cannot agree upon a Referee, either Lender or Borrower may request or move that the Referee be appointed by the Presiding Judge of the Marin County Superior Court or of the U.S. District Court for the Northern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 12.27.

(c) **Provisional Remedies.**

(i) No provision of this Section 12.27 shall limit the right of either Lender or Borrower, as the case may be, to (1) exercise self-help remedies as might otherwise be available under applicable law (2) initiate judicial or non-judicial foreclosure against any real or personal property collateral, (3) exercise any judicial or power of sale rights, or (4) obtain or oppose provisional or ancillary remedies, including without limitation, injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference.

(ii) The exercise of, or opposition to, any such remedy does not waive the right of Lender or Borrower to the Reference pursuant to this Section 12.27.

(d) Costs and Fees.

(i) Promptly following the selection of the Referee, Lender and Borrower shall each advance equal portions of the estimated fees and costs of the Referee.

(ii) In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by Borrower and/or Lender in such manner as determined by the Referee deems just.

**Section 12.28 Release of Outparcels; Sale Proceed Escrow.** The parties understand and agree that Borrower may seek to sell one or more parcels or portions of the Property to third parties during the term of the Loan. In the event that: (i) Borrower identifies any portion of the Property that it desires to list for sale or (ii) Borrower has received an offer to purchase; then, prior to any listing or offer acceptance, as the case may be, Borrower shall provide notice to Lender of the subject parcel, or portion thereof (a "Sale Parcel") that it desires to list or sell, and relevant information concerning the anticipated listing or offer, such as listing/offer price, interested purchasers or purchaser information, Borrower's desired use of sale proceeds, impact on the value of the remaining Property, the brokerage arrangement, any lot splits, consolidations, improvements, etc. needed to list or sell; and other information as may be requested by Lender. Lender, in its sole discretion, may approve Borrower's listing of or acceptance of an offer for the Sale Parcel in its sole, reasonable discretion. Lender agrees to work with Borrower to accommodate sale(s) of portions or whole parcels on the Property, provided, that, (i) any sale of a Sale Parcel must not be detrimental (as determined by Lender) to the remaining Property subject to the Mortgage and collateral securing the Loan, (ii) Lender must approve the purchase price, final sales contract and settlement statement for any such sale, (iii) all sale proceeds from the Sale Parcel must be placed in escrow with the Lender ("Sale Proceed Escrow"), which Sale Proceed Escrow shall become additional security for the Loan and used for future improvements to and reinvestment in the remaining Property, and (iv) there is no Event of Default existing under the Loan. Borrower's use of the Sale Proceed Escrow shall be on a written draw request basis subject to Lender's approval of any and all disbursements to Borrower for use of such monies. Borrower shall provide any information, copies of all construction contracts, lien waivers of all contractors, subcontractors and any materialmen, receipts (or other verification of use of funds), or the like, as requested by Lender, in approval of any draw. Notwithstanding anything to the contrary contained herein, in the Event of Default hereunder, Lender may use any balance in the Sale Proceed Escrow toward payment on the Loan.

**Section 12.29 Multiple Borrowers.**

(a) References. All references to "Borrower" in this Agreement shall be deemed to refer to one or more Borrowers (each, an "Individual Borrower"), as the context requires. It is the intent of the parties hereto in making any determination under the Loan Documents (including, without limitation, in determining whether (a) a breach of a representation, warranty or a covenant has occurred, (b) there has occurred an Event of Default, and (c) an event has occurred which would create recourse obligations under Section 9.1 hereof) that any breach, occurrence or event with respect to any Individual Borrower shall be deemed to be a breach, occurrence or event with respect to all Individual Borrowers, and that all Individual Borrowers need not have been involved with or be the subject of such breach, occurrence or event in order for

LOAN AGREEMENT – Page 56

the same to be deemed such a breach, occurrence or event with respect to every Individual Borrower and the Loan.

(b) Joint and Several Liability. Each Individual Borrower shall be jointly and severally liable for payment of the Debt and performance of all other obligations of all Borrowers (or any of them) under this Agreement and any other Loan Document, and the making of each of the representations, warranties, covenants and obligations under the Loan Document by Borrower.

(c) Contribution. Each Individual Borrower will benefit, directly and indirectly, from each Individual Borrower's obligation to pay the Debt and perform its obligations under the Loan Documents. In consideration therefor, Individual Borrowers desire to enter into an allocation and contribution agreement among themselves as set forth in this Section 12.29 to allocate such benefits among themselves and to provide a fair and equitable agreement to make contributions among each of the Individual Borrowers in the event any payment is made by any Individual Borrower hereunder to Lender (any such payment, a "Contribution"). In order to provide for a fair and equitable contribution among Individual Borrowers in the event that any Contribution is made by an Individual Borrower (a "Funding Borrower"), such Funding Borrower shall be entitled to a reimbursement Contribution ("Reimbursement Contribution") from all other Individual Borrowers for all payments, damages and expenses incurred by such Funding Borrower in discharging any of the Debt, in the manner and to the extent set forth in this Section 12.29. Each Individual Borrower shall be liable to a Funding Borrower in an amount equal to the greater of (i) (A) the ratio of the Benefit Amount (as defined below) of such Individual Borrower to the total amount of Debt, multiplied by (B) the amount of the Debt paid by such Funding Borrower, and (ii) ninety-five percent (95%) of the excess of (A) the fair saleable value of such Individual Borrower's interest in the Property and the other collateral for the Loan, over (B) the total liabilities of such Individual Borrower (including the maximum amount reasonably expected to become due in respect of contingent liabilities) determined as of the date on which the payment made by a Funding Borrower is deemed made for purposes hereof (giving effect to all payments made by other Funding Borrowers as of such date in a manner to maximize the amount of such Contributions). For purposes hereof, the "Benefit Amount" of any Individual Borrower as of any date of determination shall be the net value of the benefits to such Individual Borrower and its Affiliates from extensions of credit made by Lender to (1) such Individual Borrower and (2) the other Individual Borrowers hereunder and the other Loan Document. In addition:

(i) If at any time there exists more than one Funding Borrower with respect to any Contribution (in any such case, the "Applicable Contribution"), then Reimbursement Contributions from other Individual Borrowers shall be allocated among such Funding Borrowers in proportion to the total amount of the Contribution made for or on account of the other Individual Borrowers by each such Funding Borrower pursuant to the Applicable Contribution. If at any time any Individual Borrower pays an amount hereunder in excess of the amount calculated pursuant to this Section 12.29, such Individual Borrower shall be deemed to be a Funding Borrower to the extent of such excess and shall be entitled to a Reimbursement Contribution from the other Individual Borrowers in accordance with the provisions of this Section.

(ii) Each Individual Borrower acknowledges that the right to Reimbursement Contribution hereunder shall constitute an asset in favor of such Individual Borrower to which such Reimbursement Contribution is owing.

(iii) No Reimbursement Contribution payments payable by an Individual Borrower pursuant to the terms of this Section 12.29 shall be paid until all amounts then due and payable by all of Individual Borrowers to Lender, pursuant to the terms of the Loan Documents, are paid in full. Nothing contained in this Section 12.29 shall limit or affect the Debt of any Individual Borrower to Lender under the Note or any other Loan Documents.

(iv) Any indebtedness of a Borrower now or hereafter owed to any other Borrower (the "Surety") is hereby subordinated to the Obligations owed to the Lender under the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, if Lender so requests, any

LOAN AGREEMENT – Page 57

such indebtedness of a Borrower now or hereafter owed to any Surety shall be collected, enforced and received by such Surety as trustee for Lender and shall be paid over to Lender in kind on account of the Obligations, but without reducing or affecting in any manner the obligations of such Surety under the other provisions of this Agreement. Upon the occurrence and during the continuance of an Event of Default, should such Surety fail to collect or enforce any such indebtedness of a Borrower now or hereafter owed to such Surety and pay the proceeds thereof to Lender in accordance with this subsection, Lender as such Surety's attorney in fact may do such acts and sign such documents in such Surety's name as Lender considers necessary or desirable to effect such collection, enforcement and/or payment. Until the Obligations shall have been paid and performed in full, all the rights, privileges, powers and remedies granted to Lender hereunder shall continue to exist and may be exercised by Lender at any time and from time to time irrespective of the fact that any of the Obligations may have become barred by any statute of limitations. Each Borrower, in its capacity as Surety, expressly waives the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for evaluation and appraisal upon foreclosure, to the maximum extent permitted by applicable laws.

(v) Each Borrower, in its capacity as a Surety, acknowledges that the obligations undertaken herein involve the payment of obligations of persons or entities other than such Surety and, in full recognition of that fact, consents and agrees (and waives any right to object) that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof, in accordance with the terms of the Loan Documents: (A) supplement, modify, amend, extend, renew, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof, including any increase or decrease of the rate(s) of interest thereon; (B) supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the Obligations or any part thereof, or any of the Loan Documents to which such Surety is not a party or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation or term thereof or thereunder; (C) accept new or additional instruments, documents or agreements in exchange for or relative to any of the Loan Documents or the Obligations or any part thereof; (D) accept partial payments on the Obligations; (E) receive and hold additional security or guaranties for the Obligations or any part thereof; (F) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer and/or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as Lender in its sole and absolute discretion may determine; (G) release any party from any personal liability with respect to the Obligations or any part thereof; (H) settle, release on terms satisfactory to Lender or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security or guaranty therefor in any manner, consent to the transfer of any security and bid and purchase at any sale; and/or (I) consent to the merger, change or any other restructuring or termination of the entity existence of other Borrowers or any other party, and correspondingly restructure the Obligations, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing effectiveness hereof, or the enforceability hereof with respect to all or any part of the Obligations.

(vi) In the event, on account of the Bankruptcy Reform Act of 1978, as amended, the Uniform Fraudulent Conveyance Act, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, including, without limitation, Section 548 of the Bankruptcy Code and any state fraudulent transfer or fraudulent conveyance act or statute applied in such proceeding, whether by virtue of Section 544 of the Bankruptcy Code or otherwise (collectively, "**Bankruptcy Laws**"), now or hereafter in effect, which may be or become applicable, any Borrower shall be relieved of or fail to incur any debt, obligation or liability as provided herein or in any other Loan Documents to which such Borrower is a party, the other Borrowers shall nevertheless be fully liable therefor. Each Borrower and Lender hereby confirm that it is the intention of all parties hereto that the obligations of each Borrower hereunder, under each Security Instrument, and each other Loan Documents not constitute a fraudulent transfer or fraudulent conveyance for the purposes of any Bankruptcy Laws (a "**Fraudulent Conveyance**"). To give effect to the foregoing intention of the parties, each of such parties hereby irrevocably agrees that the obligations of each Borrower to Lender shall at all times be limited to (but shall not be less than) such maximum amount as will, after giving effect to the maximum amount of such obligations and all other liabilities (whether contingent or otherwise) of such Borrower that are relevant under such Bankruptcy Laws, result in the obligations of such

Borrower not constituting a Fraudulent Conveyance as of the date of execution and delivery of this Agreement and the other documents contemplated hereby (provided, however, that the foregoing shall not in any way limit the obligations of any Borrower to Lender pursuant to the Loan Documents in effect prior to the Effective Date). The provisions of this clause (vi) are intended solely to preserve the rights of Lender hereunder to the maximum extent that would not cause the obligations of any Borrower hereunder to be subject to avoidance as a Fraudulent Conveyance, and no Borrower or any other Person shall have any right or claim under this clause (vi) as against Lender that would not otherwise be available to such Person under Bankruptcy Laws.

(vii) Each Borrower warrants and agrees that each of the waivers and consents set forth herein are made with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or otherwise adversely affect rights which such Borrower otherwise may have against other Borrowers, Lender or others, or against any collateral, and that, under the circumstances, the waivers and consents herein given are reasonable and not contrary to public policy or law. Each Borrower acknowledges that it has either consulted with legal counsel regarding the effect of this Agreement and the waivers and consents set forth herein, or has made an informed decision not to do so.

(d) Additional Waivers. Each Individual Borrower waives, to the extent permitted by applicable law:

(i) any right to require Lender to proceed against any other Individual Borrower or any other person or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy in Lender's power before proceeding against such Individual Borrower;

(ii) any defense or rights based upon or arising out of: (A) any legal disability or other defense of any other Individual Borrower, any guarantor of any other person or by reason of the cessation or limitation of the liability of any other Individual Borrower or any guarantor from any cause other than full payment of all sums payable under the Note and the other Loan Documents; (B) any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of any other Individual Borrower or any principal of any other Individual Borrower or any defect in the formation of any other Individual Borrower or any principal of any other Individual Borrower; (C) any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (D) any failure by Lender to obtain collateral for the Debt or failure by Lender to perfect a lien on the Property (or any portion thereof); (E) presentment, demand, protest and notice of any kind; (F) any failure of Lender to give notice of sale or other disposition of the Property (or any portion thereof) to any other Individual Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition; (G) any failure of Lender to comply with applicable laws in connection with the sale or other disposition of the Property (or any portion thereof), including any failure of Lender to conduct a commercially reasonable sale or other disposition of the Property (or any portion thereof); (H) any use of cash collateral under Section 363 of the Bankruptcy Code, and any defense based upon any election by Lender, in any bankruptcy proceeding, of the application or non-application of Section 1111(6)(2) of the Bankruptcy Code or any successor statute; (I) any agreement or stipulation entered into by Lender with respect to the provision of adequate protection in any bankruptcy proceeding; (J) any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (K) the avoidance of any security interest in favor of Lender for any reason; (L) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding, including any discharge of, or bar or stay against collecting, all or any of the obligations evidenced by the Note or owing under any of the Loan Documents; (M) such Individual Borrower's, or any other party's, resignation of the portion of any obligation secured by the Security Instrument to be satisfied by any payment from any other Individual Borrower or any such party; or (N) an election of remedies by Lender even though the election of remedies, such as non-judicial foreclosure with respect to security for the Loan or any other amounts owing under the Loan Documents, has destroyed such Individual Borrower's rights of subrogation and reimbursement against any other Individual Borrower; and

(iii) except as may be expressly and specifically permitted herein, any claim or other right which such Individual Borrower might now have or hereafter acquire against any other Individual Borrower or any other person that arises from the existence or performance of any obligations under the Note or the other Loan Documents, including any of the following: (A) any right of subrogation, reimbursement, exoneration, contribution, or indemnification; or (B) any right to participate in any claim or remedy of Lender against any other Individual Borrower or any collateral security therefor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law.

### **Section 12.30 California Waivers.**

(a) Each Borrower expressly waives any and all suretyship defenses that may be available to such Borrower. Without limiting the generality of the foregoing, each Borrower makes the following additional waivers and covenants: except for compulsory cross-claims, such Borrower agrees that its obligations under this Agreement shall not be subject to any counterclaims, offsets or defenses against Lender or against any Borrower of any kind which may arise in the future. Each Borrower agrees that nothing contained herein shall prevent Lender from foreclosing on the lien of the Security Instruments or sale by power of sale, or from exercising any rights available to Lender thereunder, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of such Borrower. Each Borrower agrees that it hereby knowingly waives any defense which may arise in the future to enforcement of this Agreement under California Code of Civil Procedure Sections 580b, 580d, 580a and 726 (or any other statute limiting a Lender's right to a deficiency) based on Lender's election to conduct a private, non-judicial foreclosure sale following a default by any Borrower even though such an election destroyed, diminished or otherwise affected such Borrower's rights of subrogation against such Borrower or other trustor under a deed of trust or the right of contribution, reimbursement or indemnity from any party, with the result that such Borrower's liability under this Agreement became nonreimbursable in whole or in part. Nevertheless, each Borrower hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of each Borrower that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Without limiting the generality of the foregoing, each Borrower hereby expressly waives any and all benefits under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580b, 580a, 580d and 726. Notwithstanding any foreclosure of the lien of the Security Instruments or security agreements with respect to any or all of any real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, each Borrower shall remain bound under this Agreement. Each Borrower further waives any right to cause a fair value hearing to be conducted under Code of Civil Procedure Section 580a, or any other provision of law respecting the amount of any deficiency following a non-judicial foreclosure. Nothing shall discharge or satisfy the liability of any Borrower hereunder except the full performance and payment of the Debt with interest. Each Borrower further waives any rights, defenses, and benefits that are or may become available to such Borrower by reason of California Civil Code Sections 2787 to 2855, inclusive.

(b) Pursuant to the provisions of Section 2856 of the California Civil Code, each Borrower acknowledges and understands that if Lender forecloses judicially or nonjudicially against any real property security for the Notes, that foreclosure could impair or destroy any ability that such Borrower may have to seek reimbursement, contribution or indemnification from any other Borrower or others based on any right such Borrower may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by such Borrower under this Agreement. Each Borrower further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of such Borrower's rights, if any, may entitle Guarantor to assert a defense to this Agreement based on California Code of Civil Procedure Section 580d as interpreted in Union Bank vs. Gradsky, to the extent applicable. By executing this Agreement, each Borrower freely, irrevocably and unconditionally: (1) waives and relinquishes that defense, and agrees that such Borrower will be fully liable under this Agreement, even though Lender may foreclose judicially or nonjudicially against any real property security for the Notes; (2) agrees that such Borrower will not assert that defense in any action or proceeding that Lender may commence to enforce this Agreement; (3) acknowledges and agrees that the

rights and defenses waived by such Borrower under this Agreement include any right or defense that such Borrower may have or be entitled to assert based upon or arising out of any one or more of the following: (A) California Code of Civil Procedure Sections 580a (which if such Borrower had not given this waiver, would otherwise limit such Borrower's liability after any nonjudicial foreclosure sale to the difference between the obligations for which such Borrower is liable and the fair market value of the property or interests sold at such nonjudicial foreclosure sale rather than the actual proceeds of such sale), 580b and 580d (which if such Borrower had not given this waiver, would otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after any nonjudicial foreclosure sale, respectively), or 726 (which, if such Borrower had not given this waiver, among other things, would otherwise require Lender to exhaust all of its security before a personal judgment may be obtained for a deficiency); or (B) California Civil Code Section 2848; and (4) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Lender is receiving for making the Loan.

(c) EACH BORROWER WAIVES ALL RIGHTS AND DEFENSES THAT SUCH BORROWER MAY HAVE AGAINST ANY OTHER BORROWER BECAUSE SUCH BORROWER'S DEBT IS SECURED BY REAL PROPERTY. THIS MEANS, AMONG OTHER THINGS:

(i) LENDER MAY COLLECT FROM ANY BORROWER WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER; AND

(ii) IF LENDER FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER:

(A) THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT THE FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND

(B) LENDER MAY COLLECT FROM BORROWER EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT EITHER BORROWER MAY HAVE TO COLLECT FROM THE OTHER BORROWER.

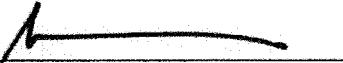
THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES ANY BORROWER MAY HAVE BECAUSE EACH BORROWER'S DEBT IS SECURED BY REAL PROPERTY. THESE RIGHTS AND DEFENSES INCLUDE, BUT ARE NOT LIMITED TO, ANY RIGHTS OR DEFENSES BASED UPON CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580d, OR 726.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By:   
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

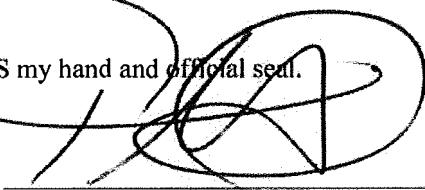
County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

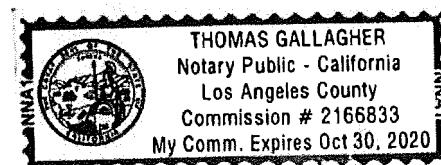
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**LYDDA LUD, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

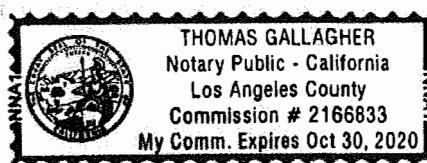
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_

(Seal)



LENDER:

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,  
an Ontario limited partnership**

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

LENDER SIGNATURE PAGE TO LOAN AGREEMENT

57513357

**SCHEDULE I**

**DEFINITIONS**

**“Acceptable Accounting Principles”** shall mean GAAP or such other accounting methods or principles acceptable to Lender and consistently applied from time to time.

**“Act”** shall have the meaning specified in Section 4.1(s)(iii).

**“Affiliate”** shall mean as to any Person, (i) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such Person, (ii) any Person (directly or indirectly) owning or controlling 10% or more of the outstanding voting securities of or other ownership interests in such Person, (iii) any officer, director, partner, employee or member (direct or indirect and no matter how remote) of such Person, (iv) if such Person is an individual, any entity for which such Person directly or indirectly acts as an officer, director, partner, employee or member, or (v) any entity in which such Person (together with family members if the Person in question is an individual) owns, directly or indirectly through one or more intermediaries an interest in any class of stock (or other beneficial interest in such entity) of 10% or more. Any reference in this Agreement to a **“Person and an Affiliate”** shall be deemed to refer to such Person and an Affiliate of such Person and any references in this Agreement to a **“Person or an Affiliate”** shall be deemed to refer to such Person or an Affiliate of such Person. As used in this Agreement, the term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy and/or policies of a Person, whether through ownership of voting securities or other ownership interests, by contract or otherwise.

**“Affiliate Transaction”** shall mean any contract, agreement or other arrangement between Borrower (or any other Person if such contract, agreement or other arrangement is in any way related to the Property) and any Borrower Party or any Affiliate of a Borrower Party or pursuant to which any Borrower Party or any Affiliate of any Borrower Party or any constituent member, partner or stockholder of Borrower or any Borrower Party or any Affiliate of a Borrower Party (direct or indirect) will receive any benefit of any kind.

**“ALTA”** shall mean American Land Title Association, or any successor thereto.

**“Alteration Threshold”** shall mean the amount of \$250,000.00.

**“Applicable Contribution”** shall have the meaning set forth in Section 12.29(c)(i).

**“Architect Agreement”** shall mean any agreement between Borrower and any architect licensed in California, which shall be reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time upon Lender’s approval thereof, which shall not be unreasonably withheld.

**“Assignment of Agreements”** shall mean, with respect to the Property, that certain first priority Assignment of Agreements, Licenses, Permit and Contracts dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee, assigning to Lender, subject to the terms thereof, all of Borrower’s interest in and to contracts, Licenses, permits and approvals necessary for the use and operation and development of the Property as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Assignment of Leases”** shall mean each certain Assignment of Leases and Rents dated even date herewith and from a Borrower to Lender.

**“Authorized Representative”** shall mean a Person at the time designated and authorized to act on behalf of Borrower by a written certificate furnished to Lender containing the specimen signature of such Person and signed by Borrower.

**“Availability Period”** means the period from and including the Closing Date to but excluding the Maturity Date.

**“Award”** shall have the meaning set forth in Section 6.1.3(b).

**“Balancing Event”** shall have the meaning set forth in Section 2.2(viii)(D).

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, as amended from time to time.

**“Bankruptcy Laws”** shall mean the Bankruptcy Code together with any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

**“Benefit Amount”** shall have the meaning set forth in Section 12.29(c).

**“Borrower”** has the meaning in the recitals hereto.

**“Borrower Parties”** shall mean the collective reference to Borrower, each Guarantor, any other guarantor, indemnitor or surety of any of the Obligations and any other Person (other than Lender) that is a party to any of the Loan Documents, other than any Manager that is not an Affiliate of Borrower. Individually, each of the Borrower Parties may be referred to herein as a “**Borrower Party**”.

**“Business Day”** shall mean a day on which commercial banks are not authorized or not required by law to close in the State of New York or in the State where the Property is located.

**“Casualty”** shall have the meaning set forth in Section 6.1.1(i).

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

**“Change Order”** shall mean any amendment, supplement or other modification in any respect to the Project Budget.

**“Closing Date”** shall mean the date of the funding of the Loan.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

**“Complete”** shall mean (a) that the Project is substantially completed in accordance with the Plans and Specifications and all Legal Requirements, (b) the applicable Governmental Authority has approved the Project for its intended purposes and has provided satisfactory evidence that Borrower has satisfied the condition of completion of road improvements in order to initiate the Development Process in accordance with Legal Requirements, (c) subject to any contest rights contained herein, the Property is free of all mechanics’,

materialmen's, and other similar liens (or such liens have otherwise been bonded over to Lender's satisfaction), (d) Lender has received copies of all warranties from suppliers covering materials, equipment and appliances included within the applicable component of the work, and (e) if required by Lender, Borrower shall have provided to Lender executed AIA Form G706 (Contractor's Affidavit of Payments of Debts), AIA Form G706A (Contractor's Affidavit of Release of Liens), and AIA Form G707 (Consent of Surety of Final Payment). The terms "Completed" and "Completion" shall have the same meaning when used in the Loan Documents.

"**Condemnation**" shall have the meaning set forth in Section 6.1.3.

"**Contribution**" shall have the meaning set forth in Section 12.29(c).

"**Creditors' Rights Laws**" shall mean any existing or future law (whether statute or case law) of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to debts or debtors, including, without limitation, the Bankruptcy Code.

"**Debt**" shall mean all Indebtedness of Borrower to Lender, including, without limitation, the outstanding principal amount set forth in, and evidenced by, the Note together with all interest accrued and unpaid thereon, and all other sums due to Lender in respect of the Loan under the Note, this Agreement or any other Loan Document.

"**Default**" shall mean the occurrence of any event under this Agreement or under any other Loan Document which, but for the giving of notice or the passage of time, or both, would be an Event of Default.

"**Default Rate**" shall have the meaning set forth in the Note.

"**Development Process**" shall mean the process set forth by Legal Requirements of the applicable Governmental Authority in order to develop the Property as estate homes or to sell the Lots.

"**Easements**" shall have the meaning set forth in Section 4.1(bb).

"**Embargoed Person**" shall have the meaning set forth in Section 5.27(e).

"**Enforcement Costs**" shall mean any and all reasonable expenses, including reasonable legal expenses, attorneys' fees and expert witness fees, (i) described in Section 7.4 of this Agreement, (ii) incurred or paid by Lender in protecting Lender's interest in the Property, (iii) incurred in collecting any amount payable under this Agreement or the other Loan Documents, or (iv) incurred in enforcing Lender's rights under this Agreement or the other Loan Documents or with respect to the Property, in each of clauses (i) through (iv) 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 paid or incurred by Lender until such amounts are repaid to Lender.

"**Engineer Agreement**" shall mean any agreement between Borrower and any engineer licensed in California, which shall be reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time upon Lender's approval thereof, which shall not be unreasonably withheld.

"**Environmental Indemnity**" shall mean that certain Hazardous Materials Indemnity Agreement dated as of the date hereof, executed by Borrower and Guarantors in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Environmental Laws**" has the meaning set forth in the Environmental Indemnity.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.

**"Event of Default"** shall have the meaning set forth in Section 7.1(a).

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in the Loan pursuant to a law in effect on the date on which Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6, amounts with respect to such Taxes were payable to Lender immediately before it changed its lending office, and (c) any U.S. federal withholding Taxes imposed under FATCA.

**"Executive Order"** shall have the meaning set forth in Section 5.27(a).

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**"Financial Statements"** shall mean a balance sheet, income statement and statements of income and expense and cash flow of changes in financial position prepared in accordance with Acceptable Accounting Principles, and setting forth all items of income and expense and such other information required under Acceptable Accounting Principles to fairly present the financial position and results of operation of Borrower and the Property and which shall at a minimum be consistent in scope, form and content with such statements delivered to Lender prior to the Closing Date, unless otherwise agreed by Lender, and which are otherwise reasonably acceptable to Lender.

**"Fiscal Year"** shall mean each twelve-month period commencing on January 1 and ending on December 31 during the term of the Loan.

**"Fraudulent Conveyance"** shall have the meaning set forth in Section 12.29(c)(vi).

**"Funding Borrower"** shall have the meaning set forth in Section 12.29(c).

**"GAAP"** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report, consistently applied.

**"General Contractor"** shall mean a general contractor with a valid contractor's license in California and that has been approved by Lender, which approval shall not be unreasonably withheld.

**"General Contractor Agreement"** shall mean a guaranteed maximum price construction contract between Borrower and General Contractor for the completion of the Project in accordance with the Plans and Specifications, in the full amount of the Project Budget, in form and content reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

**"General Contractor Consent"** shall mean a consent agreement in form and content reasonably acceptable to Lender executed by the General Contractor with respect to the General Contractor Agreement.

**"Governmental Authority"** shall mean any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**“Guarantor”** shall mean, individually and collectively, as the context may require, **MOHAMED HADID**, an individual.

**“Guaranty”** shall mean each Guaranty executed by a Guarantor, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Hard Costs”** shall mean, collectively, all costs and expenses set forth in the Project Budget that are not denominated as “soft costs”.

**“Hazardous Materials”** has the meaning set forth in the Environmental Indemnity.

**“Improvements”** has the meaning set forth in the Security Instrument.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability for borrowed money; (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Parties”** shall mean (a) Lender, (b) any prior or subsequent owner or holder of the Loan, (c) any Investor or any prior Investor, (d) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (e) any receiver or other fiduciary appointed in a foreclosure or other proceeding, (f) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (g) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business), in all cases whether during the term of the Loan or thereafter or as part of or following a foreclosure of the Loan.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document.

**“Individual Borrower”** shall have the meaning set forth in Section 12.29(a).

**“Insurance Premiums”** shall have the meaning set forth in Section 6.1.1(b).

**“Insurance Proceeds”** shall mean all proceeds received under Policies required to be maintained by Borrower.

**“Interest Reserve Fund”** shall have the meaning set forth in Section 6.4.

**“Investor”** shall have the meaning set forth in Section 8.1.

**“Land”** shall have the meaning set forth in the Security Instrument.

**“Lease”** shall have the meaning set forth in the Security Instrument.

**“Legal Requirements”** shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, development and redevelopment plans and injunctions of Governmental Authorities affecting the Property or any part thereof or the construction, use, development, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force,

and all permits, Licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including (i) applicable restrictive covenants, zoning ordinances, zoning resolutions, and building codes, (ii) subdivision and land use laws and regulations, (iii) all applicable health and Environmental Laws and regulations, and (iv) all standards and regulations of appropriate supervising boards of fire underwriters and similar agencies.

“**Lender**” has the meaning in the recitals hereto.

“**Letter of Credit**” shall mean an irrevocable, unconditional, transferable (without the payment of a transfer fee), clean, evergreen (or not expiring until at least thirty (30) Business Days after the Maturity Date, as may be extended in accordance with this Agreement) sight draft letter of credit acceptable to Lender in favor of Lender and entitling Lender to draw thereon based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon issued by a domestic institution acceptable to Lender and with respect to which Borrower has no reimbursement obligation. The evergreen clause of the Letter of Credit shall provide that the expiration date of such Letter of Credit shall automatically extend (i.e., without requiring a consent, approval, amendment or other modification) for additional periods from the current or each future expiration date unless the issuing bank provides Lender with written notice that such Letter of Credit will not be renewed at least sixty (60) days, and not more than ninety (90) days, prior to the date on which the outstanding Letter of Credit is scheduled to expire.

“**Licenses**” has the meaning set forth in Section 4.1(m).

“**Lien**” shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting the Property or any portion thereof, or any interest of Borrower therein, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s or materialmen’s liens and other similar liens and encumbrances.

“**Loan**” shall mean the advances made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, each Security Agreement, each Pledge Agreement, the Assignment of Agreements, each Guaranty, all Uniform Commercial Code financing statements filed in connection with the Loan, and all other documents now or hereafter evidencing, securing or otherwise executed and/or delivered by one or more of the Borrower Parties in connection with the Loan, together with all amendments, modifications or replacements thereto. Each of the Loan Documents may be referred to herein individually as a “**Loan Document**”.

“**Loan Term Sheet**” shall mean that certain letter from Lender to Borrower or an affiliate thereof dated March 23, 2017.

“**Loan-to-Value Ratio**” shall mean a percentage calculated by multiplying (i) a fraction, the numerator of which is the outstanding principal balance of the Loan and the denominator of which is the value of the Property based on a current appraisals thereof, by (ii) one hundred percent (100%).

“**Loss Proceeds**” shall mean any and all Casualty insurance proceeds, condemnation awards and any settlement payments made in lieu of either which are made to Borrower in connection with or in respect of the Property.

“**Losses**” shall mean any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs (including any and all costs and expenses incurred in the preservation, restoration and protection of the Property), any deficiency claim in connection with the foreclosure of the Security Instrument, expenses, diminution in value of the Property, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement, punitive damages payable by Lender or any Indemnified Party,

SCHEDULE I TO LOAN AGREEMENT – Page 6

57513357

foreseeable consequential damages payable by Lender or any Indemnified Party, and damages and expenses of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense), including Enforcement Costs or any other amounts expended by Lender in connection with the Loan.

**"Lot Sale Agreement"** shall mean any bona fide purchase agreement, lot sale agreement, contract of sale or similar agreement in form and substance satisfactory to Lender and in accordance with all Legal Requirements, pursuant to which Borrower proposes to sell a Lot to a third party arms-length purchaser, together with all amendments, modifications, or supplements thereto and any other agreements between the purchaser thereunder and any of the Borrower Parties or their Affiliates related thereto.

**"Lot"** shall mean each individual lot within the Property available for sale in accordance with all Legal Requirements to third parties.

**"Material Action"** shall mean, with respect to any Person: (A) to file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors' Rights Laws, (B) to seek or consent to the appointment of a receiver, liquidator, trustee or any similar official, (C) to take any action that might cause such entity to become insolvent, (D) to make an assignment for the benefit of creditors, (E) admit in writing such Person's inability to pay its debts generally as they become due, (F) declare or effectuate a moratorium on the payment of any obligation, or (G) take action in furtherance of any such action.

**"Material Adverse Change"** shall mean a material adverse change in (i) the assets, operations, or financial condition of Borrower or the Person in question, (ii) the ability to pay the Debt of Borrower or the Person in question in accordance with the terms hereof and otherwise comply with the terms of this Agreement and the Loan Documents, (iii) the Property or the value thereof, (iv) the validity, priority or enforceability of this Agreement or any other Loan Document, (v) the ability of Lender to enforce its rights and remedies pursuant to this Agreement or any other Loan Documents, (vi) Lender's Lien on the Property or the priority of such Lien, or (vii) the Loan.

**"Material Adverse Effect"** shall mean a material adverse effect on (i) the assets, operations, or financial condition of Borrower or the Person in question, (ii) the ability to pay the Debt of Borrower or the Person in question in accordance with the terms hereof and otherwise comply with the terms of this Agreement, and the Loan Documents, (iii) the Property or the value thereof, (iv) the validity, priority or enforceability of this Agreement, or any other Loan Document, (v) the ability of Lender to enforce its rights and remedies pursuant to this Agreement or any other Loan Documents, (vi) Lender's Lien on the Property or the priority of such Lien, or (vii) the Loan.

**"Material Alteration"** shall have the meaning set forth in Section 5.17.

**"Maturity Date"** shall mean the "Maturity Date" set forth in the Note as may be extended in accordance with the terms of the Note, or the date on which the Loan has been accelerated as herein provided.

**"Maximum Principal Amount"** shall have the meaning set forth in Section 2.1.1.

**"Member"** shall have the meaning set forth in Section 4.1(s)(iii).

**"Net Lot Sales Proceeds"** shall mean, for any transaction for the sale of a Lot pursuant to a Lot Sale Agreement, one hundred percent (100%) of the gross sale proceeds and all other consideration from whatever source from such sale minus (i) any excise Taxes payable thereon (if payable by Borrower), minus (ii) reasonable (as compared to the sale of similarly situate properties), demonstrable, out-of-pocket, third party, customary closing costs approved by Lender and actually incurred by Borrower in connection with such sale (including reasonable and customary third party broker fees, as compared to the broker's fees of similarly situated properties), and minus (iii) payments made to satisfy Permitted Encumbrances with respect to the Lots sold. The Net Lot Sales Proceeds shall be set forth on a settlement statement approved by Lender, prepared by a title insurance company acceptable to Lender.

**"Note"** shall mean that certain Promissory Note dated as of the date hereof, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, supplemented or otherwise modified from time to time.

**"Obligations"** shall mean any and all debt, liabilities and other obligations of Borrower, including all affirmative and negative covenants, to Lender or of any of the Borrower Parties in connection with the Loan or pursuant to the Loan Documents, including, without limiting the generality of the foregoing, the Debt.

**"Officer's Certificate"** shall mean a certificate delivered to Lender by Borrower, which is signed by an authorized senior officer of the manager, managing member or general partner of Borrower.

**"Organizational Documents"** shall mean (i) with respect to a corporation, such Person's certificate of incorporation and by-laws, and any shareholder agreement, voting trust or similar arrangement applicable to any of such Person's authorized shares of capital stock, (ii) with respect to a partnership, such Person's certificate of limited partnership, partnership agreement, voting trusts or similar arrangements applicable to any of its partnership interests, (iii) with respect to a limited liability company, such Person's certificate of formation, limited liability company agreement or other document affecting the rights of holders of limited liability company interests, and (iv) any and all agreements between any constituent member, partner or shareholder of Borrower, including any contribution agreement or indemnification agreements. In each case, "Organizational Documents" shall include any indemnity, contribution, shareholders or other agreement among any of the owners of the entity in question.

**"Origination Fee"** shall mean a fee equal to \$500,000.00, plus Lender's administration fee of \$1,000.00.

**"Other Charges"** shall mean all maintenance charges, charges or amounts payable under any reciprocal easement agreement, ground rents, impositions other than Taxes, and any other charges (including any charges, payments or amounts, for which the failure to pay may give rise to a Lien against the Property), including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

**"Other Connection Taxes"** means, with respect to Lender, Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Loan or any Loan Document).

**"Other Taxes"** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**"Patriot Act"** shall have the meaning set forth in Section 5.27(a).

**"Permitted Encumbrances"** shall mean, with respect to the Property, collectively: (a) the Liens created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy relating to the Property or any part thereof which have been approved by Lender and which do not in any event have a Material Adverse Effect, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) statutory Liens for labor or materials securing sums not yet due and payable, provided Borrower has given advance written notice of same to Lender.

**"Person"** shall mean any individual, entity, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any  
SCHEDULE I TO LOAN AGREEMENT – Page 8

bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Plans and Specifications”** shall mean each of the plans and specifications approved in writing by Lender for the Completion of the Project listed on **Schedule VII** attached hereto (including, without limitation, a description of the materials, equipment and fixtures necessary for the Completion of the Project), and any other plans and specifications for the Completion of the Project prepared or to be prepared by (or on behalf of) Borrower and approved in writing by Lender after the Closing Date, in each case, as the same may be amended by Change Orders applicable thereto that are permitted under this Agreement.

**“Pledge Agreement”** shall mean those certain Membership Interest Pledge Agreements dated of even date herewith between Guarantor or AM Family Fund LLC, a Virginia limited liability company, and Lender.

**“Policies”** or **“Policy”** shall have the respective meanings specified in Section 6.1.1(b).

**“Prior Loan”** shall mean that certain loan in the original principal amount of \$14,665,000.00, secured by the Property, made to Borrower.

**“Professional Consent”** shall mean a consent agreement in form and content reasonably acceptable to Lender executed by any applicable architect, engineer, or other design professional with respect to the related agreement between such professional and Borrower.

**“Prohibited Person”** shall have the meaning set forth in Section 5.27(b).

**“Project”** shall mean the construction, in accordance with all Legal Requirements and the Project Budget, of the road at the Property required by the applicable Governmental Authority in order to commence the Development Process.

**“Project Budget”** shall mean the budget of costs and expenses to be incurred in connection with the Project in an amount sufficient to cause Completion, as may be modified from time to time with Lender’s prior approval (unless such approval is not required hereunder and in such instance, in accordance with the terms of this Agreement).

**“Project Expenditures”** shall mean the Hard Costs and Soft Costs in accordance with the Project Budget, including interest and carrying costs.

**“Project Schedule”** shall mean a schedule for the Project reflecting the projected progress of the Completion.

**“Project Shortfall Reserve Funds”** shall have the meaning set forth in Section 2.2(v)(D).

**“Project Shortfall Reserve Subaccount”** shall have the meaning set forth in Section 2.2(v)(D).

**“Property”** shall mean the Land, the Improvements thereof, all personal property owned by Borrower and encumbered by the Security Instrument and its Security Agreement, as applicable, in each case as more particularly described in the Security Instrument and its Security Agreement, as applicable.

**“Rating Agency”** shall have the meaning set forth in Section 8.1.

**“Reimbursement Contribution”** shall have the meaning set forth in Section 12.29(c).

**“Rent(s)”** shall have the meaning set forth in the Security Instrument.

**“Request for Advance”** shall have the meaning set forth in Section 2.2.

**“Restoration”** shall have the meaning set forth in Section 6.1.2(a).

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Reserve Fund, the Interest Reserve Fund, the Project Shortfall Reserve Funds, and any other reserve fund account established pursuant to the Loan Documents.

**“Road Security”** shall mean delivery to Lender of one of the following, acceptable to Lender in its sole discretion: (i) payment and performance bonds acceptable to Lender covering the faithful performance of all obligations and the payment of all obligations arising under all contracts approved by Lender in order to cause Completion, written by a surety licensed to conduct business in California, and naming Borrower and Lender as dual-obligees, or (ii) a cash deposit or a Letter of Credit, in each case in an amount not less than the amount determined by Lender necessary to cause Completion.

**“Scheduled Payment Date”** shall mean the first (1<sup>st</sup>) day of each calendar month, or if such first day is not a Business Day, the next Business Day.

**“Security Agreement”** shall mean each first priority security agreement from Borrower to Lender and from each Guarantor to Lender, each dated as of the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Security Deposits”** shall mean all security given to Borrower or any agent or Person acting on behalf of Borrower in connection with the Leases.

**“Security Instrument”** shall mean each certain first priority Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed and delivered by a Borrower as security for the Loan made to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Service Rights”** shall mean any agreements, contracts, rights, licenses or other interests of any type (whether exclusive or non-exclusive) granted or given to any Person to provide any products or services to or for or with respect to the Property, any tenant or any occupants of the Property, including any of the same related to telecommunications, internet products or services, including, but not limited to, personal computer hardware and software, internet hardware and software, internet access services, printers, video display systems, audio sound systems and communication telephonic devices, as well as related and complementary products and services and any substitutes for, and items that are a technological evolution of, any of the foregoing products.

**“Single Purpose Entity”** shall mean Person, other than a natural person, whose structure and organizational and governing documents are in form and substance that comply with the provisions of Section 4.1(s) hereof and are otherwise acceptable to the Rating Agencies and otherwise acceptable to Lender in its discretion.

**“Soft Costs”** shall mean, collectively, all costs and expenses set forth in the Project Budget which are denominated therein as “soft costs”.

**“Sources and Uses of Funds”** shall mean the Sources and Uses of Funds delivered to Lender in connection with the Loan and attached hereto as Schedule VI.

**“Stored Materials”** shall have the meaning set forth in Section 2.2(v)(F).

**“Strada Deed of Trust”** shall mean that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed and delivered by **901 STRADA, LLC**, a California limited liability company, as security for the Loan made to Lender and encumbering the Property (as defined in such document), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Subdivision Map**” shall have the meaning set forth in Section 5.24.

“**Surety**” shall have the meaning set forth in Section 12.29(c)(iv).

“**Survey**” shall mean a survey of the Property prepared by a surveyor licensed in the state where the Property is located and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Taxes**” shall mean (i) for all purposes other than for Section 2.6, all real estate and personal property taxes, assessments, water rates or sewer rents now or hereafter levied or assessed or imposed against the Property or any part thereof, including (a) any ad valorem real or tangible personal property taxes levied against the Property and (b) any intangible personal property tax levied or imposed on Lender with respect to its ownership in the Loan, and (ii) all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting the Property.

“**Term**” shall have the meaning set forth in Section 6.1.1(a).

“**Title Insurance Company**” shall mean a title insurance company or authorized agent acceptable to Lender that issues the Title Insurance Policy.

“**Title Insurance Policy**” shall mean the ALTA (or equivalent if ALTA is not available in the state where the Property is located) loan title insurance policy (or mortgagee title insurance policy or policies acceptable to Lender) issued with respect to the Property and insuring Lender (in an amount satisfactory to Lender) of the validity and priority of the Lien of the Security Instrument, with all endorsements thereto as required by Lender.

“**Transfer**” shall mean any sale, assignment, conveyance, alienation, mortgage, encumbrance, pledge, hypothecation or other transfer, including any swap, derivative or other transaction shifting the risks and rewards of ownership, whether voluntary or involuntary.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable state or commonwealth in which the Property is located, as the same may be amended from time to time.

“**UCC Financing Statement**” shall mean a financing statement as defined by and in accordance with the requirements of the Uniform Commercial Code including all original financing statements or original fixture financing statements and any amendments, renewals, continuations or assignments thereof evidencing a security interest granted to Lender.

“**U.S. Person**” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Working Capital Expenditures**” shall mean (i) costs and expenses (other than Hard Costs or Soft Costs) incurred by Borrower and approved by Lender in connection with preparing the Property to be formally subdivided in accordance with Legal Requirements so that the Property can be developed or each Lot can be sold, each in accordance with Legal Requirements, or (ii) in Lender’s discretion, cost overruns with respect to Hard Costs or Soft Costs.

**SCHEDULE II**

**CONDITIONS PRECEDENT**

**PART A**

Each of the following shall be satisfied by Borrower as a condition precedent to the making of the initial advance of the Loan on the Closing Date.

(a) Representations and Warranties; Compliance with Conditions. The representations and warranties of each Borrower Party contained in this Agreement and the other Loan Documents shall be true and correct in all respects on and as of the Closing Date and no Material Adverse Change has occurred and no Default or Event of Default shall have occurred and be continuing; and each Borrower Party shall be in compliance in all respects with all terms and conditions set forth in this Agreement and in each other Loan Document on their part to be observed or performed.

(b) Delivery of Loan Documents; Title Insurance; Reports.

(i) Note, Loan Agreement, Security Instrument, Assignment of Agreements and other Loan Documents. Lender shall have received from Borrower fully executed (and acknowledged if required) counterparts of this Agreement, the Note, and all other Loan Documents and evidence that counterparts of the Security Instrument have been delivered to the Title Insurance Company for recording, so as to effectively create upon such recording valid and enforceable first priority Liens upon the Property, in favor of Lender, subject only to the Permitted Encumbrances.

(ii) UCC Financing Statements. Lender shall have received from Borrower (i) such UCC financing statements as Lender shall require, and such financing statements shall have been filed of record in the appropriate filing offices in each of the jurisdictions required by Lender or delivered to the Title Insurance Company for filing so as to effectively create upon such filing a valid and enforceable first priority Lien on the Property in favor of Lender, subject only to the Permitted Encumbrances and (ii) a list of the principal places of business, tax identification numbers, organizational identification number issued by its state of organization, and doing business names for Borrower and all other information as Lender may require to properly file such UCC financing statements, all certified by Borrower.

(iii) Title Insurance. Lender shall have received the Title Insurance Policy dated as of the Closing Date, with co-insurance and/or reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (A) provide coverage in amounts satisfactory to Lender, (B) insure Lender that the Security Instrument creates a valid first Lien on the Property free and clear of all exceptions from coverage other than Permitted Encumbrances, (C) contain such endorsements and affirmative coverages as Lender may require and which are available in the state where the Property is located, (D) show good and marketable indefeasible fee simple title to the Property vested in Borrower, and (E) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of the Title Insurance Policy have been paid. The Lender shall have received satisfactory UCC financing statement, tax lien, judgment, bankruptcy, litigation and other Lien searches and reports conducted by a search firm acceptable to the Lender with respect to the Property and the Borrower Parties and all other relevant Persons, such searches to be conducted in each of the locations as shall be required by Lender.

(iv) Insurance. Lender shall have received valid certificates of insurance and the required endorsements for all Policies required hereunder or under any of the Loan Documents, and evidence of the payment of all premiums payable for the existing policy period, which shall not be less than one year from the Closing Date. Lender shall have received a favorable opinion of Lender's insurance consultant on the adequacy of all Policies, certificates of insurance, and endorsements.

(v) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

(vi) Certificate. Lender shall have received a certificate signed by Borrower confirming the representations and warranties contained in this Agreement.

(vii) Opinion of Counsel. Lender shall have received a satisfactory opinion of legal counsel to Borrower and Guarantors with respect to due execution, authority, enforceability (including no usury) of the Loan Documents and such other matters as Lender may require, all such opinions to be in form, scope and substance satisfactory to Lender and Lender's counsel.

(c) Delivery of Organizational Documents; Consents. Borrower shall have delivered or caused to be delivered to Lender certified copies of all Organizational Documents related to the Borrower Parties and if any of the Borrower Parties is a partnership or limited liability company, the partners or members thereof, as Lender may request in its sole discretion, including good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. The Lender shall have received copies of all consents, resolutions, Licenses and approvals, if any, required in connection with the execution, delivery and performance by the Borrower Parties and the validity and enforceability of the Loan Documents and such consents, resolutions, Licenses and approvals shall be in full force and effect. Lender shall have received a chart depicting the ownership structure of Borrower, each constituent partner or member of Borrower (including their respective ownership interests, direct or indirect, and capital contributions), which chart shall identify each Person who owns or controls, directly or indirectly, any such partner or member of Borrower.

(d) Taxes, Insurance Premiums and Other Charges. Borrower shall have paid all Taxes, Insurance Premiums and Other Charges relating to the Property which are due and payable or in arrears, including (i) accrued but unpaid Insurance Premiums, (ii) currently due Taxes (including any in arrears) relating to the Property, and (iii) currently due Other Charges relating to the Property, which amounts may be funded with proceeds of the Loan if such proceeds are sufficient therefor and as set forth in the Sources and Uses of Funds.

(e) Payments. All payments, deposits or escrows required to be made or established by the Borrower under this Agreement, and the other Loan Documents on or before the Closing Date shall have been paid and Lender shall have received (i) a settlement statement setting forth the disbursement of the Loan in form and content satisfactory to Lender and (ii) tax and insurance bills for the two calendar years prior to the Closing Date.

(f) Third Party Reports. Lender shall have received a current seismic report, if required by Lender (prepared by a specialist acceptable to Lender), MAI appraisal report (prepared in compliance with FIRREA) (provided that Lender may accept evidence of value other than an MAI appraisal report, as determined by Lender), environmental property condition report (Phase I environmental reports for the Property and, where environmental consultants recommends, Phase II reports and/or further investigation or as Lender otherwise determines are required), and property condition / engineering report; each addressed to Lender and in form and substance satisfactory to Lender and dated within three (3) months of the Closing Date, or if approved by Lender, if such third party reports that are not dated within three (3) months of the Closing Date but are otherwise acceptable to Lender, Borrower has delivered a reliance letter to Lender within three (3) months of the Closing Date that is in form and substance satisfactory to Lender. An appraiser, engineer and environmental specialist, each satisfactory to Lender, shall perform the appraisal and the structural engineering and environmental property condition reports.

(g) Survey. Lender shall have received, reviewed, and be satisfied with an ALTA survey of the Property, prepared by a duly qualified land surveyor and certified to Lender and the Title SCHEDULE II TO LOAN AGREEMENT – Page 2

Insurance Company showing (i) the boundaries and dimensions of the Land and each Parcel, (ii) the locations of all buildings and other improvements (if any) on the Property, (iii) the names and municipal block numbers of adjacent streets, (iv) the location of all recorded easements, rights of way, and other recorded encumbrances of the Property, and (v) anything else required by Lender.

(h) Contracts with General Contractors. Lender shall have received, reviewed, and be satisfied with the all contracts between Borrower or any Affiliate of Borrower and any general contractor, and Lender shall have received an assignment of all such contracts in form and substance satisfactory to Lender and acknowledged by each applicable contractor.

(i) Costs. Borrower shall have paid all of Lender's cost and expenses associated with the making of the Loan with respect to the Property, including all out-of-pocket due diligence expenses, the cost of all third party reports (such as but not limited to environmental, structural, appraisal and/or market study), legal fees and expenses, survey costs, title costs, etc.

(j) Authorizations. Borrower shall provide to the appropriate taxation, municipal, utility, and other authorities an authorization by which Lender or any Person authorized by Lender as its legal counsel, agent, or manager, shall be able to obtain, in the name of Borrower, a confirmation from such authorities that all payments, declarations, and other filings of Borrower are up to date, whether the authorities concerned have issued or will issue a default notice or demand for payment to Borrower and whether any such notice concerns arrears.

(k) Site Inspection. Lender has received an acceptable site inspection of the Property.

(l) Interview. Lender has completed and is satisfied with an interview of Borrower and has reviewed and is satisfied with the present and intended use of the Property and the income to be generated from the Property.

(m) Diligence. Lender has received, reviewed, and is satisfied with all due diligence materials referred to in the Loan Term Sheet.

(n) Proceeds of Crime and Terrorist Financing Act. Lender shall have received evidence and be satisfied of Borrower's compliance with The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Regulations.

(o) Closing Date Advance. Lender shall have received, reviewed, and be satisfied with the amount of the advance to be made on the Closing Date together with copies of invoices for items to be paid with the proceeds of such advance and copies of all other documentation requested by Lender supporting such advance.

(p) Inspection. Lender shall have received from Lender's independent consultant (if applicable) an inspection report certifying (or if no independent consultant, Lender shall have determined that) (i) the amount of the requested advance does not exceed the cost of the work completed, (ii) all work typically done at the stage of development when the advance is requested has been completed, and all materials, supplies, and fixtures typically furnished or installed at such stage of development have been furnished and installed, (iii) the undisbursed Loan proceeds are sufficient to complete the proposed development of the Property, (iv) the Request for Advance and all invoices and other supporting documentation delivered to Lender in connection with the Request for Advance have been verified and are in order, (v) Borrower has complied with all Legal Requirements and the requirements of Lender's independent consultant, and (vi) as to such other matters requested by Lender.

(q) Lien Waivers. Lender shall have received from each Person providing services or materials for the Property prior to the Closing Date an invoice, a lien waiver, and such other instruments and

SCHEDULE II TO LOAN AGREEMENT – Page 3

documents as Lender may require in form and substance satisfactory to Lender. The invoice, lien waiver, and such other instruments and documents must cover and be based upon work actually completed or materials actually furnished through the Closing Date.

(r) Licenses, Permits, and Approvals. To the extent applicable as of the Closing Date, Lender shall have received, reviewed, and be satisfied that all necessary municipal approvals have been received, together with all necessary permits, Licenses, approvals, easements and agreements as may be required from all state, county and local Governmental Authorities and/or public utilities (including building permits and certificates of occupancy) to permit the construction of all Improvements in accordance with all Legal Requirements, including without limitation all approvals and permits for public sewer and water, availability notices from applicable private and public utilities indicating that electric, gas and telephone service will be available, and all sanitary sewer, water, utility, storm sewer, drainage, and other off-site easements necessary for construction and occupancy of such Improvements.

(s) No Violation of Legal Requirements. There shall be no outstanding notices of any uncorrected violations of any Legal Requirements with respect to the Property.

(t) Further Documents. Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested in form and substance satisfactory to Lender and its counsel.

(u) Sources and Uses of Funds. Lender shall have approved the Sources and Uses of Funds for the initial advance.

(v) Agreement to Advance. Lender has been advised by its legal counsel that, giving regard to all the circumstances, such advance should be made, it being understood that neither the preparation nor the recordation or filing of any of the documents contemplated herein shall bind the Lender to advance the funds or any unadvanced portion thereof, and that the advance of funds or any part thereof from time to time shall be in the sole, absolute, unfettered and unqualified discretion of the Lender.

PART B

In addition to satisfaction of all items listed in Part A above, each of the following shall be satisfied by Borrower as a condition precedent to the making of any advances after the Closing Date:

(a) Request for Advance. Lender shall have received, reviewed, and be satisfied with a Request for Advance for the advance to be made together with copies of invoices for items to be paid with the proceeds of such advance and copies of all other documentation supporting the Request for Advance. Borrower shall not request more than one Request for Advance during any month.

(b) Inspection. Lender shall have received from Lender's independent consultant (if applicable) an inspection report certifying (or if no independent consultant, Lender shall have determined that) (i) the amount of the requested advance does not exceed the cost of the work completed, less all prior advances, (ii) all work typically done at the stage of development when the advance is requested has been completed, and all materials, supplies, and fixtures typically furnished or installed at such stage of development have been furnished and installed, (iii) the undisbursed Loan proceeds are sufficient to complete the proposed development of the Property, (iv) the Request for Advance and all invoices and other supporting documentation delivered to Lender in connection with the Request for Advance have been verified and are in order, (v) Borrower has complied with all Legal Requirements and the requirements of Lender's independent consultant, and (vi) as to such other matters requested by Lender.

(c) Representations and Warranties; Compliance with Conditions. The representations and warranties of each Borrower Party contained in this Agreement and the other Loan Documents shall be true and correct in all respects on and as of the date of such advance and no Material Adverse Change has occurred and no Default or Event of Default shall have occurred and be continuing; and each Borrower Party shall be in compliance in all respects with all terms and conditions set forth in this Agreement and in each other Loan Document on their part to be observed or performed. Borrower shall have delivered evidence satisfactory to Lender indicating that Policies in accordance with Section 6.1 of this Agreement are in place as to all of the Property.

(d) Title Endorsement. Lender shall have received a down date endorsement to the Title Insurance Policy showing no state of facts of record objectionable to Lender and affecting the Property from the date of recording of the Security Instrument and increasing the amount of the Title Insurance Policy to include the amount to be advanced.

(e) Lien Waivers. Lender shall have received from each Person providing services or materials for the Property an invoice, a lien waiver, and such other instruments and documents as Lender may require in form and substance satisfactory to Lender. The invoice, lien waiver, and such other instruments and documents must cover and be based upon work actually completed or materials actually furnished through the date of the requested advance.

(f) Licenses, Permits, and Approvals. To the extent applicable as of the date of such advance, Lender shall have received, reviewed, and be satisfied that all necessary municipal approvals have been received, together with all necessary permits, Licenses, approvals, easements and agreements as may be required from all state, county and local Governmental Authorities and/or public utilities (including building permits and certificates of occupancy) to permit the construction and occupancy of all Improvements in accordance with all Legal Requirements, including without limitation all approvals and permits for public sewer and water, availability notices from applicable private and public utilities indicating that electric, gas and telephone service will be available, and all sanitary sewer, water, utility, storm sewer, drainage, and other off-site easements necessary for construction of such Improvements.

(g) No Violation of Legal Requirements. There shall be no outstanding notices of any uncorrected violations of any Legal Requirements with respect to the Property.

(h) Affidavit. Lender and the Title Insurance Company shall have received an affidavit of a senior officer of Borrower certifying that since the preparation of the survey described in item (g) of Part A above, no new easement has been created, no construction of any building or other improvement shown thereon has been effected (other than as expressly approved by Lender), and no new construction has been erected by a neighbor along the boundaries of the Land.

(i) Further Documents. Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested in form and substance satisfactory to Lender and its counsel.

(j) Sources and Uses of Funds. Lender shall have approved the Sources and Uses of Funds for the initial advance.

(k) Agreement to Advance. Lender has been advised by its legal counsel that, giving regard to all the circumstances, such advance should be made, it being understood that neither the preparation nor the recordation or filing of any of the documents contemplated herein shall bind the Lender to advance the funds or any unadvanced portion thereof, and that the advance of funds or any part thereof from time to time shall be in the sole, absolute, unfettered and unqualified discretion of the Lender.

(l) Lot Sales. Lender shall have received all applicable Net Lot Sales Proceeds for all Lots sold prior to the date of the requested advance.

(m) Maturity Date. No Request for Advance shall be requested later than the Maturity Date (and no advance shall be obligated to be made in the event that all conditions precedent to the making of any such advance is not satisfied as of the Maturity Date).

(n) On Schedule. Lender shall have determined that the Project is progressing in material compliance with the Project Schedule.

(o) Project Documents. Borrower shall have delivered the Plans and Specifications, the Project Schedule and the Project Budget to Lender.

**SCHEDULE III**

**PENDING OR THREATENED LITIGATION**

**NONE**

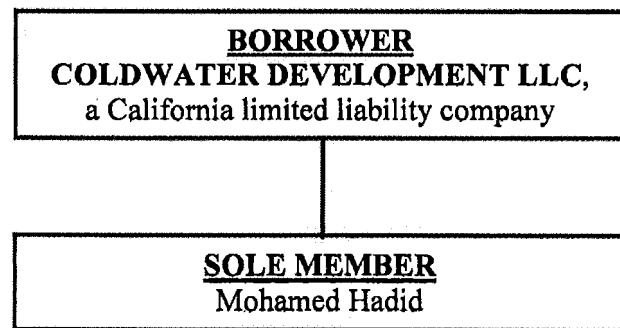
**SCHEDULE IV**

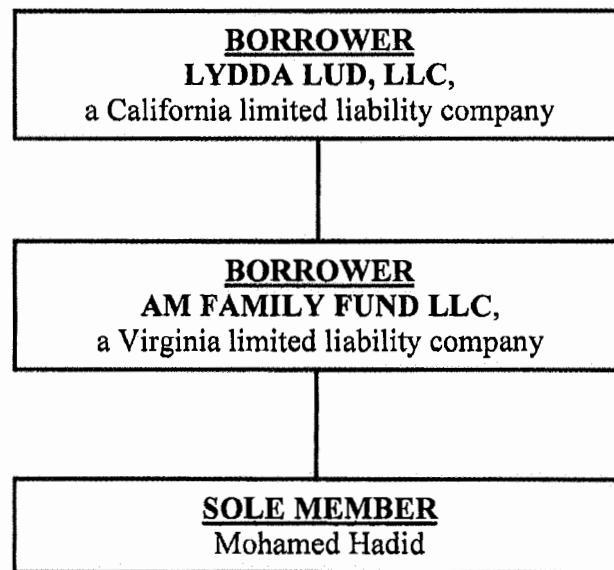
**DISCLOSURE SCHEDULE**

**NONE**

**SCHEDULE V**

**BORROWER'S OWNERSHIP STRUCTURE**





**SCHEDULE VI**

**SOURCES AND USES OF FUNDS**

Repayment of existing loans on the Property	\$14,665,000.00
Loan fees and transaction costs	\$1,000,000.00
Interest Reserve	\$2,300,000.00
Engineering, architecture and other soft costs of road construction	\$2,000,000.00
Hard costs of road construction	\$4,035,000.00
Working capital	\$1,000,000.00
Total Uses this Loan	\$25,000,000.00

**SCHEDULE VII**  
**PLANS AND SPECIFICATIONS**

SCHEDULE VII TO LOAN AGREEMENT  
57513357





# EXHIBIT 2

**PROMISSORY NOTE**

U.S. \$25,000,000.00

March 17, 2017  
Beverly Hills, California

**FOR VALUE RECEIVED, COLDWATER DEVELOPMENT LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077, and **LYDDA LUD, LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077 (individually and collectively, jointly and severally, "Borrower"), absolutely and unconditionally promises to pay to the order of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5 ("Lender"), the principal sum of TWENTY-FIVE MILLION AND NO/100 DOLLARS (U.S. \$25,000,000.00), with interest on the unpaid principal balance to be computed from the date of the first disbursement of the Loan proceeds under this Promissory Note (this "Note") at the Applicable Interest Rate (defined below), in lawful money of the United States of America, in immediately available funds, which shall at the time of payment be legal tender for payment of all debts and dues, public and private (the "Loan"). This Note is secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed of even date herewith by Borrower in favor of Lender (the "Security Instrument"). Simultaneously herewith, Borrower and Lender have entered into that certain Loan Agreement (as the same may be amended, modified, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement").

**PAYMENT OF PRINCIPAL AND INTEREST.**

1.1 **Payments.** The principal, interest and all other sums due under this Note shall be payable at the office of Lender as set forth above, or at such other place as Lender may from time to time designate in writing, as follows:

(a) Interest on the unpaid balance of the Loan shall accrue at the rate of eleven percent (11.0%) per annum (the "Interest Rate") from and including the date of the first disbursement of the Loan proceeds under this Note until the Maturity Date (defined below), and shall be payable on a monthly basis, in arrears, on each Scheduled Payment Date (defined below). If Borrower exercises the Maturity Extension, during the Maturity Extension Period, interest shall accrue at the Maturity Extension Interest Rate.

(b) The Loan shall mature on the Maturity Date. The entire outstanding principal balance of this Note, together with all accrued and unpaid interest and any other amounts due under this Note and the other Loan Documents (defined below) shall be due and payable in full on the Maturity Date. Subject to meeting the Maturity Extension Requirements, Borrower may extend the Maturity Date for up to one (1) additional one-year term by exercising the First Maturity Extension as set forth herein.

(c) If this Note is executed on a day other than the first (1<sup>st</sup>) day of a calendar month, Borrower shall pay to Lender, contemporaneously with the execution of this Note, an interest payment calculated by multiplying (i) the number of days from and including the date of this Note to and including the last day of the current month, by (ii) a daily rate based on the Interest Rate calculated for a 360 day year. Each interest accrual period (the "Interest Period") thereafter shall commence on the first (1<sup>st</sup>) day of each calendar month during the term of the Loan and shall end on the last day of the next occurring calendar month. Commencing on the Scheduled Payment Date occurring May 1, 2017, and on each Scheduled Payment Date thereafter throughout the term of the Loan, Borrower shall make a payment to Lender monthly in arrears of interest accruing on the outstanding principal balance during each Interest Period (each such payment, a "Monthly Debt Service Payment").

**PROMISSORY NOTE**

57513482

(d) All amounts due under this Note and each other Loan Document shall be payable without setoff, counterclaim or any other deduction whatsoever.

(e) Principal payments shall be made on this Note as provided in Section 2.3 of the Loan Agreement.

1.2 Computation. Interest at the Applicable Interest Rate on the principal sum of this Note shall be calculated on the basis of a three hundred sixty (360) day year and the actual number of days elapsed in such period and shall be compounded monthly. In computing the number of days during which interest accrues, the day on which funds are advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to Lender's close of business. For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360. The rates of interest under this Note are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Note.

1.3 Determination. Payments under this Note or any other Loan Document made in federal funds immediately available in the place designated for payment which are received by Lender prior to 2:00 p.m. local time at said place of payment shall be considered by Lender as having been received prior to close of business, while other payments may, at the option of Lender, not be credited until immediately available to Lender in federal funds in the place designated for payment prior to 2:00 p.m. local time at said place of payment on a day on which Lender is open for business.

1.4 Making of Payments. Each payment by Borrower hereunder or under the Loan Agreement or any other Loan Document shall be made in immediately available funds to Lender on the date such payment is due to Lender, without presentment, demand, protest or notice of any kind, all such notices being hereby waived and without setoff, counterclaim or other deduction of any nature. Whenever any payment hereunder or under the Loan Agreement or any other Loan Document shall be stated to be due on a day which is not a Business Day such payment shall be made on the next following Business Day, and, if applicable, interest shall continue to accrue and be payable at the applicable interest rate during such extension. Borrower shall remit all payments to Lender via an automatic debit service approved by Lender.

1.5 Application. Payments under this Note shall be applied in accordance with Section 2.4 of the Loan Agreement. No principal amount repaid may be reborrowed.

1.6 Maturity Grace Period. If Borrower fails to pay the unpaid balance of the Loan and all unpaid accrued interest thereon on the Maturity Date (other than a Maturity Date arising pursuant to clause (iv) of the definition of Maturity Date), Lender may, at its sole discretion, grant to Borrower a Maturity Grace Period (in lieu of such occurrence being deemed an Event of Default). During the Maturity Grace Period, the unpaid balance of the Loan shall accrue interest at the Maturity Grace Period Interest Rate, with the unpaid balance of the Loan and all unpaid accrued interest thereon, including interest that accrues during the Maturity Grace Period, being due and payable in full on the last day of the Maturity Grace Period. There shall be no more than one (1) Maturity Grace Period. If Lender grants a Maturity Grace Period to Borrower, the Maturity Grace Period Fee shall automatically be added to the outstanding balance of the Loan. Borrower's failure to pay the unpaid balance of the Loan and all unpaid accrued interest on the first day after the expiration of the Maturity Grace Period shall constitute an Event of Default.

1.7 **Definitions.** All capitalized terms used in this Note without definition shall have the meanings assigned to such terms in the Loan Agreement, all of the terms of such Loan Agreement being hereby incorporated into and made part of this Note by reference for all purposes. Additionally, for purposes of this Note, the following terms shall have the following meanings:

**“Applicable Interest Rate”** shall mean the Interest Rate, the Default Rate, the Maturity Grace Period Interest Rate, or the Maturity Extension Interest Rate, as applicable.

**“Banking Day”** shall mean a day on which the Toronto, Ontario, head office for the Royal Bank of Canada is open for business and which is not a Saturday, Sunday, civic or statutory holiday in Canada.

**“Business Day”** shall mean a day on which commercial banks are not authorized or not required by law to close in the State of New York or in the State where the Property is located.

**“Default Rate”** has the meaning given thereto in Section 2.3.

**“First Maturity Extension”** shall mean that Lender has determined that Borrower has timely satisfied all Maturity Extension Requirements prior to April 1, 2018, and Lender has extended the Maturity Date from May 1, 2018, to May 1, 2019.

**“Interest Period”** has the meaning given thereto in Section 1.1(c).

**“Interest Rate”** has the meaning given thereto in Section 1.1(a).

**“Loan Agreement”** has the meaning given thereto in the recitals above.

**“Maturity Date”** shall mean (i) if not extended pursuant to the First Maturity Extension, May 1, 2018, (ii) if extended pursuant to the First Maturity Extension, May 1, 2019, or (iii) any earlier date on which Lender’s obligation to make disbursements of the Loan has been terminated and the Loan has been accelerated, in each case pursuant to the terms of the Loan Agreement.

**“Maturity Extension Requirements”** shall collectively mean the following:

(i) Delivery by Borrower to Lender of written notice no more than sixty (60) days prior and no less than thirty (30) days prior to the applicable Maturity Date (the “**Maturity Extension Notice**”) that Borrower seeks to exercise the First Maturity Extension;

(ii) Delivery by Borrower to Lender no later than the applicable Maturity Date of an extension fee in immediately available funds in an amount equal to one percent (1%) of the then outstanding principal balance of the Loan; and

(iii) No Default or Event of Default has ever occurred.

**“Maturity Grace Period Interest Rate”** shall mean an interest rate that is the greater of (i) the Interest Rate and (ii) the Royal Bank of Canada Prime Rate per annum, plus five percent (5%); as determined on the first (1<sup>st</sup>) Banking Day of the month in which the Maturity Date occurs.

**“Maturity Grace Period”** shall mean the period from the Maturity Date through and including the date that is one (1) month from the Maturity Date. There shall be no Maturity Grace Period available to Borrower if the Maturity Date arises pursuant to clause (iv) of the definition of Maturity Date.

**"Maturity Grace Period Fee"** shall mean an amount equal to the greater of (i) \$5,000.00, and (ii) one percent (1%) of the then outstanding principal balance of the Loan.

**"Prepayment Premium"** means payment in immediately available funds in the amount of one percent (1%) of the then outstanding principal balance of the Loan.

**"Royal Bank of Canada Prime Rate"** means the rate of interest, expressed as a percentage per annum, published and quoted by the Royal Bank of Canada's Toronto, Ontario, Head Office and which is commonly known as the prime lending rate for commercial loans in Canadian Dollars.

**"Scheduled Payment Date"** shall mean the first (1<sup>st</sup>) day of each calendar month, or if such first (1<sup>st</sup>) day is not a Business Day, the next Business Day.

## 2. **DEFAULT.**

2.1 **Late Fee.** If any principal, interest or any other sum due under this Note or the other Loan Documents (other than the payment of principal during the Maturity Grace Period) is not paid by Borrower on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by any Legal Requirements, in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents.

2.2 **Remedies.** The entire outstanding principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under this Note, the Security Instrument, or any of the other Loan Documents, or any portion thereof, including without limitation, any amounts described in Section 12.9 of the Loan Agreement shall without notice become immediately due and payable at the option of Lender upon the occurrence of any Event of Default. Time is of the essence in this Note, the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. All payments from Borrower to Lender following the occurrence of an Event of Default shall be applied in such order and manner as Lender elects in reduction of costs, expenses, charges, disbursements and fees payable by Borrower hereunder or under any other Loan Document, in reduction of interest due on the outstanding principal balance of the Loan, or in reduction thereof. Lender may, without notice to Borrower or any other person, accept one or more partial payments of any sums due or past due hereunder from time to time while an Event of Default exists hereunder, after Lender accelerates the indebtedness evidenced hereby, and/or after Lender commences enforcement of its remedies under any Loan Document or applicable law, without thereby waiving any Event of Default, rescinding any acceleration, or waiving, delaying, or forbearing in the pursuit of any remedies under the Loan Documents. Lender may endorse and deposit any check or other instrument tendered in connection with such a partial payment without thereby giving effect to or being bound by any language purporting to make acceptance of such instrument an accord and satisfaction of the indebtedness evidenced hereby.

2.3 **Default Rate.** Upon the occurrence of a default by Borrower under this Note, and following the expiration of the applicable cure period (if any) or any other Event of Default under the Loan Documents (each of the foregoing an "**Event of Default**"), Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at the Interest Rate plus five percent (5%) (the "**Default Rate**"). The Default Rate shall be automatically computed from the occurrence of the Event of Default until the actual receipt and collection of this Note in full or, if permitted by Lender (of which Lender has no obligation to do so), the date such Event of Default is cured. This charge shall be

added to this Note, and shall be deemed secured by the Security Instrument and the other Loan Documents. Borrower agrees that Lender's right to collect interest at the Default Rate is given for the purpose of compensating Lender at reasonable amounts for Lender's added costs and expenses that occur as a result of Borrower's default and that are difficult to predict in amount, such as increased general overhead, concentration of management resources on problem loans, and increased cost of funds. Lender and Borrower agree that Lender's collection of interest at the Default Rate is not a fine or penalty, but is intended to be and shall be deemed to be reasonable compensation to Lender for increased costs and expenses that Lender will incur if there occurs an Event of Default hereunder. Collection of interest at the Default Rate shall not be construed as an agreement or privilege to extend the Maturity Date or to limit or impair any rights and remedies of Lender under any Loan Documents. In the event the Default Rate would otherwise exceed the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

2.4 Post-Judgment. Interest shall accrue on any judgment obtained by Lender in connection with the enforcement or collection of this Note or the other Loan Documents (including foreclosure of the Security Instrument) until such judgment amount is irrevocably paid in full at a rate equal to the greater of (a) the Default Rate or (b) the highest legal rate applicable to judgments within such jurisdiction; provided, however, that interest shall not accrue at a rate in excess of the maximum rate of interest, if any, which may be charged by Lender or collected from Borrower under applicable law.

2.5 Remedies Cumulative. The remedies available to Lender under this Note and in the other Loan Documents, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Lender's sole discretion and as often as occasion therefor shall arise.

### 3. PREPAYMENT.

#### 3.1 Prepayment.

(a) Except as set forth in Sections 3.1(b) and 3.1(c), Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

(b) At any time prior to the Maturity Date, Borrower shall have the right to prepay the Loan, in whole or in part, without premium or penalty as a result of payments made pursuant to Section 2.3 of the Loan Agreement.

(c) On any Scheduled Payment Date during the term of the Loan, so long as no Default or Event of Default shall have occurred and be continuing, Borrower may, at its option and upon not less than thirty (30) days prior notice to Lender, prepay the outstanding principal balance of the Loan in whole only (and not in part) with payment of the Prepayment Premium. If after notifying Lender of its intent to prepay, Borrower revokes such prior notice or fails to make such prepayment on the date specified in such notice, Borrower shall pay all actual costs and expenses incurred by Lender as a result of such failure or revocation. Any prepayment received by Lender under this Section shall, in addition to the outstanding principal balance of the Loan and the Prepayment Premium, also be accompanied by (a) if for any reason such prepayment does not occur on a Scheduled Payment Date, all interest which would have accrued on the principal amount prepaid through, but not including, the next occurring Scheduled Payment Date, (b) all other sums due and payable under the Loan Documents, and (c) all reasonable out-of-pocket costs and expenses incurred by Lender in connection with such prepayment. Borrower acknowledges that Lender has made the Loan to Borrower in reliance on the actual receipt over time of the principal and interest as applicable as agreed to by Borrower herein and that Lender will incur additional costs and expenses in the event of a prepayment of the Loan and that the Prepayment Premium is reasonable and is a bargained for consideration and not a penalty and the terms of the Loan are in

various respects more favorable to Borrower than they would have been absent Borrower's agreement to pay the Prepayment Premium as provided herein. Borrower agrees that Lender shall not, as a condition to receiving the Prepayment Premium, be obligated to actually reinvest the amount prepaid in any treasury obligation or in any other manner whatsoever. Nothing contained herein shall be deemed to be a waiver by Lender of any right it may have to require specific performance of any obligation of Borrower hereunder.

**3.2 Prepayment Upon Default.** If following the occurrence of any Event of Default, Lender shall accelerate the Loan, Borrower shall pay to Lender all amounts payable under this Note and the other Loan Documents. If Borrower shall tender payment of an amount sufficient to satisfy the Debt at any time prior to a sale of the Property, either through foreclosure or the exercise of the other remedies available to Lender under the Loan Documents, such tender by Borrower shall be deemed to be voluntary and Borrower shall pay all amounts due and payable under the Loan Documents, including without limitation, amounts described in Section 3.1.

**3.3 BORROWER HEREBY EXPRESSLY (A) WAIVES ANY RIGHTS THAT BORROWER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 2954.10 TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE OF THE NOTE, AND (B) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ANY OR ALL OF THIS NOTE IS MADE, WHETHER VOLUNTARY OR INVOLUNTARY, OR UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THE NOTE BY LENDER ON ACCOUNT OF ANY EVENT OF DEFAULT BY BORROWER UNDER ANY LOAN DOCUMENT, INCLUDING, BUT NOT LIMITED TO ANY TRANSFER OR DISPOSITION AS RESTRICTED BY LOAN AGREEMENT, THEN BORROWER SHALL BE OBLIGATED TO PAY, CONCURRENTLY THEREWITH, AS A PREPAYMENT FEE, THE APPLICABLE SUM SPECIFIED IN THIS NOTE. BY SIGNING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER AGREES THAT LENDER'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER FOR THIS WAIVER AND AGREEMENT.**

**4. SECURITY.** The indebtedness evidenced by this Note is governed by the Loan Agreement and the obligations created hereby (including without limitation the amounts authorized by Section 2 to be collected by Lender) are secured by, among other things, the Security Instrument and other Loan Documents.

**5. GENERAL**

**5.1 Written Amendment Only.** This Note 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 Borrower and Lender.

**5.2 Certain Waivers.** Except for any notices specifically required by the Loan Agreement, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest, notice of non payment, notice of acceleration, and notice of intent to accelerate the maturity hereof (and of such acceleration). No release of any security for the Loan or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the other Loan Documents made by agreement between Lender and any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, or any

other Person who may become liable for the payment of all or any part of the Debt, under this Note and the other Loan Documents. Lender may release any guarantor or indemnitor of the Loan from liability, in every instance without the consent of the Borrower hereunder, and without waiving any rights the Lender may have hereunder, the other Loan Documents or by virtue of the laws of the State in which the Property is located or any other state of the United States.

5.3 Severability. If any provision or obligation under this Note and the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents.

5.4 Notices. All notices or other written communications hereunder shall be given and become effective as provided in Section 12.5 of the Loan Agreement.

5.5 Set-Off Preference. Borrower is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff. In the event that at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any bankruptcy, insolvency or other debtor relief law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

5.6 Successors and Assigns. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and permitted assigns, whether by voluntary action of the parties or by operation of law. As used in this Note and the other Loan Documents, the terms "Borrower" and "Lender" shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and permitted assigns (no right to assign on the part of Borrower being implied hereby), whether by voluntary action of the parties or by operation of law.

5.7 Joint and Several. If Borrower consists of more than one Person, each shall be jointly and severally liable to for the Obligations.

5.8 Interpretation. Sections 1.2, 12.18, and 12.19 of the Loan Agreement are hereby incorporated into this Note by reference for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

5.9 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, BORROWER HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE (PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO JUDICIAL REFERENCE SHALL BE APPLICABLE WITH RESPECT TO ANY ACTION IN RESPECT OF THE FORECLOSURE OF THE SECURITY INSTRUMENT). PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640 TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. BORROWER ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER. BORROWER HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARMS-LENGTH BASIS, WITH BORROWER AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN.

  
Borrower's Initials

  
Borrower's Initials

5.10 **GOVERNING LAW.** Except as otherwise expressly set forth herein, this Note shall be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located without regard to the conflicts of law provisions thereof ("Governing State"). Borrower hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE TERM LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Borrower hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Note may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

5.11 **Expenses.** Borrower shall pay Lender, on demand, all Administration and Enforcement Expenses (as hereinafter defined) now or hereafter incurred by Lender, together with interest thereon at the Default Rate, from the date paid or incurred by Lender until such fees and expenses are paid by Borrower, whether or not an Event of Default then exists. Provided no Event of Default has occurred, fees and expenses related solely to origination and administration of the Loan shall be limited to reasonable fees and expenses, but charges of governmental entities or other third parties that are outside of the control of Lender shall not be subject to the reasonableness standard. For the purpose of this Note, "**Administration and Enforcement Expenses**" shall mean all fees and expenses incurred at any time or from time to time by Lender, including legal (whether for the purpose of advice, negotiation, documentation, defense, enforcement or otherwise), accounting, financial advisory, auditing, rating agency, appraisal, valuation, title or title insurance, engineering, environmental, collection agency, or other expert or consulting or similar services, in connection with: (a) the origination of the Loan, including the negotiation and preparation of the Loan Documents and any amendments or modifications of the Loan or the Loan Documents, whether or not consummated; (b) the administration, servicing or enforcement of the Loan or the Loan Documents, including any request for interpretation or modification of the Loan Documents or any matter related to the Loan or the servicing thereof (which shall include the consideration of any requests for consents, waivers, modifications, approvals, lease reviews or similar matters and any proposed transfer of the Property or any interest therein), (c) any litigation, contest, dispute, suit, arbitration, mediation, proceeding or action (whether instituted by or against Lender, including actions brought by or on behalf of Borrower or Borrower's bankruptcy estate or any indemnitor or guarantor of the Loan or any other person) in any way relating to the Loan or the Loan Documents including in connection with any bankruptcy, reorganization, insolvency, or receivership proceeding; (d) any attempt to enforce any rights of Lender against Borrower or any other person that may be obligated to Lender by virtue of any Loan Document or otherwise whether or not litigation is commenced in pursuance of such rights; and (e) protection, enforcement against, or liquidation of the Property or any other collateral for the Loan, including any attempt to inspect, verify, preserve, restore, collect, sell, liquidate or otherwise dispose of or realize upon the Loan, the Property or any other collateral for the Loan. All Administration and Enforcement Expenses shall be additional Debt hereunder secured by the

Property, and may be funded, if Lender so elects, by Lender paying the same to the appropriate persons and thus making an advance on Borrower's behalf.

5.12 Avoidance of Debt Payments. To the extent that any payment to Lender and/or any payment or proceeds of any collateral received by Lender in reduction of the Debt is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, to Borrower (or Borrower's successor) as a debtor in possession, or to a receiver, creditor, or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then the portion of the Debt intended to have been satisfied by such payment or proceeds shall remain due and payable hereunder, be evidenced by this Note, and shall continue in full force and effect as if such payment or proceeds had never been received by Lender whether or not this Note has been marked "paid" or otherwise cancelled or satisfied and/or has been delivered to Borrower, and in such event Borrower shall be immediately obligated to return the original Note to Lender and any marking of "paid" or other similar marking shall be of no force and effect.

5.13 Miscellaneous. Neither this Note nor any of the terms hereof, including the provisions of this Section, may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Note; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Note; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Note. This Note may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Note. The failure of any party hereto to execute this Note, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. As used in this Note, (i) the terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to," (ii) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa, (iii) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Note, (iv) no inference in favor of, or against, Lender or Borrower shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document, (v) the words "Lender" and "Borrower" shall include their respective successors (including, in the case of Borrower, any subsequent owner or owners of the Property or any part thereof or any interest therein and Borrower in its capacity as debtor-in-possession after the commencement of any bankruptcy proceeding), assigns, heirs, personal representatives, executors and administrators, (vi) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or," (vii) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Note refer to this Note as a whole and not to any particular provision or section of this Note, (viii) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender, and (ix) in the computation of periods of time from a specified date to a later date, the word "from and including" and the words "to" and "until" each means "to but excluding." Wherever Lender's judgment, consent, approval or discretion is required under this Note or Lender shall have an option, election, or right of determination or any other power to decide any other matter relating to the terms of this Note, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender except as may be otherwise expressly and specifically provided herein. Such Decision Power and each other power granted to Lender upon this Note or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. In the event of a conflict between or among the terms, covenants, conditions or provisions of the Loan Documents, the term(s), covenant(s),

condition(s) and/or provision(s) that Lender may elect to enforce from time to time so as to enlarge the interest of Lender in its security, afford Lender the maximum financial benefits or security for the Debt, and/or provide Lender the maximum assurance of payment of the Debt in full shall control. Capitalized terms used herein shall, unless otherwise defined herein, have the meanings set forth in the Loan Agreement. BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN PROVIDED WITH SUFFICIENT AND NECESSARY TIME AND OPPORTUNITY TO REVIEW THE TERMS OF THIS NOTE, THE SECURITY INSTRUMENT, AND EACH OF THE LOAN DOCUMENTS, WITH ANY AND ALL COUNSEL IT DEEMS APPROPRIATE, AND THAT NO INFERENCE IN FAVOR OF, OR AGAINST, LENDER OR BORROWER SHALL BE DRAWN FROM THE FACT THAT EITHER SUCH PARTY HAS DRAFTED ANY PORTION HEREOF, OR THE SECURITY INSTRUMENT, OR ANY OF THE LOAN DOCUMENTS.

**5.14 Usury Savings.** Any provision herein, in any Loan Document or any other document executed or delivered in connection with the Loan, or in any other agreement or commitment, whether written or oral, expressed or implied, to the contrary notwithstanding, Lender shall not in any event be entitled to receive or collect, nor shall or may amounts received hereunder be credited, so that Lender shall be paid, as interest, a sum greater than the maximum amount permitted by applicable law to be charged to the Person primarily obligated to pay the Debt and the Obligations at the time in question. If any construction of this Note, any other Loan Document, or any other document executed or delivered in connection herewith, indicates a different right given to Lender to ask for, demand or receive any larger sum as interest, such is a mistake in calculation or wording which this clause shall override and control, it being the intention of Borrower and Lender that this Note, any other Loan Document and any other documents executed in connection herewith conform strictly to applicable usury laws. In no event shall the amount treated as the total interest exceed the maximum amount of interest which may be lawfully contracted for, charged, taken, received or reserved by Lender in accordance with the applicable usury laws, taking into account all items which are treated as interest under applicable law, computed in the aggregate over the full term of the Loan evidenced hereby. In the event that the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Note, any other Loan Document and any other documents executed in connection herewith shall ever exceed the maximum nonusurious rate under applicable law, any sum in excess thereof shall be applied to the reduction of the unpaid principal balance of the Debt and the Obligations, and if the Debt and the Obligations are paid in full, any remaining excess shall be paid to Borrower. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the maximum nonusurious rate under applicable law, if any, Borrower and Lender shall, to the maximum extent permitted under applicable law, (a) characterize any nonprincipal amount as an expense or fee rather than as interest, (b) exclude voluntary prepayments and the effects thereof, or (c) "spread" the total amount of interest throughout the entire term of the Debt and the Obligations so that the interest rate is uniform throughout the entire term of the Debt and the Obligations; provided, however, that if the Debt and Obligations are paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the maximum nonusurious rate, if any, Lender shall refund to Borrower the amount of such excess. In addition, if any provision of this Note would oblige the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any applicable law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the Lender; and

(ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

5.15 Exculpation. The Debt shall be fully recourse to Borrower, and Borrower shall be fully personally liable for all of the Debt.

[SEPARATE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower has duly executed this Note the day and year first above written.

**BORROWER:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher Notary PJS12  
(insert name and title of the officer)

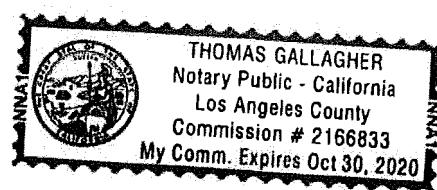
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**PROMISSORY NOTE**

57513482

IN WITNESS WHEREOF, Borrower has duly executed this Note the day and year first above written.

**BORROWER:**

**LYDDA LUD, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public

(insert name and title of the officer)

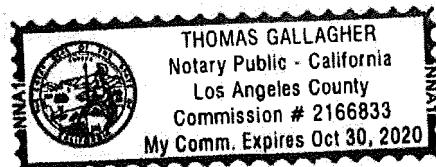
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



# EXHIBIT 3

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310859**



Pages:  
0039

Recorded/Filed In Official Records  
Recorder's Office, Los Angeles County,  
California

03/20/17 AT 08:00AM

FEES :	190.00
TAXES :	0.00
OTHER :	0.00
<hr/>	
PAID:	190.00



LEADSHEET



201703200200001

00013489024



008212116

SEQ:  
07

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

E464776

E08\_170320\_566-004

This document was prepared  
by and after recording should  
be returned to:

Polsinelli PC  
2950 N Harwood, Suite 2100  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(space above reserved for recorder's use)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company  
(Grantor)

to

**EQUITY TITLE COMPANY,**  
a California corporation  
(Trustee)

in favor of

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
an Ontario limited partnership  
(Lender)

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTIONS 9-334, 9-501(a)(1) AND 9-502 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR SHALL BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT A ATTACHED HERETO]. THE NAME OF THE RECORD OWNER OF THE REAL PROPERTY IS COLDWATER DEVELOPMENT LLC, A CALIFORNIA LIMITED LIABILITY COMPANY. THE ORGANIZATION IDENTIFICATION NUMBER OF GRANTOR IS 201101410052.

Dated: March 16, 2017

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND  
Fixture Filing**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 16th day of March, 2017, by **COLDWATER DEVELOPMENT LLC**, a California limited liability company, having its principal place of business at 630 Nimes Road, Bel Air, California 90077 (together with its successors and assigns, "Grantor"), to **EQUITY TITLE COMPANY**, a California corporation, having an address at 801 North Brand Boulevard, Suite 400, Glendale, California 91203, as Trustee ("Trustee") for the benefit of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5, as beneficiary (together with its successors and assigns, "Lender").

**WITNESSETH:**

WHEREAS, this Security Instrument is given to secure a loan (the "Loan") in the principal sum of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Grantor, **LYDDA LUD, LLC**, a California limited liability company (together with Grantor, individually and collectively, jointly and severally, "Borrower"), and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender in the principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note"). All capitalized terms contained herein and not otherwise defined shall be as defined in the Loan Agreement;

WHEREAS, Grantor desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined) (including, without limitation, any prepayment fees and the Environmental Costs (as defined in the Environmental Indemnity), excluding, however, any such Environmental Costs not permitted to be recovered pursuant to Section 736 of the California Code of Civil Procedure) (the term "Loan Documents", for the purposes of this Security Instrument, shall not include the Environmental Indemnity); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

DEED OF TRUST

57513330

## ARTICLE I - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee for the benefit of Lender and its successors and assigns, WITH POWER OF SALE, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Grantor 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;

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

(d) 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 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Grantor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and

ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Grantor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures");

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, entitlements, approvals, authorizations, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Grantor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Grantor in and to any of the Personal Property 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;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, 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 Grantor 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. "Rents" shall include all revenues, deposits (including security, utility and other deposits and Lease termination payments and tenant reimbursements), accounts, cash, issues, fees, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources (including any Service Rights granted to any Person and any warrants, stock options or other rights granted to Grantor or its Affiliates in connection with any Lease) whether or not arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income insurance, together with 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 and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including all guarantees, letters of credit (including the proceeds thereof) and any other credit support given by any guarantor in connection therewith, and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the

Bankruptcy Code 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.

(i) 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 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;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Grantor, 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 interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, development, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Grantor thereunder;

(o) 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;

(p) Accounts. All reserves, escrows, accounts receivable, accounts (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Documents), documents, instruments, chattel paper, 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, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor or any operator or manager of the Improvements or acquired from others (including, without limitation, from the rental of any space and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, service charges, vending machine sales and proceeds, if any, from business interruption or

other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with the Property returned by or reclaimed from customers wherever the Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon and deposit accounts maintained by Grantor, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Proceeds. All products and proceeds of any of the foregoing; and

(t) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Grantor expressly grants to Lender as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and subject to this Security Instrument.

**Section 1.2 Assignment of Rents.** Grantor hereby absolutely and unconditionally assigns to Lender all of Grantor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to Section 7.1(h) of this Security Instrument, Lender grants to Grantor a license revocable upon the occurrence of an Event of Default to collect, receive, use and enjoy the Rents and Grantor 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 Security Agreement.** This Security Instrument is both a real property mortgage and a “security agreement”, a “financing statement” and a “fixture filing” 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 Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment and the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition

to any other rights and remedies which it 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 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 request or demand of Lender after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Grantor shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt and Other Obligations in such priority and proportions as Lender in its discretion shall deem proper. Grantor's (debtor's) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof. Grantor irrevocably authorizes Lender at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto and continuations thereof that (i) indicate the Collateral as the collateral covered thereby, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the applicable jurisdiction, (ii) describe the Collateral in generic terms such as "all assets" or similar description, and (iii) contain any other information required by Article 9 of the applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor and, (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Grantor agrees to furnish any such information to Lender promptly upon request. Grantor also ratifies its authorization for Lender to have filed in any jurisdiction any like initial financing statements or amendments thereto if filed prior to the date of this Security Instrument.

Grantor shall promptly notify Lender of the existence of any commercial tort claim now or hereafter existing for the benefit of Grantor or the Property, and shall execute, acknowledge and deliver a security agreement or other documentation as Lender shall from time to time require to acquire and perfect a valid and binding security interest in such commercial tort claim.

**Section 1.4     Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commerical Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5     Pledges of Monies Held.** Grantor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Agreement.

**Section 1.6     Common Law Pledge/Assignment.** To the extent that the Uniform Commercial Code does not apply to any item of the Personal Property in which a security interest is granted hereby, it is the intention of the parties that this Security Instrument serve to evidence Grantor's common law

pledge and/or collateral assignment of such item of Personal Property, and Grantor hereby pledges and assigns such Personal Property to Lender.

#### **CONDITIONS TO GRANT**

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

IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Loan Agreement, the Note and in this Security Instrument.

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, the Loan Agreement 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, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Grantor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

#### **ARTICLE II - DEBT AND OBLIGATIONS SECURED**

**Section 2.1      Debt.** This Security Instrument and the grants, assignments and Transfers made in Article I are given for the purpose of securing the Debt.

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

- (a) the performance of all other obligations of Grantor contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document "(but specifically excluding the Environmental Indemnity); 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, the Loan Agreement or any other Loan Document "(but specifically excluding the Environmental Indemnity).

**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."

### ARTICLE III - GRANTOR COVENANTS

Grantor covenants and agrees that:

**Section 3.1    Payment of Debt.** Borrower shall pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 3.2    Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of 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.

**Section 3.3    Insurance.** Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Loan Agreement.

**Section 3.4    Maintenance of Property.** Grantor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of equal or better quality of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Grantor 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 Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.5    Waste.** Grantor shall not commit or suffer any waste of the Property ("waste" meaning the diminution in the Property's value resulting from Grantor's negligent or willful failure to manage, maintain, repair and otherwise operate the Property in a commercially reasonable manner) or 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 (including the risk of any discharge of any Hazardous Material), or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Grantor shall 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 3.6    Payment for Labor and Materials.** (a) Grantor shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") 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 Encumbrances.

(b) After prior written notice to Lender, Grantor, 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 Labor and Material Costs, provided that

(i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust, security instrument, deed or other agreement or instrument to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor 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) Grantor 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 Labor and Material Costs, together with all interest and penalties thereon, (vii) Grantor shall have furnished to Lender all other items reasonably requested by Lender, including title insurance coverage or bonding over such lien, and (viii) Lender shall have determined that Grantor is likely to prevail in such contest.

**Section 3.7      Performance of Other Agreements.** Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8      Change of Name, Identity or Structure.** Grantor shall not change Grantor's name, identity (including its trade name or names) or, if not an individual, Grantor's corporate, partnership, limited liability company, or other structure, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of Lender. Grantor hereby authorizes Lender to file, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

**Section 3.9      Title.** Grantor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as may be expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Grantor's ability to repay the Loan. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

**Section 3.10 Letter of Credit Rights.** If Grantor is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Grantor, Grantor shall promptly notify Lender thereof and, at the request and option of Lender, Grantor shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.

#### ARTICLE IV - OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Grantor and Lender.** The relationship between Grantor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Grantor and Lender to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lender.** The general partners, managers, members, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under any 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 Loan Agreement, the Note or the other Loan Documents, including 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 sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

**Section 4.4 Reliance.** Grantor recognizes and acknowledges that in accepting the Loan Agreement, 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 Section 4.1 of the Loan Agreement 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 the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## ARTICLE V - FURTHER ASSURANCES

**Section 5.1      Recording of Security Instrument, etc.** Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, shall cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Grantor shall pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust 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 deed of trust or mortgage supplemental hereto, any other 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 5.2      Further Acts, Etc.** Grantor shall, at the cost of Grantor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, 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, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor 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 Legal Requirements. Grantor 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 such rights and remedies available to Lender pursuant to this Section 5.2.

**Section 5.3      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 deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Grantor shall pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Grantor 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 one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Grantor shall 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 one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Grantor shall pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Severing of Security Instrument.** (a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Grantor under this Security Instrument or any of the other Loan Documents executed and delivered by, or applicable to, Grantor or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Grantor agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and this Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Grantor and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose this Security Instrument in any manner and for any amounts secured by this Security Instrument then due and payable as determined by Lender in its discretion including the following circumstances: (i) in the event Grantor defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose this Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Security Instrument to secure payment of sums secured by this Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Grantor shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Grantor hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Grantor ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any

such documents under such power until three (3) days after notice has been given to Grantor by Lender of Lender's intent to exercise its rights under such power. Grantor shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Grantor only as of the Closing Date.

**Section 5.5    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, Grantor shall 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.

#### **ARTICLE VI - DUE ON SALE/ENCUMBRANCE**

**Section 6.1    Lender Reliance.** Grantor acknowledges that Lender has examined and relied on the experience of Grantor and its general partners, members, principals and (if Grantor 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 Grantor'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. Grantor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Grantor 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 6.2    No Sale/Encumbrance.** Neither Grantor nor any Borrower Party (as defined in the Loan Agreement) shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement. If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, if required, and otherwise not in accordance with the terms and provisions of the Loan Agreement, THEN Lender, in its sole and absolute discretion, may declare all Obligations to be immediately due and payable.

#### **ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1    Remedies.** Upon the occurrence and during the continuance of any Event of Default (as defined in the Loan Agreement), Grantor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including 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 discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a)      declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for and obtain the appointment, on an *ex parte* basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor, any guarantor, indemnitor or of any Person liable for the payment of the Debt, of a receiver, trustee, liquidator or conservator of the Property to do all of the actions set forth in subparagraph (h) below and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver, trustee, liquidator or conservator is appointed;

(h) the license granted to Grantor under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its discretion after

deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including: (i) the right to take possession of the Fixtures, the Equipment, 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 Fixtures, the Equipment, the Personal Property, and (ii) request Grantor at its expense to assemble the Fixtures, the Equipment, 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 Fixtures, the Equipment, the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its 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 in the inverse order of maturity; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender shall deem proper, and in connection therewith, Grantor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums;

(l) prohibit Grantor and anyone claiming for or through Grantor from making use of or withdrawing any sums from any lockbox, escrow or similar account;

(m) pursue such other remedies as Lender may have under applicable law;

(n) apply the undisbursed balance of any other deposits or reserves of Grantor held by Lender, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

(o) give notice of default and of election to cause the Property to be sold. In connection with any sale or sales hereunder, and as a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by

public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantor or Lender may purchase at the sale; or

(p) upon sale of the Property at any judicial or non-judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (1) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (2) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (3) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios previously discussed between Grantor and Lender; and (4) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

In the event of a sale, by foreclosure, power of sale 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 unimpaired and without loss of priority.

Upon written request of the Lender and surrender of this Security Instrument and the Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the property then subject to this Security Instrument. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

**Section 7.2      Application of Proceeds.**

(a) After deducting all reasonable costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

(b) All sums received by Lender under this Section 7.2, less all reasonable costs and expenses incurred by Lender or any receiver under Section 7.1, including, without limitation, attorneys' fees, shall be applied in payment of the Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

**Section 7.3      Right to Cure Defaults; No Cure or Waiver.**

(a) Upon the occurrence and during the continuance of any Event of Default, or if Grantor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make any payment or do any act required of Grantor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(b) Neither Lender's nor Trustec's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the status of the security, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.

**Section 7.4      Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 7.5      Recovery of Sums Required To Be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

**Section 7.6      Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books,

management and other papers of Grantor which reflect upon their financial condition, at the Property or at any office regularly maintained by Grantor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7      Other Rights, etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Grantor or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8      Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9      Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Grantor in connection herewith including monetary reserves or financial equivalents.

**Section 7.10 Choice of Remedies.** Without limiting the specificity of Section 5.4, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article IX herein.

**Section 7.11 Right of Entry.** Upon reasonable notice to Grantor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 7.12 Rights Pertaining To Sales.** The following provisions shall, to the extent permitted by law, apply to any sale or sales of all or any portion of the Property under or by virtue of this Security Instrument, whether under any power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Trustee (for purposes of this Section 7.12 only, the term "Trustee" shall be interpreted to include any public officer or other person having the responsibility to conduct any sale of all or part of the Property pursuant to this Security Instrument) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more of such sales as to any part of the Property that has not been sold or by any sale that is not completed or is defective until the Debt has been paid in full.

(b) 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, and such sale may be completed at the time and place so announced without further notice.

(c) Lender is hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, Transfers and deliveries of the Property and rights so sold, and for that purpose Lender may execute all necessary instruments to accomplish the same, and may substitute one or more persons with like power, and Grantor hereby ratifies and confirms all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers, as applicable, all such instruments as may be advisable, in Lender's judgment, for the purposes designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in Section 7.12(c) given by Lender concerning nonpayment of the Debt, occurrence of any Event of Default, any declaration by Lender that all or any of the Debt is due and payable, any request to sell, any representation that notice of time, place and terms of sale and property or rights to be sold was duly given, or that any other act or thing was duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(e) The receipt by Trustee of the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the

application of such purchase price or any part thereof upon or for any trust or purpose of this Security Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part therof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) 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 Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) 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 that Lender is authorized to charge to Borrower under the terms of the Note, this Security Instrument, or any other Loan Document to the extent necessary to satisfy such bid.

(h) If Grantor, or any person claiming by, through or under Grantor, shall Transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Grantor or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of unlawful detainer proceedings or other appropriate proceedings, and to any other right or remedy available hereunder or under applicable law.

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

(j) In the event of any sale referred to in this Section 7.12, the entire Debt, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary in the Note, this Security Instrument or any other Loan Document, become due and payable.

(k) This instrument shall be effective as a mortgage. If a sale hereunder shall be commenced by Trustee, Lender may, at any time before the sale of the Property, direct the Trustee to abandon the sale, and may institute suit for the collection of the Debt or part thereof and for the foreclosure of this Security Instrument. If Lender shall institute suit for the collection of the Debt or part thereof, and for the foreclosure of this Security Instrument, Lender may at any time before the entry of final judgment in said suit dismiss the same (or part thereof) and direct the Trustee to sell the Property in accordance with the provisions of this Security Instrument. Lender may pursue its rights and remedies against any guarantor or other party liable for any of the obligations in such a suit for foreclosure or by separate suit, whether or not the Trustee is also pursuing a sale under the terms hereof.

## ARTICLE VIII - PREPAYMENT

**Section 8.1 Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Note.

## ARTICLE IX - INDEMNIFICATION

**Section 9.1      General Indemnification.** Grantor shall, at its sole cost and expense, protect (with legal counsel reasonably acceptable to Lender), defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or any indemnitor Person and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article IX; (k) 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 Lease; (l) any and all claims (including lender liability claims) or demands by Borrower or any third parties, including any guarantor or indemnitor; (m) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (n) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

**Section 9.2      Mortgage and/or Intangible Tax.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Grantor hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including the Note), Grantor shall indemnify and hold harmless the

Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

**Section 9.3 ERISA Indemnification.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1(k) of the Loan Agreement or a breach of any negative covenants contained in Section 5.1.9 of the Loan Agreement.

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Grantor 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. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Grantor and any Indemnified Party and Grantor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Grantor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Grantor's consent, which consent shall not be unreasonably withheld. Upon demand, Grantor 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 9.5 Environmental Indemnity.** Simultaneously with this Security Instrument, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Security Instrument.

## ARTICLE X - WAIVERS

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Grantor hereby waives the benefit of all homestead, appraisalment, 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, Grantor 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 Grantor, 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, and hereby waives any defense Grantor might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable law, Grantor 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 Grantor and except with respect to matters for which Lender is required by applicable law to give notice, and Grantor 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 Grantor.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Survival.** The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other Transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any Transfer of all or any portion of the Property (whether by Grantor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Grantor from the obligations pursuant hereto.

**Section 10.6 Trial by Jury.** GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GRANTOR HEREBY AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF GRANTOR TO THE WAIVER OF ANY RIGHT GRANTOR MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

#### ARTICLE XI - EXCULPATION

The Debt shall be fully recourse to Grantor and Grantor shall be personally liable for all of the Debt.

## ARTICLE XII - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 12.5 of the Loan Agreement.

## ARTICLE XIII - APPLICABLE LAW

**Section 13.1 Governing Law.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THIS SECURITY INSTRUMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LAND IS LOCATED WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF ("GOVERNING STATE"). GRANTOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Security Instrument may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Grantor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Grantor to Lender, or if there is no such indebtedness, shall immediately be returned to Grantor.

**Section 13.3 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 XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. 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 "**Grantor**" shall mean "each Grantor 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 "**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 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 XV - MISCELLANEOUS PROVISIONS

**Section 15.1    No Oral Change.** This Security Instrument, and any provisions hereof, including the provisions of this Section, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor 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, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Security Instrument; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Security Instrument; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Security Instrument.

**Section 15.2    Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns forever.

**Section 15.3    Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 15.4    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 15.5    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 15.6    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 Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, 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. Grantor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, 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, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 15.8 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 15.9 Rules of Construction.** The following rules of construction shall be applicable for all purposes of this Security Instrument and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";
- (b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument;
- (d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";
- (e) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Security Instrument refer to this Security Instrument as a whole and not to any particular provision or section of this Security Instrument;
- (f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;
- (g) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;

(h) The cover page (if any) of, all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated herein; and

(i) Wherever Lender's judgment, consent, approval or discretion is required under this Security Instrument or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Security Instrument, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Security Instrument or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Grantor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. Without limiting the generality of the foregoing, any authorized agent of Lender (including any servicer and/or attorney-in-fact) is hereby specifically authorized to remove a trustee and select and appoint a successor trustee.

**Section 15.10 Duplicate Originals; Counterparts.** For the purpose of facilitating the execution of this Security Instrument and for other purposes, this Security Instrument may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. 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 15.11 Lender's Right to Subordinate.** Lender may, at its election, subordinate the lien of this Security Instrument and any or all of Lender's rights, titles or interests hereunder to any lien, leasehold interest, easement, plat, covenant, restriction, dedication, encumbrance or other matter affecting the Property or any part thereof by recording a written declaration of such subordination in the office of the register or recorder of deeds or similar filing officer for the county in which the Land is located. If foreclosure sale occurs hereunder after the recording of any such declaration, the title received by the purchaser at such sale shall be subject to the matters specified in such declaration, but such declaration shall not otherwise affect the validity or terms of this Security Instrument or any other Loan Document or the priority of any lien or security interest created hereunder or under any other Loan Document. Without limitation of the foregoing, Lender shall have the right to unilaterally modify any Loan Document to release any lien on any portion of the Property.

## ARTICLE XVI – DEED OF TRUST PROVISIONS

**Section 16.1 Concerning the Trustee.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal,

resignation, refusal to act, or inability to act of Trustee, or in its discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

**Section 16.2 Trustee's Fees.** Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

**Section 16.3 Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (c) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith and (d) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

**Section 16.4 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 16.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 16.6 Succession Instruments.** Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates,

properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

#### **ARTICLE XVII - STATE-SPECIFIC PROVISIONS**

**Section 17.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article XVII and the terms and conditions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

**Section 17.2 Appointment of Receiver for Breach of Environmental Covenants.**

(a) Upon the occurrence of an Event of Default, or when permitted under Section 564 of the California Code of Civil Procedure (including without limitation in order to enforce Lender's rights under Section 2929.5 of the California Civil Code), Lender, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in this Security Instrument and shall continue as such and exercise all such powers until the later of: (a) the date of confirmation of sale of the Property; (b) the disbursement of all proceeds of the Property collected by such receiver and the payment of all expenses incurred in connection therewith, including without limitation expenses incurred in connection with the cleanup, remediation or other response action concerning the release or threatened release of Hazardous Materials (as defined in the Environmental Indemnity) from or at the Property and/or the Improvements, whether or not such actions are pursuant to an order of any federal, state or local governmental agency; or (c) the termination of such receivership with the consent of Lender or pursuant to an order by a court of competent jurisdiction.

(b) Grantor on its own behalf and on behalf of its successors and assigns of any portion of the Property, and of future lienholders on any estate or interest of Grantor hereunder, hereby expressly waives all rights legal or equitable, to require a marshaling of assets by Trustee or Lender or to require Trustee or Lender, upon a foreclosure, to first resort to the sale of any portion of the Property which might have been retained by Grantor, or any further lienholder who might succeed to the title of Grantor, or could possibly be retained by any future lienholder who might succeed to the title of Grantor, before foreclosing upon and selling any other portions as may be conveyed by Grantor subject to this Security Instrument, including any rights under California Civil Code Sections 2899 and 3433, and all rights of Grantor under California Civil Code Section 2822.

(c) Grantor shall and does hereby agree that, if all or a portion of the principal sum of the Note has prior to the Stated Maturity Date fixed in the obligation, become due or been declared due by reason of an Event of Default the entire amount then due under the terms of this Security Instrument and the Note shall include all attorneys' fees and costs and expenses which are actually incurred as stated above, notwithstanding the provisions of Section 2924c(d) and Section 2924d of the California Civil Code.

(d) The foregoing provisions of this Section 16.2 are in addition to and not in limitation of the other provisions of the Loan Documents and Lender's rights and remedies thereunder and under applicable law and equity.

(e) At Lender's option, Lender shall be entitled to waive its lien against the Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired in accordance with California Code of Civil Procedure Section 726.5 and to exercise any and all rights and remedies of an unsecured creditor against Grantor and all of Grantor's assets and property for the recovery of any deficiency and Environmental Costs (as defined below). For purposes of California Code of Civil Procedure Section 726.5, as between Grantor and Lender, Grantor acknowledges and agrees that it shall have the burden of proving that Grantor or any of its contractors, employees, agents, invitees, affiliates, related parties or customers was not in any way negligent in permitting the release or threatened release of any hazardous substances causing environmental impairment of the Property. Lender reserves its other rights under California Code of Civil Procedure Sections 726.5.

(f) At Lender's option, Lender shall be entitled to seek a judgment that Grantor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth in the Environmental Indemnity, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or otherwise, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred or advanced by Lender relating to the cleanup, remediation or other response action, required by applicable law or to which Lender believes necessary to protect the Property (collectively, the "**Environmental Costs**") (excluding, however, any Environmental Costs not permitted to be recovered pursuant to Section 736 of the California Code of Civil Procedure), it being conclusively presumed between Lender and Grantor that all such Environmental Costs incurred or advanced by Lender relating to the cleanup, remediation, or other response action of or to the Property were made by Lender in good faith. Environmental Costs that are not permitted to be recovered pursuant to Section 736 may be referred to hereinafter as the "**Unsecured Environmental Costs**," and Environmental Costs other than the Unsecured Environmental Costs may be referred to hereinafter as the "**Secured Environmental Costs**." Any Unsecured Environmental Costs shall not be secured by this Security Instrument; provided, however, nothing herein shall prevent Lender from recovering any Unsecured Environmental Costs pursuant to the unsecured Environmental Indemnity, to the extent they are recoverable in accordance with said Environmental Indemnity. All Environmental Costs under this subparagraph (including, without limitation, court costs, consultant fees and attorneys' fees, whether incurred in litigation or otherwise and whether before or after judgment) shall bear interest at the Default Rate from the date of such costs and expenses have been incurred until said sums have been fully paid. Lender shall be entitled to bid, at a sale of the Property held as provided herein, the amount of such Secured Environmental Costs (including interest thereon) in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.3 Additional Rights and Remedies.**

(a) In addition to the rights of Lender specifically granted by Grantor under this Security Instrument, upon the occurrence of an Event of Default under any Loan Document, Lender shall be entitled to enforce this Security Instrument as provided under California Civil Code Section 2938.

(b) Lender shall have the right to enforce this Security Instrument by (1) the appointment of a receiver; (2) obtaining possession of the rents, issues, or profits; (3) delivery to any one or more of the tenants of the Property of a written demand for turnover of rents, issues, and profits in the form specified in California Civil Code Section 2938, a copy of which demand shall also be delivered to Grantor, and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the Property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording; and (4) delivery to Grantor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues and profits of the Property at the address for notices provided in the assignment, or, if none, to the address to which the recorded assignment was to be mailed after recording.

(c) Monies received by the Lender pursuant to this Section 17.3, net of amounts paid to preserve and protect the Property, shall be applied in accordance with this Security Instrument and the other Loan Documents.

(d) Notwithstanding the foregoing, neither the application nor the failure to apply the rents, issues, or profits of the Property shall result in a loss of any lien or security interest which Lender holds in the Property or any other collateral pursuant to this Security Instrument and the other Loan Documents, render the obligation evidenced by the Note unenforceable, constitute a violation of Section 726 of the California Code of Civil Procedure, or otherwise limit any right available to Lender with respect to its security.

  
Grantor's Initials

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.4 Notice of Default.** Grantor hereby requests that any notice of default and any notice of sale hereunder be mailed to it at its address set forth in the introductory paragraph of this Security Instrument.

**Section 17.5 Hazard Insurance Disclosure.** This Section is being furnished by Lender in compliance with Section 2955.5(b) of the California Civil Code. California Civil Code Section 2955.5(a) reads as follows: "No lender shall require a Grantor, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property." Grantor acknowledges and agrees that the above disclosure was made by Lender to Grantor prior to execution of this Security Instrument, the Note or the other Loan Documents.

**Section 17.6 Commercial Loan.** Grantor represents and warrants that the Loan is for commercial purposes, and not for personal, household or consumer purposes. For the avoidance of any doubt, no portion of the proceeds of the Loan shall be used by Borrower to finance the purchase or construction of real property containing four (4) or fewer residential units or on which four (4) or fewer residential units are to be constructed.

**Section 17.7 Future Advances.** This Security Instrument is given to secure the obligations of Borrower under the Loan Documents and shall secure not only obligations with respect to presently existing indebtedness but also any and all other obligations that may hereafter be owing to Lender under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances, re-advances, and protective advances (collectively, "Future Advances"), in each case pursuant to the Loan Agreement and the other Loan Documents, whether such Future Advances are obligatory or to be made at the option of Lender, to the same extent as if such Future Advances were made on the date of the execution of this Security Instrument. The Lien of this Security Instrument shall be valid as to all obligations secured hereby, including Future Advances, from the time of delivery hereof by Grantor to Lender. This Security Instrument is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Land and the Improvements.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Grantor as of the day and year first above written.

**GRANTOR:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the office)

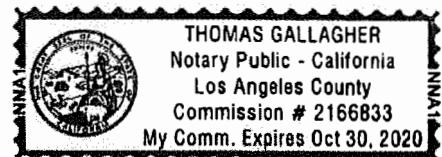
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL 1:**

THAT PORTION OF LOT 1 OF COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT 7 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS; IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT ALONG SAID PROLONGATION AND NORTHERLY LINE NORTH 78° 17' 00" WEST 311.77 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 7; THENCE ALONG SAID PROLONGATION SOUTH 78° 17' 00" EAST 31.03 FEET TO A POINT DISTANT NORTH 78° 17' 00" WEST 150.74 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE SOUTH 51° 53' 58" WEST TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT 1 NORTH 85° 57' 00" WEST TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1 NORTH 00° 34' 40" EAST 213.54 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1 SOUTH 88° 22' 30" EAST 1277.69 FEET TO THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CHARLES B. DIAMOND, RECORDED ON JULY 24, 1961 AS INSTRUMENT NO. 1259, IN BOOK D-1296 PAGES 51 AND 52, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LAND TO DIAMOND, SOUTH 05° 06' 00" WEST 224.43 FEET TO THE TRUE POINT OF BEGINNING, PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-022 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556400, OF OFFICIAL RECORDS.

**PARCEL 2:**

THAT PORTION OF LOT 2 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 85° 57' 00" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2 TO A POINT IN THAT CERTAIN COURSE RECITED AS SOUTH 51° 53' 58" WEST 96.80 FEET" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CERTAIN COURSE SOUTH 51° 53' 58" WEST TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST RECORDED ON FEBRUARY 6, 1962 AS INSTRUMENT NO. 186, IN BOOK T-2216 PAGE 834, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 57° 54' 35" WEST 143.29 FEET TO A POINT IN THAT CERTAIN COURSE RECITED AS

EXHIBIT A TO DEED OF TRUST

57513330

"NORTH 55° 00' 00" WEST 100.00 FEET" IN THE DEED OF TRUST RECORDED ON APRIL 4, 1963 AS INSTRUMENT NO. 2537, IN BOOK T-2938 PAGE 145 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH 55° 00' 00" EAST 12.00 FEET FROM THE WESTERLY TERMINUS OF SAID LAST MENTIONED CERTAIN COURSE; THENCE NORTH 55° 00' 00" EAST 42.00 FEET; THENCE SOUTH 35° 00' 00" WEST 23.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET SAID CURVE BEING TANGENT AT ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES, FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTHERLY ALONG SAID CURVE TO A POINT ON THE SOUTHERLY LINE OF LOT 2 OF SAID COLDWATER CANYON TRACT; THENCE NORTH 76° 50' 30" WEST ALONG SAID SOUTHERLY LINE TO AN ANGLE POINT IN SAID SOUTHERLY LINE DISTANT SOUTH 89° 08' 15" EAST 672.10 FEET FROM THE SOUTHWEST CORNER OF SAID LAST MENTIONED LOT 2 OF THE COLDWATER CANYON TRACT; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89° 08' 15" WEST 672.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 NORTH 00° 34' 40" EAST 222.09 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-021 RECORDED NOVEMBER 3, 1988 AS INSTRUMENT NO. 88-1776821, OF OFFICIAL RECORDS.

PARCEL 3:

THAT PORTION OF LOT 3 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 3 SOUTH 89° 08' 15" EAST 672.10 FEET TO AN ANGLE IN SAID NORTHERLY LINE; THENCE SOUTH 76° 50' 30" EAST TO A POINT IN THAT CERTAIN CURVE RECITED AS A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET, SAID CURVE BEING TANGENT AS ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF SAID TRACT NO. 11859" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY SOUTHEASTERLY ALONG SAID CURVE TO THAT CERTAIN POINT DESCRIBED IN SAID CORPORATION GRANT DEED AS BEING AN ARC DISTANCE OF 221.11 FEET" (FROM THE BEGINNING OF SAID CURVE IN SAID DEED); THENCE SOUTH 41° 00' 00" WEST 111.09 FEET; THENCE SOUTH 66° 48' 37" 12.00 FEET; THENCE SOUTH 23° 11' 23" WEST 103.00 FEET; THENCE SOUTH 71° 15' 00" EAST 31.00 FEET; THENCE SOUTH 15° 45' 00" WEST 36.00 FEET; THENCE SOUTH 71° 15' 00" EAST 23.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 47.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02° 02' 22", AN

ARC DISTANCE OF 17.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 103.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $37^{\circ} 15' 57''$ ; AN ARC DISTANT OF 66.99 FEET; ALONG THE PROLONGATION OF A RADIAL LINE OF SAID LAST MENTIONED CURVE SOUTH  $02^{\circ} 31' 25''$  WEST 39.36 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID SOUTHERLY LINE NORTH  $77^{\circ} 35' 30''$  WEST 384.04 FEET, MORE OR LESS TO AN ANGLE POINT IN SAID SOUTHERLY LINE; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH  $88^{\circ} 30' 30''$  WEST 716.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE WESTERLY LINE OF SAID LOT 3 NORTH  $00^{\circ} 34' 40''$  EAST 402.58 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-019 RECORDED MAY 15, 1992 AS INSTRUMENT NO. 92-885381 OF OFFICIAL RECORDS.

PARCEL 4:

THAT PORTION OF LOT 4 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH  $79^{\circ} 33' 10''$  WEST 235.00 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN BOUNDARY LINE OF SAID LOT 4 SHOWN AS HAVING A BEARING AND DISTANCE OF SOUTH  $79^{\circ} 33' 10''$  EAST 1057.13 FEET; THENCE NORTHWESTERLY ON A DIRECT LINE TO A POINT ON THE NORtherly LINE OF SAID LOT 4, DISTANT THEREON SOUTH  $88^{\circ} 30' 30''$  WEST 40.00 FEET FROM THE NORTHEASTERLY TERMINUS OF THAT CERTAIN NORtherly LINE SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH  $88^{\circ} 30' 30''$  WEST 716.84 FEET. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-020 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556401 OF OFFICIAL RECORDS.

# EXHIBIT 4

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310860**



Pages:  
0037

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

03/20/17 AT 08:00AM

FEES:	184.00
TAXES:	0.00
OTHER:	0.00
<b>PAID:</b>	<b>184.00</b>



LEADSHEET



201703200200001

00013489025



008212116

SEQ:  
08

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

E464776

E08\_170320\_5651694

This document was prepared  
by and after recording should  
be returned to:

Polsinelli PC  
2950 N Harwood, Suite 2100  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(space above reserved for recorder's use)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**LYDDA LUD, LLC,**  
a California limited liability company  
(Grantor)

to

**EQUITY TITLE COMPANY,**  
a California corporation  
(Trustee)

in favor of

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
an Ontario limited partnership  
(Lender)

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTIONS 9-334, 9-501(a)(1) AND 9-502 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR SHALL BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT A ATTACHED HERETO. THE NAME OF THE RECORD OWNER OF THE REAL PROPERTY IS LYDDA LUD, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY. THE ORGANIZATION IDENTIFICATION NUMBER OF GRANTOR IS 200916810138.

Dated: March 16, 2017

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND  
Fixture Filing**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 16th day of March, 2017, by **LYDDA LUD, LLC**, a California limited liability company, having its principal place of business at 630 Nimes Road, Bel Air, California 90077 (together with its successors and assigns, "Grantor"), to **EQUITY TITLE COMPANY**, a California corporation, having an address at 801 North Brand Boulevard, Suite 400, Glendale, California 91203, as Trustee ("Trustee") for the benefit of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5, as beneficiary (together with its successors and assigns, "Lender").

**WITNESSETH:**

WHEREAS, this Security Instrument is given to secure a loan (the "Loan") in the principal sum of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Grantor, **COLDWATER DEVELOPMENT LLC**, a California limited liability company (together with Grantor, individually and collectively, jointly and severally, "Borrower"), and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender in the principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note"). All capitalized terms contained herein and not otherwise defined shall be as defined in the Loan Agreement;

WHEREAS, Grantor desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined) (including, without limitation, any prepayment fees and the Environmental Costs (as defined in the Environmental Indemnity), excluding, however, any such Environmental Costs not permitted to be recovered pursuant to Section 736 of the California Code of Civil Procedure) (the term "Loan Documents", for the purposes of this Security Instrument, shall not include the Environmental Indemnity); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

DEED OF TRUST

57613326

## ARTICLE I - GRANTS OF SECURITY

**Section 1.1    Property Mortgaged.** Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee for the benefit of Lender and its successors and assigns, WITH POWER OF SALE, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the "Property"):

(a)    Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b)    Additional Land. All additional lands, estates and development rights hereafter acquired by Grantor 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;

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

(d)    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 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e)    Equipment. All "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Grantor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");

(f)    Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and

ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Grantor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**");

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, entitlements, approvals, authorizations, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Grantor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Grantor in and to any of the Personal Property 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;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, 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 Grantor 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. "Rents" shall include all revenues, deposits (including security, utility and other deposits and Lease termination payments and tenant reimbursements), accounts, cash, issues, fees, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources (including any Service Rights granted to any Person and any warrants, stock options or other rights granted to Grantor or its Affiliates in connection with any Lease) whether or not arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income insurance, together with 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 and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including all guarantees, letters of credit (including the proceeds thereof) and any other credit support given by any guarantor in connection therewith, and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the

Bankruptcy Code 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.

(i) 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 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;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Grantor, 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 interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, development, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Grantor thereunder;

(o) 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;

(p) Accounts. All reserves, escrows, accounts receivable, accounts (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Documents), documents, instruments, chattel paper, 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, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor or any operator or manager of the Improvements or acquired from others (including, without limitation, from the rental of any space and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, service charges, vending machine sales and proceeds, if any, from business interruption or

other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with the Property returned by or reclaimed from customers wherever the Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon and deposit accounts maintained by Grantor, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Proceeds. All products and proceeds of any of the foregoing; and

(t) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Grantor expressly grants to Lender as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and subject to this Security Instrument.

**Section 1.2 Assignment of Rents.** Grantor hereby absolutely and unconditionally assigns to Lender all of Grantor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to Section 7.1(h) of this Security Instrument, Lender grants to Grantor a license revocable upon the occurrence of an Event of Default to collect, receive, use and enjoy the Rents and Grantor 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 Security Agreement.** This Security Instrument is both a real property mortgage and a “security agreement”, a “financing statement” and a “fixture filing” 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 Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment and the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition

to any other rights and remedies which it 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 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 request or demand of Lender after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Grantor shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt and Other Obligations in such priority and proportions as Lender in its discretion shall deem proper. Grantor's (debtor's) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof. Grantor irrevocably authorizes Lender at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto and continuations thereof that (i) indicate the Collateral as the collateral covered thereby, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the applicable jurisdiction, (ii) describe the Collateral in generic terms such as "all assets" or similar description, and (iii) contain any other information required by Article 9 of the applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor and, (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Grantor agrees to furnish any such information to Lender promptly upon request. Grantor also ratifies its authorization for Lender to have filed in any jurisdiction any like initial financing statements or amendments thereto if filed prior to the date of this Security Instrument.

Grantor shall promptly notify Lender of the existence of any commercial tort claim now or hereafter existing for the benefit of Grantor or the Property, and shall execute, acknowledge and deliver a security agreement or other documentation as Lender shall from time to time require to acquire and perfect a valid and binding security interest in such commercial tort claim.

**Section 1.4     Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5     Pledges of Monies Held.** Grantor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Agreement.

**Section 1.6     Common Law Pledge/Assignment.** To the extent that the Uniform Commercial Code does not apply to any item of the Personal Property in which a security interest is granted hereby, it is the intention of the parties that this Security Instrument serve to evidence Grantor's common law

pledge and/or collateral assignment of such item of Personal Property, and Grantor hereby pledges and assigns such Personal Property to Lender.

#### **CONDITIONS TO GRANT**

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

IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Loan Agreement, the Note and in this Security Instrument.

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, the Loan Agreement 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, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Grantor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

#### **ARTICLE II - DEBT AND OBLIGATIONS SECURED**

**Section 2.1      Debt.** This Security Instrument and the grants, assignments and Transfers made in Article I are given for the purpose of securing the Debt.

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

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

(b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document "(but specifically excluding the Environmental Indemnity); 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, the Loan Agreement or any other Loan Document "(but specifically excluding the Environmental Indemnity).

**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."

#### **ARTICLE III - GRANTOR COVENANTS**

Grantor covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower shall pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of 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.

**Section 3.3 Insurance.** Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Grantor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of equal or better quality of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Grantor 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 Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.5 Waste.** Grantor shall not commit or suffer any waste of the Property ("waste" meaning the diminution in the Property's value resulting from Grantor's negligent or willful failure to manage, maintain, repair and otherwise operate the Property in a commercially reasonable manner) or 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 (including the risk of any discharge of any Hazardous Material), or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Grantor shall 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 3.6 Payment for Labor and Materials.** (a) Grantor shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") 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 Encumbrances.

(b) After prior written notice to Lender, Grantor, 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 Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust, security instrument, deed or other agreement or instrument to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material

Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor 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) Grantor 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 Labor and Material Costs, together with all interest and penalties thereon, (vii) Grantor shall have furnished to Lender all other items reasonably requested by Lender, including title insurance coverage or bonding over such lien, and (viii) Lender shall have determined that Grantor is likely to prevail in such contest.

**Section 3.7    Performance of Other Agreements.** Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8    Change of Name, Identity or Structure.** Grantor shall not change Grantor's name, identity (including its trade name or names) or, if not an individual, Grantor's corporate, partnership, limited liability company, or other structure, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of Lender. Grantor hereby authorizes Lender to file, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

**Section 3.9    Title.** Grantor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as may be expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Grantor's ability to repay the Loan. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

**Section 3.10    Letter of Credit Rights.** If Grantor is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Grantor, Grantor shall promptly notify Lender thereof and, at the request and option of Lender, Grantor shall, pursuant to an agreement in form and substance

satisfactory to Lender, either (i) arrange for the issuer and any confirmor of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.

#### ARTICLE IV - OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Grantor and Lender.** The relationship between Grantor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Grantor and Lender to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lender.** The general partners, managers, members, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under any 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 Loan Agreement, the Note or the other Loan Documents, including 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 sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

**Section 4.4 Reliance.** Grantor recognizes and acknowledges that in accepting the Loan Agreement, 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 Section 4.1 of the Loan Agreement 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 the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

#### ARTICLE V - FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, etc.** Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, shall cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in

such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Grantor shall pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust 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 deed of trust or mortgage supplemental hereto, any other 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 5.2     Further Acts, Etc.** Grantor shall, at the cost of Grantor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, 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, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor 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 Legal Requirements. Grantor 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 such rights and remedies available to Lender pursuant to this Section 5.2.

**Section 5.3     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 deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Grantor shall pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Grantor 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 one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Grantor shall 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 one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Grantor shall pay for the same, with interest and penalties thereon, if any.

**Section 5.4     Severing of Security Instrument.** (a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender

against Grantor under this Security Instrument or any of the other Loan Documents executed and delivered by, or applicable to, Grantor or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Grantor agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and this Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Grantor and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose this Security Instrument in any manner and for any amounts secured by this Security Instrument then due and payable as determined by Lender in its discretion including the following circumstances: (i) in the event Grantor defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose this Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Security Instrument to secure payment of sums secured by this Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Grantor shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Grantor hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Grantor ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Grantor by Lender of Lender's intent to exercise its rights under such power. Grantor shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Grantor only as of the Closing Date.

**Section 5.5    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, Grantor shall 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.

#### **ARTICLE VI - DUE ON SALE/ENCUMBRANCE**

**Section 6.1    Lender Reliance.** Grantor acknowledges that Lender has examined and relied on the experience of Grantor and its general partners, members, principals and (if Grantor 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 Grantor'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. Grantor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Grantor 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 6.2    No Sale/Encumbrance.** Neither Grantor nor any Borrower Party (as defined in the Loan Agreement) shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement. If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, if required, and otherwise not in accordance with the terms and provisions of the Loan Agreement, THEN Lender, in its sole and absolute discretion, may declare all Obligations to be immediately due and payable.

#### **ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1    Remedies.** Upon the occurrence and during the continuance of any Event of Default (as defined in the Loan Agreement), Grantor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including 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 discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for

the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for and obtain the appointment, on an *ex parte* basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor, any guarantor, indemnitor or of any Person liable for the payment of the Debt, of a receiver, trustee, liquidator or conservator of the Property to do all of the actions set forth in subparagraph (h) below and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver, trustee, liquidator or conservator is appointed;

(h) the license granted to Grantor under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including: (i) the right to take possession of the Fixtures, the

Equipment, 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 Fixtures, the Equipment, the Personal Property, and (ii) request Grantor at its expense to assemble the Fixtures, the Equipment, 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 Fixtures, the Equipment, the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its 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 in the inverse order of maturity; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender shall deem proper, and in connection therewith, Grantor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums;

(l) prohibit Grantor and anyone claiming for or through Grantor from making use of or withdrawing any sums from any lockbox, escrow or similar account;

(m) pursue such other remedies as Lender may have under applicable law;

(n) apply the undisbursed balance of any other deposits or reserves of Grantor held by Lender, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

(o) give notice of default and of election to cause the Property to be sold. In connection with any sale or sales hereunder, and as a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantor or Lender may purchase at the sale; or

(p) upon sale of the Property at any judicial or non-judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the

Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (1) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (2) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (3) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios previously discussed between Grantor and Lender; and (4) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

In the event of a sale, by foreclosure, power of sale 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 unimpaired and without loss of priority.

Upon written request of the Lender and surrender of this Security Instrument and the Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the property then subject to this Security Instrument. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

**Section 7.2      Application of Proceeds.**

(a) After deducting all reasonable costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

(b) All sums received by Lender under this Section 7.2, less all reasonable costs and expenses incurred by Lender or any receiver under Section 7.1, including, without limitation, attorneys' fees, shall be applied in payment of the Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

**Section 7.3      Right to Cure Defaults; No Cure or Waiver.**

(a) Upon the occurrence and during the continuance of any Event of Default, or if Grantor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make any payment or do any act required of Grantor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(b) Neither Lender's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the status of the security, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.

**Section 7.4      Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 7.5      Recovery of Sums Required To Be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

**Section 7.6      Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Grantor which reflect upon their financial condition, at the Property or at any office regularly maintained by Grantor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income,

expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7    Other Rights, etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Grantor or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8    Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9    Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Grantor in connection herewith including monetary reserves or financial equivalents.

**Section 7.10    Choice of Remedies.** Without limiting the specificity of Section 5.4, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article IX herein.

**Section 7.11 Right of Entry.** Upon reasonable notice to Grantor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 7.12 Rights Pertaining To Sales.** The following provisions shall, to the extent permitted by law, apply to any sale or sales of all or any portion of the Property under or by virtue of this Security Instrument, whether under any power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

- (a) Trustee (for purposes of this Section 7.12 only, the term "Trustee" shall be interpreted to include any public officer or other person having the responsibility to conduct any sale of all or part of the Property pursuant to this Security Instrument) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more of such sales as to any part of the Property that has not been sold or by any sale that is not completed or is defective until the Debt has been paid in full.
- (b) 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, and such sale may be completed at the time and place so announced without further notice.
- (c) Lender is hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, Transfers and deliveries of the Property and rights so sold, and for that purpose Lender may execute all necessary instruments to accomplish the same, and may substitute one or more persons with like power, and Grantor hereby ratifies and confirms all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers, as applicable, all such instruments as may be advisable, in Lender's judgment, for the purposes designated in such request.
- (d) Any and all statements of fact or other recitals made in any of the instruments referred to in Section 7.12(c) given by Lender concerning nonpayment of the Debt, occurrence of any Event of Default, any declaration by Lender that all or any of the Debt is due and payable, any request to sell, any representation that notice of time, place and terms of sale and property or rights to be sold was duly given, or that any other act or thing was duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited.
- (e) The receipt by Trustee of the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Security Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.
- (f) 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 Grantor in and to the properties and

rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) 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 that Lender is authorized to charge to Borrower under the terms of the Note, this Security Instrument, or any other Loan Document to the extent necessary to satisfy such bid.

(h) If Grantor, or any person claiming by, through or under Grantor, shall Transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Grantor or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of unlawful detainer proceedings or other appropriate proceedings, and to any other right or remedy available hereunder or under applicable law.

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

(j) In the event of any sale referred to in this Section 7.12, the entire Debt, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary in the Note, this Security Instrument or any other Loan Document, become due and payable.

(k) This instrument shall be effective as a mortgage. If a sale hereunder shall be commenced by Trustee, Lender may, at any time before the sale of the Property, direct the Trustee to abandon the sale, and may institute suit for the collection of the Debt or part thereof and for the foreclosure of this Security Instrument. If Lender shall institute suit for the collection of the Debt or part thereof, and for the foreclosure of this Security Instrument, Lender may at any time before the entry of final judgment in said suit dismiss the same (or part thereof) and direct the Trustee to sell the Property in accordance with the provisions of this Security Instrument. Lender may pursue its rights and remedies against any guarantor or other party liable for any of the obligations in such a suit for foreclosure or by separate suit, whether or not the Trustee is also pursuing a sale under the terms hereof.

## ARTICLE VIII - PREPAYMENT

**Section 8.1 Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Note.

## ARTICLE IX - INDEMNIFICATION

**Section 9.1 General Indemnification.** Grantor shall, at its sole cost and expense, protect (with legal counsel reasonably acceptable to Lender), defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages,

foreseeable and unforeseeable consequential damages, of whatever kind or nature (including reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or any indemnitor Person and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article IX; (k) 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 Lease; (l) any and all claims (including lender liability claims) or demands by Borrower or any third parties, including any guarantor or indemnitor; (m) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (n) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

**Section 9.2     Mortgage and/or Intangible Tax.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Grantor hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including the Note), Grantor shall indemnify and hold harmless the Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

**Section 9.3     ERISA Indemnification.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in

obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1(k) of the Loan Agreement or a breach of any negative covenants contained in Section 5.1.9 of the Loan Agreement.

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Grantor 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. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Grantor and any Indemnified Party and Grantor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Grantor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Grantor's consent, which consent shall not be unreasonably withheld. Upon demand, Grantor 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 9.5 Environmental Indemnity.** Simultaneously with this Security Instrument, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Security Instrument.

#### ARTICLE X - WAIVERS

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Grantor hereby waives the benefit of all homestead, appraisalment, 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, Grantor 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 Grantor, 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, and hereby waives any defense Grantor might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable law, Grantor 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 Grantor and except with respect to matters for which Lender is required by applicable law to give notice, and Grantor 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 Grantor.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Survival.** The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other Transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any Transfer of all or any portion of the Property (whether by Grantor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Grantor from the obligations pursuant hereto.

**Section 10.6 Trial by Jury.** GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GRANTOR HEREBY AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF GRANTOR TO THE WAIVER OF ANY RIGHT GRANTOR MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

#### ARTICLE XI - EXCULPATION

The Debt shall be fully recourse to Grantor and Grantor shall be personally liable for all of the Debt.

#### ARTICLE XII - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 12.5 of the Loan Agreement.

### ARTICLE XIII - APPLICABLE LAW

**Section 13.1 Governing Law.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THIS SECURITY INSTRUMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LAND IS LOCATED WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF ("GOVERNING STATE"). GRANTOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Security Instrument may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Grantor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Grantor to Lender, or if there is no such indebtedness, shall immediately be returned to Grantor.

**Section 13.3 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 XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. 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 "Grantor" shall mean "each Grantor 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 "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 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 XV - MISCELLANEOUS PROVISIONS

**Section 15.1 No Oral Change.** This Security Instrument, and any provisions hereof, including the provisions of this Section, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor 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, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Security Instrument; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Security Instrument; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Security Instrument.

**Section 15.2 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns forever.

**Section 15.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 15.4 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 15.5 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 15.6 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 Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, 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. Grantor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, 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, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 15.8 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 15.9 Rules of Construction.** The following rules of construction shall be applicable for all purposes of this Security Instrument and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";
- (b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument;
- (d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";
- (e) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Security Instrument refer to this Security Instrument as a whole and not to any particular provision or section of this Security Instrument;
- (f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;
- (g) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;
- (h) The cover page (if any) of, all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated herein; and

(i) Wherever Lender's judgment, consent, approval or discretion is required under this Security Instrument or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Security Instrument, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Security Instrument or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Grantor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. Without limiting the generality of the foregoing, any authorized agent of Lender (including any servicer and/or attorney-in-fact) is hereby specifically authorized to remove a trustee and select and appoint a successor trustee.

**Section 15.10 Duplicate Originals; Counterparts.** For the purpose of facilitating the execution of this Security Instrument and for other purposes, this Security Instrument may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. 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 15.11 Lender's Right to Subordinate.** Lender may, at its election, subordinate the lien of this Security Instrument and any or all of Lender's rights, titles or interests hereunder to any lien, leasehold interest, easement, plat, covenant, restriction, dedication, encumbrance or other matter affecting the Property or any part thereof by recording a written declaration of such subordination in the office of the register or recorder of deeds or similar filing officer for the county in which the Land is located. If foreclosure sale occurs hereunder after the recording of any such declaration, the title received by the purchaser at such sale shall be subject to the matters specified in such declaration, but such declaration shall not otherwise affect the validity or terms of this Security Instrument or any other Loan Document or the priority of any lien or security interest created hereunder or under any other Loan Document. Without limitation of the foregoing, Lender shall have the right to unilaterally modify any Loan Document to release any lien on any portion of the Property.

## **ARTICLE XVI – DEED OF TRUST PROVISIONS**

**Section 16.1 Concerning the Trustee.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is

recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

**Section 16.2 Trustee's Fees.** Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

**Section 16.3 Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (c) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith and (d) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

**Section 16.4 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 16.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 16.6 Succession Instruments.** Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such

substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

#### **ARTICLE XVII - STATE-SPECIFIC PROVISIONS**

**Section 17.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article XVII and the terms and conditions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

**Section 17.2 Appointment of Receiver for Breach of Environmental Covenants.**

(a) Upon the occurrence of an Event of Default, or when permitted under Section 564 of the California Code of Civil Procedure (including without limitation in order to enforce Lender's rights under Section 2929.5 of the California Civil Code), Lender, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in this Security Instrument and shall continue as such and exercise all such powers until the later of: (a) the date of confirmation of sale of the Property; (b) the disbursement of all proceeds of the Property collected by such receiver and the payment of all expenses incurred in connection therewith, including without limitation expenses incurred in connection with the cleanup, remediation or other response action concerning the release or threatened release of Hazardous Materials (as defined in the Environmental Indemnity) from or at the Property and/or the Improvements, whether or not such actions are pursuant to an order of any federal, state or local governmental agency; or (c) the termination of such receivership with the consent of Lender or pursuant to an order by a court of competent jurisdiction.

(b) Grantor on its own behalf and on behalf of its successors and assigns of any portion of the Property, and of future lienholders on any estate or interest of Grantor hereunder, hereby expressly waives all rights legal or equitable, to require a marshaling of assets by Trustee or Lender or to require Trustee or Lender, upon a foreclosure, to first resort to the sale of any portion of the Property which might have been retained by Grantor, or any further lienholder who might succeed to the title of Grantor, or could possibly be retained by any future lienholder who might succeed to the title of Grantor, before foreclosing upon and selling any other portions as may be conveyed by Grantor subject to this Security Instrument, including any rights under California Civil Code Sections 2899 and 3433, and all rights of Grantor under California Civil Code Section 2822.

(c) Grantor shall and does hereby agree that, if all or a portion of the principal sum of the Note has prior to the Stated Maturity Date fixed in the obligation, become due or been declared due by reason of an Event of Default the entire amount then due under the terms of this Security Instrument and the Note shall include all attorneys' fees and costs and expenses which are actually incurred as stated above, notwithstanding the provisions of Section 2924c(d) and Section 2924d of the California Civil Code.

(d) The foregoing provisions of this Section 16.2 are in addition to and not in limitation of the other provisions of the Loan Documents and Lender's rights and remedies thereunder and under applicable law and equity.

(e) At Lender's option, Lender shall be entitled to waive its lien against the Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired in accordance with California Code of Civil Procedure Section 726.5 and to exercise any and all rights and remedies of an unsecured creditor against Grantor and all of Grantor's assets and property for the recovery of any deficiency and Environmental Costs (as defined below). For purposes of California Code of Civil Procedure Section 726.5, as between Grantor and Lender, Grantor acknowledges and agrees that it shall have the burden of proving that Grantor or any of its contractors, employees, agents, invitees, affiliates, related parties or customers was not in any way negligent in permitting the release or threatened release of any hazardous substances causing environmental impairment of the Property. Lender reserves its other rights under California Code of Civil Procedure Sections 726.5.

(f) At Lender's option, Lender shall be entitled to seek a judgment that Grantor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth in the Environmental Indemnity, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or otherwise, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred or advanced by Lender relating to the cleanup, remediation or other response action, required by applicable law or to which Lender believes necessary to protect the Property (collectively, the "**Environmental Costs**") (excluding, however, any Environmental Costs not permitted to be recovered pursuant to Section 736 of the California Code of Civil Procedure), it being conclusively presumed between Lender and Grantor that all such Environmental Costs incurred or advanced by Lender relating to the cleanup, remediation, or other response action of or to the Property were made by Lender in good faith. Environmental Costs that are not permitted to be recovered pursuant to Section 736 may be referred to hereinafter as the "**Unsecured Environmental Costs**," and Environmental Costs other than the Unsecured Environmental Costs may be referred to hereinafter as the "**Secured Environmental Costs**." Any Unsecured Environmental Costs shall not be secured by this Security Instrument; provided, however, nothing herein shall prevent Lender from recovering any Unsecured Environmental Costs pursuant to the unsecured Environmental Indemnity, to the extent they are recoverable in accordance with said Environmental Indemnity. All Environmental Costs under this subparagraph (including, without limitation, court costs, consultant fees and attorneys' fees, whether incurred in litigation or otherwise and whether before or after judgment) shall bear interest at the Default Rate from the date of such costs and expenses have been incurred until said sums have been fully paid. Lender shall be entitled to bid, at a sale of the Property held as provided herein, the amount of such Secured Environmental Costs (including interest thereon) in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.3 Additional Rights and Remedies.**

(a) In addition to the rights of Lender specifically granted by Grantor under this Security Instrument, upon the occurrence of an Event of Default under any Loan Document, Lender shall be entitled to enforce this Security Instrument as provided under California Civil Code Section 2938.

(b) Lender shall have the right to enforce this Security Instrument by (1) the appointment of a receiver; (2) obtaining possession of the rents, issues, or profits; (3) delivery to any one or more of the tenants of the Property of a written demand for turnover of rents, issues, and profits in the form specified in California Civil Code Section 2938, a copy of which demand shall also be delivered to Grantor, and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the Property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording; and (4) delivery to Grantor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues and profits of the Property at the address for notices provided in the assignment, or, if none, to the address to which the recorded assignment was to be mailed after recording.

(c) Monies received by the Lender pursuant to this Section 17.3, net of amounts paid to preserve and protect the Property, shall be applied in accordance with this Security Instrument and the other Loan Documents.

(d) Notwithstanding the foregoing, neither the application nor the failure to apply the rents, issues, or profits of the Property shall result in a loss of any lien or security interest which Lender holds in the Property or any other collateral pursuant to this Security Instrument and the other Loan Documents, render the obligation evidenced by the Note unenforceable, constitute a violation of Section 726 of the California Code of Civil Procedure, or otherwise limit any right available to Lender with respect to its security.

  
Grantor's Initials

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.4 Notice of Default.** Grantor hereby requests that any notice of default and any notice of sale hereunder be mailed to it at its address set forth in the introductory paragraph of this Security Instrument.

**Section 17.5 Hazard Insurance Disclosure.** This Section is being furnished by Lender in compliance with Section 2955.5(b) of the California Civil Code. California Civil Code Section 2955.5(a) reads as follows: "No lender shall require a Grantor, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property." Grantor acknowledges and agrees that the above disclosure was made by Lender to Grantor prior to execution of this Security Instrument, the Note or the other Loan Documents.

**Section 17.6 Commercial Loan.** Grantor represents and warrants that the Loan is for commercial purposes, and not for personal, household or consumer purposes. For the avoidance of any doubt, no portion of the proceeds of the Loan shall be used by Borrower to finance the purchase or construction of real property containing four (4) or fewer residential units or on which four (4) or fewer residential units are to be constructed.

**Section 17.7 Future Advances.** This Security Instrument is given to secure the obligations of Borrower under the Loan Documents and shall secure not only obligations with respect to presently existing indebtedness but also any and all other obligations that may hereafter be owing to Lender under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances, re-advances, and protective advances (collectively, "**Future Advances**"), in each case pursuant to the Loan Agreement and the other Loan Documents, whether such Future Advances are obligatory or to be made at the option of Lender, to the same extent as if such Future Advances were made on the date of the execution of this Security Instrument. The Lien of this Security Instrument shall be valid as to all obligations secured hereby, including Future Advances, from the time of delivery hereof by Grantor to Lender. This Security Instrument is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Land and the Improvements.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Grantor as of the day and year first above written.

**GRANTOR:**

**LYDDA LUD, LLC,**  
a California limited liability company  
BY AM FAMILY FUND LLC, A VIRGINIA LIMITED  
LIABILITY COMPANY  
By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

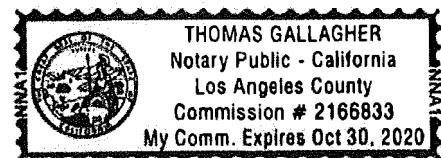
On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL 5:**

THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND IN THE DISTRICT LAND ON JUNE 25, 1887.

**PARCEL 6:**

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND LYING NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, DISTANT THEREON SOUTH  $88^{\circ} 42' 03''$  EAST 434.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE SOUTHWESTERLY IN A DIRECT LINE TO A POINT IN THE WESTERLY LINE OF SAID SOUTHWEST QUARTER; DISTANT THEREON SOUTHERLY 200.00 FEET FROM SAID NORTHWEST QUARTER SECTION CORNER.

**PARCEL 7:**

THAT PORTION OF LOTS 5 AND 6 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY AND NORTHERLY BOUNDARY LINES OF TRACT NO. 20500, AS PER MAP RECORDED IN BOOK 580 PAGES 25 AND 26, OF MAPS, RECORDS OF SAID COUNTY, SAID WESTERLY AND NORTHERLY LINES OF SAID TRACT NO. 20500 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID TRACT NO. 20500; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT NO. 20500 NORTH  $02^{\circ} 44' 45''$  WEST 200.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 OF TRACT NO. 20500; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NO. 20500, NORTH  $86^{\circ} 27' 03''$  EAST 214.00 FEET TO AN ANGLE POINT IN THE BOUNDARY OF SAID TRACT NO. 20500, NORTH  $13^{\circ} 11' 03''$  EAST 292.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 OF SAID TRACT NO. 20500, BEING A POINT ON THE NORTHERLY LINE OF SAID LOT 5 OF THE COLDWATER CANYON TRACT.

EXCEPT THAT PORTION, IF ANY, OF SAID LOT 6 LYING WITHIN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1, RANGE 15 WEST, SAN BERNARDINO MERIDIAN.

# EXHIBIT 5

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310861**



Pages:  
0040

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

03/20/17 AT 08:00AM

FEES:	193.00
TAXES:	0.00
OTHER:	0.00
<b>PAID:</b>	<b>193.00</b>



LEADSHEET



201703200200001

00013489026



008212116

SEQ:  
09

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

E464776

E08\_170320\_500-504

This document was prepared  
by and after recording should  
be returned to:

Polsinelli PC  
2950 N Harwood, Suite 2100  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(space above reserved for recorder's use)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**901 STRADA, LLC,**  
a California limited liability company  
(Grantor)

to

**EQUITY TITLE COMPANY,**  
a California corporation  
(Trustee)

in favor of

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
an Ontario limited partnership  
(Lender)

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTIONS 9-334, 9-501(a)(1) AND 9-502 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR SHALL BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT A ATTACHED HERETO. THE NAME OF THE RECORD OWNER OF THE REAL PROPERTY IS 901 STRADA, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY. THE ORGANIZATION IDENTIFICATION NUMBER OF GRANTOR IS 201213610106.

Dated: March 16, 2017

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 16th day of March, 2017, by **901 STRADA, LLC**, a California limited liability company, having its principal place of business at 630 Nimes Road, Bel Air, California 90077 (together with its successors and assigns, "Grantor"), to **EQUITY TITLE COMPANY**, a California corporation, having an address at 801 North Brand Boulevard, Suite 400, Glendale, California 91203, as Trustee ("Trustee") for the benefit of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5, as beneficiary (together with its successors and assigns, "Lender").

**W I T N E S S E T H:**

WHEREAS, reference is made to that certain loan (the "Loan") in the principal sum of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company (individually and collectively, jointly and severally, "Borrower"), and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender in the principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note"). All capitalized terms contained herein and not otherwise defined shall be as defined in the Loan Agreement;

WHEREAS, Grantor desires to secure the obligation of Borrower and Guarantor (as defined in the Loan Agreement) to comply with the requirement set forth in § 8.7 of the Loan Agreement that Borrower or Guarantor contribute no less than \$1,000,000 in additional equity to the Property (such obligation, the "Debt"); and

WHEREAS, this Security Instrument is given as additional security in the total amount of one million dollars (\$1,000,000), which may be subordinated, and which shall be released upon the occurrence of certain events, pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## ARTICLE I - GRANTS OF SECURITY

**Section 1.1      Property Mortgaged.** Subject to any previously granted security interests by the Grantor, which Lender acknowledges may be senior to the grants herein, Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee for the benefit of Lender and its successors and assigns, WITH POWER OF SALE, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the “**Property**”):

(a)      Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b)      Additional Land. All additional lands, estates and development rights hereafter acquired by Grantor 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;

(c)      Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d)      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 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e)      Equipment. All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Grantor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”);

(f)      Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and

equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Grantor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**");

(g) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, entitlements, approvals, authorizations, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Grantor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Grantor in and to any of the Personal Property 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;

(h) **Leases and Rents.** All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, 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 Grantor 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. "Rents" shall include all revenues, deposits (including security, utility and other deposits and Lease termination payments and tenant reimbursements), accounts, cash, issues, fees, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources (including any Service Rights granted to any Person and any warrants, stock options or other rights granted to Grantor or its Affiliates in connection with any Lease) whether or not arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income insurance, together with 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 and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including all guarantees, letters of credit (including the proceeds thereof) and any other credit support given by any guarantor in connection therewith, and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the

Bankruptcy Code 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.

(i) 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 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;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Grantor, 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 interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, development, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Grantor thereunder;

(o) 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;

(p) Accounts. All reserves, escrows, accounts receivable, accounts (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Documents), documents, instruments, chattel paper, 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, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor or any operator or manager of the Improvements or acquired from others (including, without limitation, from the rental of any space and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, service charges, vending machine sales and proceeds, if any,

from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with the Property returned by or reclaimed from customers wherever the Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon and deposit accounts maintained by Grantor, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Proceeds. All products and proceeds of any of the foregoing; and

(t) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Grantor expressly grants to Lender as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and subject to this Security Instrument.

**Section 1.2 Assignment of Rents.** Subject to any previously granted security interests by the Grantor, which Lender acknowledges may be senior to the grants herein, Grantor hereby absolutely and unconditionally assigns to Lender all of Grantor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to Section 7.1(h) of this Security Instrument, Lender grants to Grantor a license revocable upon the occurrence of an Event of Default to collect, receive, use and enjoy the Rents and Grantor 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, to the extent that said funds are not already pledged and recoverable by any other secured creditor of the Property.

**Section 1.3 Security Agreement.** This Security Instrument is both a real property mortgage and a “security agreement”, a “financing statement” and a “fixture filing” 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 Grantor in the Property. Subject to any previously granted security interests by the Grantor, which Lender acknowledges may be senior to the grants herein, by executing and delivering this Security Instrument, Grantor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter

acquired, to the full extent that the Fixtures, the Equipment and the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it 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 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 request or demand of Lender after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Grantor shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt and Other Obligations in such priority and proportions as Lender in its discretion shall deem proper. Grantor’s (debtor’s) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof. Grantor irrevocably authorizes Lender at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto and continuations thereof that (i) indicate the Collateral as the collateral covered thereby, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the applicable jurisdiction, (ii) describe the Collateral in generic terms such as “all assets” or similar description, and (iii) contain any other information required by Article 9 of the applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor and, (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Grantor agrees to furnish any such information to Lender promptly upon request. Grantor also ratifies its authorization for Lender to have filed in any jurisdiction any like initial financing statements or amendments thereto if filed prior to the date of this Security Instrument.

Grantor shall promptly notify Lender of the existence of any commercial tort claim now or hereafter existing for the benefit of Grantor or the Property, and shall execute, acknowledge and deliver a security agreement or other documentation as Lender shall from time to time require to acquire and perfect a valid and binding security interest in such commercial tort claim.

**Section 1.4     Fixture Filing.** Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5     Pledges of Monies Held.** Grantor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Agreement.

**Section 1.6      Common Law Pledge/Assignment.** To the extent that the Uniform Commercial Code does not apply to any item of the Personal Property in which a security interest is granted hereby, it is the intention of the parties that this Security Instrument serve to evidence Grantor's common law pledge and/or collateral assignment of such item of Personal Property, and Grantor hereby pledges and assigns such Personal Property to Lender.

### **CONDITIONS TO GRANT**

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

IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Loan Agreement, the Note and in this Security Instrument.

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, the Loan Agreement 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, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Grantor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

### **ARTICLE II - DEBT AND OBLIGATIONS SECURED**

**Section 2.1      Debt.** This Security Instrument and the grants, assignments and Transfers made in Article I are given for the purpose of securing the Debt, but are limited to the sum of One Million Dollars (\$1,000,000).

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

- (a) the performance of all other obligations of Grantor contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document "(but specifically excluding the Environmental Indemnity); 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, the Loan Agreement or any other Loan Document "(but specifically excluding the Environmental Indemnity).

**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."

### **ARTICLE III - GRANTOR COVENANTS**

Grantor covenants and agrees that:

**Section 3.1    Payment of Debt.** Borrower shall pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 3.2    Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of 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.

**Section 3.3    Insurance.** Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Loan Agreement.

**Section 3.4    Maintenance of Property.** Grantor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of equal or better quality of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Grantor 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 Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.5    Waste.** Grantor shall not commit or suffer any waste of the Property ("waste" meaning the diminution in the Property's value resulting from Grantor's negligent or willful failure to manage, maintain, repair and otherwise operate the Property in a commercially reasonable manner) or 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 (including the risk of any discharge of any Hazardous Material), or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Grantor shall 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 3.6    Payment for Labor and Materials.** (a) Grantor shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") 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 Encumbrances.

(b) After prior written notice to Lender, Grantor, 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 Labor and Material Costs, provided that

(i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust, security instrument, deed or other agreement or instrument to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor 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) Grantor 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 Labor and Material Costs, together with all interest and penalties thereon, (vii) Grantor shall have furnished to Lender all other items reasonably requested by Lender, including title insurance coverage or bonding over such lien, and (viii) Lender shall have determined that Grantor is likely to prevail in such contest.

**Section 3.7     Performance of Other Agreements.** Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8     Change of Name, Identity or Structure.** Grantor shall not change Grantor's name, identity (including its trade name or names) or, if not an individual, Grantor's corporate, partnership, limited liability company, or other structure, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of Lender. Grantor hereby authorizes Lender to file, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

**Section 3.9     Title.** Grantor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as may be expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Grantor's ability to repay the Loan. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

**Section 3.10 Agreement to Subordinate:** All obligations of this Deed of Trust are agreed by Lender to be subordinate to any existing liens of record; in addition, Lender agrees that this Deed of Trust shall be subordinate to any future construction funding obtained by the Grantor that is reasonably necessary for Grantor to complete the construction of the Property and to market it for sale. Lender shall execute such additional documents, including any Subordination Agreement required by a construction lender to Grantor.

#### **ARTICLE IV - OBLIGATIONS AND RELIANCES**

**Section 4.1 Relationship of Grantor and Lender:** The relationship between Grantor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Grantor and Lender to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lender:** The general partners, managers, members, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations:** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under any 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 Loan Agreement, the Note or the other Loan Documents, including 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 sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

**Section 4.4 Reliance:** Grantor recognizes and acknowledges that in accepting the Loan Agreement, 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 Section 4.1 of the Loan Agreement 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 the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement. Notwithstanding the foregoing, with respect to the subject Property, Lender acknowledges it has been advised that the security interests granted herein are inferior to the rights of existing lenders to the Property.

## **ARTICLE V - FURTHER ASSURANCES**

**Section 5.1 Recording of Security Instrument, etc.** Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, shall cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Grantor shall pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust 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 deed of trust or mortgage supplemental hereto, any other 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 5.2 Further Acts, Etc.** Grantor shall, at the cost of Grantor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, 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, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor 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 Legal Requirements. Grantor 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 such rights and remedies available to Lender pursuant to this Section 5.2.

**Section 5.3 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 deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Grantor shall pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Grantor 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 one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Grantor shall 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 one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Grantor shall pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Severing of Security Instrument.** (a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Grantor under this Security Instrument or any of the other Loan Documents executed and delivered by, or applicable to, Grantor or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Grantor agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and this Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Grantor and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose this Security Instrument in any manner and for any amounts secured by this Security Instrument then due and payable as determined by Lender in its discretion including the following circumstances: (i) in the event Grantor defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose this Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Security Instrument to secure payment of sums secured by this Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Grantor shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Grantor hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Grantor ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any

such documents under such power until three (3) days after notice has been given to Grantor by Lender of Lender's intent to exercise its rights under such power. Grantor shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Grantor only as of the Closing Date.

**Section 5.5      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, Grantor shall 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.

## **ARTICLE VI - DUE ON SALE/ENCUMBRANCE**

**Section 6.1      Lender Reliance.** Grantor acknowledges that Lender has examined and relied on the experience of Grantor and its general partners, members, principals and (if Grantor 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 Grantor'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. Grantor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Grantor 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 6.2      No Sale/Encumbrance.** Neither Grantor nor any Borrower Party (as defined in the Loan Agreement) shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement. If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, if required, and otherwise not in accordance with the terms and provisions of the Loan Agreement, THEN Lender, in its sole and absolute discretion, may declare all Obligations to be immediately due and payable.

## **ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1      Remedies.** Upon the occurrence and during the continuance of any Event of Default (as defined in the Loan Agreement), Grantor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including 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 discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a)      declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for and obtain the appointment, on an *ex parte* basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor, any guarantor, indemnitor or of any Person liable for the payment of the Debt, of a receiver, trustee, liquidator or conservator of the Property to do all of the actions set forth in subparagraph (h) below and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver, trustee, liquidator or conservator is appointed;

(h) the license granted to Grantor under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its discretion after

deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including: (i) the right to take possession of the Fixtures, the Equipment, 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 Fixtures, the Equipment, the Personal Property, and (ii) request Grantor at its expense to assemble the Fixtures, the Equipment, 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 Fixtures, the Equipment, the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its 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 in the inverse order of maturity; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender shall deem proper, and in connection therewith, Grantor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums;

(l) prohibit Grantor and anyone claiming for or through Grantor from making use of or withdrawing any sums from any lockbox, escrow or similar account;

(m) pursue such other remedies as Lender may have under applicable law;

(n) apply the undisbursed balance of any other deposits or reserves of Grantor held by Lender, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

(o) give notice of default and of election to cause the Property to be sold. In connection with any sale or sales hereunder, and as a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by

public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantor or Lender may purchase at the sale; or

(p) upon sale of the Property at any judicial or non-judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (1) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (2) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (3) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios previously discussed between Grantor and Lender; and (4) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

In the event of a sale, by foreclosure, power of sale 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 unimpaired and without loss of priority.

Upon written request of the Lender and surrender of this Security Instrument and the Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the property then subject to this Security Instrument. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

## **Section 7.2      Application of Proceeds.**

(a) After deducting all reasonable costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

(b) All sums received by Lender under this Section 7.2, less all reasonable costs and expenses incurred by Lender or any receiver under Section 7.1, including, without limitation, attorneys' fees, shall be applied in payment of the Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

**Section 7.3      Right to Cure Defaults; No Cure or Waiver.**

(a) Upon the occurrence and during the continuance of any Event of Default, or if Grantor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make any payment or do any act required of Grantor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(b) Neither Lender's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the status of the security, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.

**Section 7.4      Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 7.5      Recovery of Sums Required To Be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

**Section 7.6      Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books,

management and other papers of Grantor which reflect upon their financial condition, at the Property or at any office regularly maintained by Grantor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7      Other Rights, etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Grantor or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8      Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9      Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Grantor in connection herewith including monetary reserves or financial equivalents.

**Section 7.10      Choice of Remedies.** Without limiting the specificity of Section 5.4, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article IX herein.

**Section 7.11      Right of Entry.** Upon reasonable notice to Grantor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 7.12      Rights Pertaining To Sales.** The following provisions shall, to the extent permitted by law, apply to any sale or sales of all or any portion of the Property under or by virtue of this Security Instrument, whether under any power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Trustee (for purposes of this Section 7.12 only, the term "Trustee" shall be interpreted to include any public officer or other person having the responsibility to conduct any sale of all or part of the Property pursuant to this Security Instrument) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more of such sales as to any part of the Property that has not been sold or by any sale that is not completed or is defective until the Debt has been paid in full.

(b) 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, and such sale may be completed at the time and place so announced without further notice.

(c) Lender is hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, Transfers and deliveries of the Property and rights so sold, and for that purpose Lender may execute all necessary instruments to accomplish the same, and may substitute one or more persons with like power, and Grantor hereby ratifies and confirms all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers, as applicable, all such instruments as may be advisable, in Lender's judgment, for the purposes designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in Section 7.12(c) given by Lender concerning nonpayment of the Debt, occurrence of any Event of Default, any declaration by Lender that all or any of the Debt is due and payable, any request to sell, any representation that notice of time, place and terms of sale and property or rights to be sold was duly given, or that any other act or thing was duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(e) The receipt by Trustee of the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the

application of such purchase price or any part thereof upon or for any trust or purpose of this Security Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) 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 Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) 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 that Lender is authorized to charge to Borrower under the terms of the Note, this Security Instrument, or any other Loan Document to the extent necessary to satisfy such bid.

(h) If Grantor, or any person claiming by, through or under Grantor, shall Transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Grantor or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of unlawful detainer proceedings or other appropriate proceedings, and to any other right or remedy available hereunder or under applicable law.

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

(j) In the event of any sale referred to in this Section 7.12, the entire Debt, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary in the Note, this Security Instrument or any other Loan Document, become due and payable.

(k) This instrument shall be effective as a mortgage. If a sale hereunder shall be commenced by Trustee, Lender may, at any time before the sale of the Property, direct the Trustee to abandon the sale, and may institute suit for the collection of the Debt or part thereof and for the foreclosure of this Security Instrument. If Lender shall institute suit for the collection of the Debt or part thereof, and for the foreclosure of this Security Instrument, Lender may at any time before the entry of final judgment in said suit dismiss the same (or part thereof) and direct the Trustee to sell the Property in accordance with the provisions of this Security Instrument. Lender may pursue its rights and remedies against any guarantor or other party liable for any of the obligations in such a suit for foreclosure or by separate suit, whether or not the Trustee is also pursuing a sale under the terms hereof.

## ARTICLE VIII - PREPAYMENT

**Section 8.1      Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Note.

## ARTICLE IX - INDEMNIFICATION

**Section 9.1      General Indemnification.** Grantor shall, at its sole cost and expense, protect (with legal counsel reasonably acceptable to Lender), defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or any indemnitor Person and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article IX; (k) 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 Lease; (l) any and all claims (including lender liability claims) or demands by Borrower or any third parties, including any guarantor or indemnitor; (m) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (n) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

**Section 9.2      Mortgage and/or Intangible Tax.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Grantor hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including the Note), Grantor shall indemnify and hold harmless the

Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

**Section 9.3 ERISA Indemnification.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1(k) of the Loan Agreement or a breach of any negative covenants contained in Section 5.1.9 of the Loan Agreement.

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Grantor 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. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Grantor and any Indemnified Party and Grantor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Grantor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Grantor's consent, which consent shall not be unreasonably withheld. Upon demand, Grantor 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 9.5 Environmental Indemnity.** Simultaneously with this Security Instrument, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Security Instrument.

## **ARTICLE X - WAIVERS**

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Grantor hereby waives the benefit of all homestead, appraisement, 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, Grantor 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 Grantor, 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, and hereby waives any defense Grantor might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable law, Grantor 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 Grantor and except with respect to matters for which Lender is required by applicable law to give notice, and Grantor 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 Grantor.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Survival.** The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other Transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any Transfer of all or any portion of the Property (whether by Grantor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Grantor from the obligations pursuant hereto.

**Section 10.6 Trial by Jury.** GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GRANTOR HEREBY AGREES AND CONSENTS THAT LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF GRANTOR TO THE WAIVER OF ANY RIGHT GRANTOR MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

## ARTICLE XI - EXCULPATION

The Debt shall be fully recourse to Grantor and Grantor shall be personally liable for all of the Debt.

## **ARTICLE XII - NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 12.5 of the Loan Agreement.

## **ARTICLE XIII - APPLICABLE LAW**

**Section 13.1 Governing Law.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THIS SECURITY INSTRUMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LAND IS LOCATED WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF ("GOVERNING STATE"). GRANTOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Security Instrument may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Grantor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Grantor to Lender, or if there is no such indebtedness, shall immediately be returned to Grantor.

**Section 13.3 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 XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. 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 "**Grantor**" shall mean "each Grantor 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 "**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 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 XV - MISCELLANEOUS PROVISIONS

**Section 15.1    No Oral Change.** This Security Instrument, and any provisions hereof, including the provisions of this Section, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor 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, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Security Instrument; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Security Instrument; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Security Instrument.

**Section 15.2    Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns forever.

**Section 15.3    Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 15.4    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 15.5    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 15.6    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 Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, 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. Grantor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, 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, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 15.8 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 15.9 Rules of Construction.** The following rules of construction shall be applicable for all purposes of this Security Instrument and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";
- (b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument;
- (d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";
- (e) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Security Instrument refer to this Security Instrument as a whole and not to any particular provision or section of this Security Instrument;
- (f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;
- (g) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;

(h) The cover page (if any) of, all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated herein; and

(i) Wherever Lender's judgment, consent, approval or discretion is required under this Security Instrument or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Security Instrument, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Security Instrument or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Grantor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. Without limiting the generality of the foregoing, any authorized agent of Lender (including any servicer and/or attorney-in-fact) is hereby specifically authorized to remove a trustee and select and appoint a successor trustee.

**Section 15.10 Duplicate Originals; Counterparts.** For the purpose of facilitating the execution of this Security Instrument and for other purposes, this Security Instrument may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. 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 15.11 Lender's Right to Subordinate.** Lender may, at its election, subordinate the lien of this Security Instrument and any or all of Lender's rights, titles or interests hereunder to any lien, leasehold interest, easement, plat, covenant, restriction, dedication, encumbrance or other matter affecting the Property or any part thereof by recording a written declaration of such subordination in the office of the register or recorder of deeds or similar filing officer for the county in which the Land is located. If foreclosure sale occurs hereunder after the recording of any such declaration, the title received by the purchaser at such sale shall be subject to the matters specified in such declaration, but such declaration shall not otherwise affect the validity or terms of this Security Instrument or any other Loan Document or the priority of any lien or security interest created hereunder or under any other Loan Document. Without limitation of the foregoing, Lender shall have the right to unilaterally modify any Loan Document to release any lien on any portion of the Property.

## **ARTICLE XVI – DEED OF TRUST PROVISIONS**

**Section 16.1 Concerning the Trustee.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal,

resignation, refusal to act, or inability to act of Trustee, or in its discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

**Section 16.2 Trustee's Fees.** Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

**Section 16.3 Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (c) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith and (d) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

**Section 16.4 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 16.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 16.6 Succession Instruments.** Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates,

properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

## ARTICLE XVII - STATE-SPECIFIC PROVISIONS

**Section 17.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article XVII and the terms and conditions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

**Section 17.2 Appointment of Receiver for Breach of Environmental Covenants.**

(a) Upon the occurrence of an Event of Default, or when permitted under Section 564 of the California Code of Civil Procedure (including without limitation in order to enforce Lender's rights under Section 2929.5 of the California Civil Code), Lender, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in this Security Instrument and shall continue as such and exercise all such powers until the later of: (a) the date of confirmation of sale of the Property; (b) the disbursement of all proceeds of the Property collected by such receiver and the payment of all expenses incurred in connection therewith, including without limitation expenses incurred in connection with the cleanup, remediation or other response action concerning the release or threatened release of Hazardous Materials (as defined in the Environmental Indemnity) from or at the Property and/or the Improvements, whether or not such actions are pursuant to an order of any federal, state or local governmental agency; or (c) the termination of such receivership with the consent of Lender or pursuant to an order by a court of competent jurisdiction.

(b) Grantor on its own behalf and on behalf of its successors and assigns of any portion of the Property, and of future lienholders on any estate or interest of Grantor hereunder, hereby expressly waives all rights legal or equitable, to require a marshaling of assets by Trustee or Lender or to require Trustee or Lender, upon a foreclosure, to first resort to the sale of any portion of the Property which might have been retained by Grantor, or any further lienholder who might succeed to the title of Grantor, or could possibly be retained by any future lienholder who might succeed to the title of Grantor, before foreclosing upon and selling any other portions as may be conveyed by Grantor subject to this Security Instrument, including any rights under California Civil Code Sections 2899 and 3433, and all rights of Grantor under California Civil Code Section 2822.

(c) Grantor shall and does hereby agree that, if all or a portion of the principal sum of the Note has prior to the Stated Maturity Date fixed in the obligation, become due or been declared due by reason of an Event of Default the entire amount then due under the terms of this Security Instrument and the Note shall include all attorneys' fees and costs and expenses which are actually incurred as stated above, notwithstanding the provisions of Section 2924c(d) and Section 2924d of the California Civil Code.

(d) The foregoing provisions of this Section 16.2 are in addition to and not in limitation of the other provisions of the Loan Documents and Lender's rights and remedies thereunder and under applicable law and equity.

(e) At Lender's option, Lender shall be entitled to waive its lien against the Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired in accordance with California Code of Civil Procedure Section 726.5 and to exercise any and all rights and remedies of an unsecured creditor against Grantor and all of Grantor's assets and property for the recovery of any deficiency and Environmental Costs (as defined below). For purposes of California Code of Civil Procedure Section 726.5, as between Grantor and Lender, Grantor acknowledges and agrees that it shall have the burden of proving that Grantor or any of its contractors, employees, agents, invitees, affiliates, related parties or customers was not in any way negligent in permitting the release or threatened release of any hazardous substances causing environmental impairment of the Property. Lender reserves its other rights under California Code of Civil Procedure Sections 726.5.

(f) At Lender's option, Lender shall be entitled to seek a judgment that Grantor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth in the Environmental Indemnity, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or otherwise, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred or advanced by Lender relating to the cleanup, remediation or other response action, required by applicable law or to which Lender believes necessary to protect the Property (collectively, the "**Environmental Costs**") (excluding, however, any Environmental Costs not permitted to be recovered pursuant to Section 736 of the California Code of Civil Procedure), it being conclusively presumed between Lender and Grantor that all such Environmental Costs incurred or advanced by Lender relating to the cleanup, remediation, or other response action of or to the Property were made by Lender in good faith. Environmental Costs that are not permitted to be recovered pursuant to Section 736 may be referred to hereinafter as the "**Unsecured Environmental Costs**," and Environmental Costs other than the Unsecured Environmental Costs may be referred to hereinafter as the "**Secured Environmental Costs**." Any Unsecured Environmental Costs shall not be secured by this Security Instrument; provided, however, nothing herein shall prevent Lender from recovering any Unsecured Environmental Costs pursuant to the unsecured Environmental Indemnity, to the extent they are recoverable in accordance with said Environmental Indemnity. All Environmental Costs under this subparagraph (including, without limitation, court costs, consultant fees and attorneys' fees, whether incurred in litigation or otherwise and whether before or after judgment) shall bear interest at the Default Rate from the date of such costs and expenses have been incurred until said sums have been fully paid. Lender shall be entitled to bid, at a sale of the Property held as provided herein, the amount of such Secured Environmental Costs (including interest thereon) in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.3 Additional Rights and Remedies.**

(a) In addition to the rights of Lender specifically granted by Grantor under this Security Instrument, upon the occurrence of an Event of Default under any Loan Document, Lender shall be entitled to enforce this Security Instrument as provided under California Civil Code Section 2938.

(b) Lender shall have the right to enforce this Security Instrument by (1) the appointment of a receiver; (2) obtaining possession of the rents, issues, or profits; (3) delivery to any one or more of the tenants of the Property of a written demand for turnover of rents, issues, and profits in the form specified in California Civil Code Section 2938, a copy of which demand shall also be delivered to Grantor, and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the Property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording; and (4) delivery to Grantor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues and profits of the Property at the address for notices provided in the assignment, or, if none, to the address to which the recorded assignment was to be mailed after recording.

(c) Monies received by the Lender pursuant to this Section 17.3, net of amounts paid to preserve and protect the Property, shall be applied in accordance with this Security Instrument and the other Loan Documents.

(d) Notwithstanding the foregoing, neither the application nor the failure to apply the rents, issues, or profits of the Property shall result in a loss of any lien or security interest which Lender holds in the Property or any other collateral pursuant to this Security Instrument and the other Loan Documents, render the obligation evidenced by the Note unenforceable, constitute a violation of Section 726 of the California Code of Civil Procedure, or otherwise limit any right available to Lender with respect to its security.



Grantor's Initials

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Section 17.4 Notice of Default.** Grantor hereby requests that any notice of default and any notice of sale hereunder be mailed to it at its address set forth in the introductory paragraph of this Security Instrument.

**Section 17.5 Hazard Insurance Disclosure.** This Section is being furnished by Lender in compliance with Section 2955.5(b) of the California Civil Code. California Civil Code Section 2955.5(a) reads as follows: "No lender shall require a Grantor, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property." Grantor acknowledges and agrees that the above disclosure was made by Lender to Grantor prior to execution of this Security Instrument, the Note or the other Loan Documents.

**Section 17.6 Commercial Loan.** Grantor represents and warrants that the Loan is for commercial purposes, and not for personal, household or consumer purposes. For the avoidance of any doubt, no portion of the proceeds of the Loan shall be used by Borrower to finance the purchase or construction of real property containing four (4) or fewer residential units or on which four (4) or fewer residential units are to be constructed.

**Section 17.7 Future Advances.** This Security Instrument is given to secure the obligations of Borrower under the Loan Documents and shall secure not only obligations with respect to presently existing indebtedness but also any and all other obligations that may hereafter be owing to Lender under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances, re-advances, and protective advances (collectively, "**Future Advances**"), in each case pursuant to the Loan Agreement and the other Loan Documents, whether such Future Advances are obligatory or to be made at the option of Lender, to the same extent as if such Future Advances were made on the date of the execution of this Security Instrument. The Lien of this Security Instrument shall be valid as to all obligations secured hereby, including Future Advances, from the time of delivery hereof by Grantor to Lender. This Security Instrument is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Land and the Improvements.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, this Security Instrument has been executed by Grantor as of the day and year first above written.

**GRANTOR:**

**901 STRADA, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: SDe Member & Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

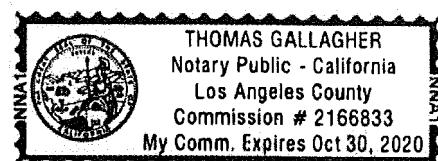
On 3-16, 2017, before me, Thomas Gallagher Notary Public  
(insert name and title of the officer)

personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they ~~executed~~ the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A**

**LEGAL DESCRIPTION**

[insert]

ORDER NO. LA1532107

EXHIBIT "A"

PARCEL 1:

THAT PORTION OF LOT "I" OF BEL-AIR, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 113, PAGES 9 TO 17 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY BOUNDARY OF PARCEL 1 OF THE REAL PROPERTY CONVEYED TO LURIE COMPANY, BY DEED RECORDED IN BOOK 17517, PAGE 110, OFFICIAL RECORDS OF SAID COUNTY, SAID BOUNDARY BEING ALSO THE EASTERLY BOUNDARY OF THE REAL PROPERTY CONVEYED TO DENNIS D. ALEXANDER BY DEED RECORDED IN BOOK 29640, PAGE 154, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE THEREIN DESIGNATED AS HAVING A BEARING OF NORTH 41° 26' 50" WEST A LENGTH 45.48 FEET; THENCE LEAVING SAID BOUNDARY LINE NORTH 9° 26' 19" WEST 133.15 FEET TO A POINT IN SAID BOUNDARY LINE SAID POINT BEING THE NORtherly TERMINUS OF THAT CERTAIN CURVE IN SAID BOUNDARY LINE, THEREIN DESIGNATED AS BEING CONCAVE EASTERLY HAVING A RADIUS OF 67.50 FEET AND A LENGTH OF 109.10 FEET; THENCE CONTINUING ALONG SAID BOUNDARY TANGENT TO SAID CURVE NORTH 51° 09' 50" EAST 75.35 FEET; THENCE NORTH 76° 10' 51" WEST 138.24 FEET; THENCE SOUTH 40° 26' 16" WEST 137.17 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 116.16 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 68° 21' 34" AN ARC DISTANCE OF 138.59 FEET TO THE BEGINNING OF A REVERSING CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 98.09 FEET; THENCE SOUTHERLY ALONG SAID CURVE 26.74 FEET TO THE WESTERLY BOUNDARY OF PARCEL 1 OF THE REAL PROPERTY CONVEYED TO J. HAROLD BRADLEY, BY DEED RECORDED ON MAY 8, 1951 AS INSTRUMENT NO. 73, IN BOOK 36236, PAGE 222, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID BOUNDARY SOUTH 66° 56' 03" EAST 176.02 FEET TO AN ANGLE POINT THEREIN, SAID ANGLE POINT BEING THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 212.50 FEET, A RADIAL TO SAID POINT BEARS NORTH 47° 14' 49" WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE 71.72 FEET TO THE END THEREOF; THENCE RADIAL TO SAID CURVE AT ITS POINT OF ENDING SOUTH 66° 35' 02" EAST 12.50 FEET TO A POINT IN THE WESTERLY BOUNDARY OF SAID REAL PROPERTY CONVEYED TO THE LURIE COMPANY, ALSO BEING THE EASTERLY BOUNDARY OF SAID REAL PROPERTY CONVEYED TO DENNIS D. ALEXANDER, BEING THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING OF SOUTH 66° 35' 02" EAST AND A LENGTH OF 12.50 FEET; THENCE FOLLOWING ALONG THE COMMON LINE OF SAID LAST TWO MENTIONED BOUNDARIES SOUTH 66° 35' 02" EAST 12.50 FEET TO THE BEGINNING OF A RADIAL CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 187.50 FEET; THENCE NORtheasterly ALONG SAID CURVE 72.07 FEET TO THE BEGINNING OF A REVERSING CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 92.50 FEET, A RADIAL TO SAID POINT BEARS NORTH 44° 33' 40" WEST; THENCE NORtherly ALONG SAID CURVE 140.27 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR PUBLIC UTILITY HOUSE CONNECTION PURPOSES OVER THE FOLLOWING DESCRIBED PORTION OF LOT "I" OF BEL-AIR, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 115, PAGES 9 TO 17, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A STRIP OF LAND OF A UNIFORM WIDTH OF 5 FEET, THE EASTERLY LINE OF WHICH LIES WESTERLY OF AND DISTANT 12.5 FEET FROM THE FOLLOWING DESCRIBED LINE.

LEGAL DESCRIPTION CONTINUED

ORDER NO. LA1532107

BEGINNING AT THE NORTHEASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHERLY LINE OF THE REAL PROPERTY CONVEYED TO ANNE VICKERS CRAWFORD, BY DEED RECORDED IN BOOK 4484, PAGE 356, OFFICIAL RECORDS OF SAID COUNTY, SAID COURSE HAVING A BEARING OF NORTH 34° 38' 00" EAST AND A LENGTH OF 12.50 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG SAID BOUNDARY NORTH 55° 22' 00" WEST 59.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 97.50 FEET; THENCE NORTHERLY ALONG SAID CURVE 188.11 FEET TO THE BEGINNING OF A REVERSING CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 95.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE 52.66 FEET TO A POINT DESIGNATED FOR THE PURPOSE OF THE FOLLOWING DESCRIPTION AS POINT "A".

A STRIP OF LAND OF A UNIFORM WIDTH OF 5 FEET, THE EASTERLY LINE OF WHICH LIES WESTERLY OF AND DISTANT 25 FEET FROM THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT "A" AT THE END OF THE LAST MENTIONED CURVE ON THE ABOVE DESCRIPTION; THENCE RADIALLY TO SAID CURVE SOUTH 66° 33' 02" EAST 12.50 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING THE BEGINNING OF A RADIAL CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 187.50 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE 72.07 FEET TO THE BEGINNING OF A REVERSING CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 92.50 FEET.

THE SIDE LINES OF SAID STRIP OF LAND OF A WIDTH OF 5 FEET ARE TO BE SHORTENED TO TERMINATE IN THAT CERTAIN COURSE IN THE SOUTHERLY BOUNDARY OF PARCEL 1 ABOVE DESIGNATED AS HAVING A BEARING OF SOUTH 66° 56' 03" EAST AND A LENGTH OF 138.24 FEET, AND TO TERMINATE IN THE SOUTHERLY BOUNDARY OF THE LAND CONVEYED TO DENNIS D. ALEXANDER BY DEED RECORDED IN BOOK 29640, PAGE 154, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 3:

AN EASEMENT FOR ROAD PURPOSES, TO BE USED IN COMMON WITH OTHER OVER A PORTION OF LOT "I" OF BEL-AIR, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 113, PAGES 9 TO 17, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A STRIP OF LAND 12.5 FEET IN WIDTH LYING SOUTHWESTERLY OF AND ADJOINING THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MIDPOINT OF THE NORTHERLY TERMINAL LINE OF THAT CERTAIN UNNAMED STREET, NOW KNOWN AS STRADA VECHIA ROAD SHOWN ON SAID MAP IN BOOK 113, PAGE 13, SAID POINT OF BEGINNING BEING THE SOUTHERLY END OF THAT CERTAIN COURSE DESIGNATED "SOUTH 16° 49' 30" EAST 51.10 FEET" IN THE BOUNDARY OF THE LAND CONVEYED TO THE LURIE COMPANY, BY DEED RECORDED IN BOOK 17517, PAGE 110, OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG SAID BOUNDARY OF THE LURIE COMPANY LAND, NORTH 16° 49' 30" WEST 51.10 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 100 FEET; THENCE NORTHWESTERLY ON SAID CURVE 32.46 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE NORTH 35° 25' 30" WEST 51.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 65.50 FEET; THENCE WESTERLY ON SAID CURVE 95.87 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE SOUTH 60° 43' WEST 6.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORtherly HAVING A RADIUS OF 80 FEET; THENCE WESTERLY ON SAID CURVE 89.24 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE NORTH 55° 22' 00" WEST 9.42 FEET TO AN ANGLE POINT IN THE BOUNDARY OF PARCEL 4 OF THE REAL PROPERTY DESCRIBED IN THE DEED TO BEL-AIR LAND CO., RECORDED IN BOOK 23211, PAGE 261, OFFICIAL RECORDS; THENCE ALONG THE BOUNDARY COMMON TO SAID LURIE COMPANY LAND AND SAID PARCEL 4, CONTINUING NORTH 55° 22' 00" WEST 59.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 97.50 FEET;

LEGAL DESCRIPTION CONTINUED

ORDER NO. LA1532107

THENCE NORTHERLY ON SAID CURVE 188.11 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 95 FEET; THENCE NORtheASTERLY ON SAID CURVE 52.66 FEET TO THE END THEREOF;

**PARCEL 4:**

AN EASEMENT FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS, OVER A PORTION OF LOT "I" OF BEL-AIR, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 113, PAGES 9 TO 17, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A STRIP OF LAND 12.5 FEET IN WIDTH LYING NORtheASTERLY AND EASTERLY OF, AND ADJOINING THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MIDPOINT OF THE NORTHERLY TERMINAL LINE OF THAT CERTAIN UNNAMED STREET, NOW KNOWN AS STRADA VECHIA ROAD, SHOWN ON SAID MAP RECORDED IN BOOK 113, PAGE 13, SAID POINT OF BEGINNING BEING THE SOUTHERLY END OF THAT CERTAIN COURSE DESIGNATED "SOUTH 16° 49' 30" EAST 51.10 FEET" IN THE BOUNDARY OF THE LAND CONVEYED TO THE LURIE COMPANY, BY DEED RECORDED IN BOOK 17517, PAGE 110, OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG SAID BOUNDARY OF THE LURIE COMPANY LAND, NORTH 16° 49' 30" WEST 51.10 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100 FEET; THENCE NORTHWESTERLY ON SAID CURVE 32.46 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE NORTH 35° 25' 30" WEST 51.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 65.50 FEET; THENCE WESTERLY ON SAID CURVE 95.87 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE SOUTH 60° 43' 00" WEST 6.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 80 FEET; THENCE WESTERLY ON SAID CURVE 89.24 FEET TO THE END THEREOF; THENCE TANGENT TO SAID CURVE NORTH 55° 22' 00" WEST 9.42 FEET TO AN ANGLE POINT IN THE BOUNDARY OF PARCEL 4 OF THE REAL PROPERTY DESCRIBED IN THE DEED TO BEL-AIR LAND CO., RECORDED IN BOOK 23211, PAGE 261 OF SAID OFFICIAL RECORDS; THENCE ALONG THE BOUNDARY COMMON TO SAID LURIE COMPANY LAND AND SAID PARCEL 4, CONTINUING NORTH 55° 22' 00" WEST 59.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 97.50 FEET; THENCE NORTHERLY ON SAID CURVE 188.11 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 95 FEET; THENCE NORtheASTERLY ON SAID CURVE 52.66 FEET TO THE END THEREOF; SAID PARCELS 3 AND 4 PROVIDE INGRESS AND EGRESS TO A PUBLIC DEDICATED STREET OF RECORD.

\*\*\*END OF LEGAL DESCRIPTION\*\*\*

# EXHIBIT 6

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310862**



Pages:  
0021

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

03/20/17 AT 08:00AM

FEES :	93 .00
TAXES :	0.00
OTHER :	0.00
<hr/>	
PAID:	93.00



LEADSHEET



201703200200001

00013489027



008212116

SEQ:  
10

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

E464776

E08\_170320\_568794

This document was prepared  
by and after recording should  
be returned to:

Polsinelli PC  
2950 N Harwood, Suite 2100  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(space above reserved for recorder's use)

**ASSIGNMENT OF LEASES AND RENTS**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

(Assignor)

to

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
an Ontario limited partnership  
(Lender)

Dated: March 16, 2017

RECORDED CONCURRENTLY HEREWITH

## ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT OF LEASES AND RENTS** ("Assignment") is made as of March 16, 2017, by and between **COLDWATER DEVELOPMENT LLC**, a California limited liability company (together with its successors and assigns, "Assignor"), and **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, "Lender").

### Recitals of Fact

The following recitals are a material part of this instrument:

A. Assignor is the owner of the Property (as defined in the Loan Agreement (defined below)), with a legal description as set forth in Exhibit A attached hereto and incorporated herein.

B. Lender is prepared to make a loan (the "Loan") to Assignor and **LYDDA LUD, LLC**, a California limited liability company (together with Assignor, individually and collectively, jointly and severally, "Borrower"), in the principal amount of \$25,000,000.00 pursuant to a Loan Agreement of even date herewith between Lender and Borrower (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Loan Agreement"), which Loan shall be evidenced by that certain Promissory Note of even date herewith given by Borrower in favor of Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note") and secured by, among other things, those certain Deeds of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof given by each Borrower to Lender and encumbering the Property (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Security Instrument"). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

C. Assignor desires to assign to Lender the rents, leases and profits of and from the Property and the proceeds therefrom, as primary and not as secondary security for the payment of the Note and the Debt (as such term is hereinafter defined), and for the performance of the obligations in the Loan Agreement, Security Instrument and the other Loan Documents.

### Agreement

In consideration of the Loan from Lender to Borrower, which is of direct and substantial benefit to Assignor, the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Assignment.** Assignor absolutely and unconditionally assigns, transfers, sets over and conveys to Lender the following, absolutely and not as additional security:

(a) **Leases and Other Agreements.** All existing and future written and oral leases, subleases, tenancies, subtenancies, licenses, contracts, contract rights, and occupancy and all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property, now or hereafter made, whether before or after the filing by or against Assignor 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"), together with any extension, renewal or replacement of the same (collectively the "Leases"); this Assignment of all such present and future leases and present and future agreements being effective without further or supplemental assignment.

(b) Rents. All rents, additional rents, revenues, payments (including payments in connection with the exercise of any purchase option or termination rights), income, issues and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts and other benefits arising from the Leases or otherwise from the use, enjoyment and occupancy of the Property and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(c) Bankruptcy Claims. All claims and rights to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the "Bankruptcy Claims").

(d) Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty," and collectively, the "Lease Guaranties") given to Assignor by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor," and collectively, the "Lease Guarantors").

(e) Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other Rights of Lessor. All rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases and beneficiary under the Lease Guaranties, including the immediate and continuing right to make claim for, receive, collect and apply all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry and Possession. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and enforce the Leases.

(h) Power of Attorney. Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(i) Other Rights and Agreements. Any and all other rights of Assignor in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements and substitutions thereof.

2. **Debt.** This Assignment secures the "Debt," as such term is defined in the Loan Agreement. Nothing herein shall be construed to obligate Lender to make any renewals or additional loans or advances, including increasing the amount of the Note.

3. **Term.** This Assignment shall remain in effect until the Debt and all other obligations evidenced by the Note or advanced under the Loan Documents are paid in full, or this Assignment is voluntarily released by Lender. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

4. **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Assignment: (a) the failure of Borrower to perform or to observe any agreement, covenant, or condition required under this Assignment, which failure is not cured within fifteen (15) days

after written notice from Lender to Borrower (provided that Borrower shall not be entitled to a cure period hereunder if such breach or default is not capable of being cured as determined by Lender); (b) the breach by Assignor of any representation or warranty given or made hereunder by Assignor or in any writing furnished or to be furnished by Assignor under this Assignment; or (c) the occurrence of an Event of Default under any of the Loan Documents which has continued beyond any applicable cure period therefor.

**5. License to Assignor Prior to Default.** Notwithstanding that this Assignment is an absolute assignment of the Leases and Rents and not merely the collateral assignment of, or the grant of a lien or security interest in the Leases and Rents, Lender hereby grants to Assignor an exclusive license revocable upon occurrence of an Event of Default to possess, use and enjoy the Property and to collect and retain the Rents of and from the Property, unless and until an Event of Default occurs. Even prior to the occurrence of an Event of Default, no Rents or other payment in excess of one month in advance shall be collected or accepted by Assignor without the prior written consent of Lender.

**6. Lender's Remedies Upon Default.** Upon the occurrence of an Event of Default, Assignor's license to collect and retain the Rents under Section 5 above shall immediately terminate. Lender will have the right at its option to enforce and to exercise any or all of its rights under this Assignment or otherwise, but Assignor expressly agrees that Lender's exercise of any rights hereunder or Lender's affirmative act to collect the Rents or other income or to acquire possession of the Property shall not be a prerequisite or precondition to the full enforceability of Lender's rights hereunder.

**6.1** Upon the occurrence of an Event of Default, and upon Lender's election, Assignor shall deliver to Lender all of the original Leases, and all modifications, extensions, renewals, amendments, and other agreements relating thereto and to the Property. Any oral Leases shall be described in a writing delivered by Assignor to Lender.

**6.2** Upon the occurrence of an Event of Default, Lender, at its option, and without any notice whatsoever to Assignor, shall have the right and is hereby authorized to: (a) take possession and control of the Property; (b) manage and operate the Property; (c) preserve and maintain the Property; (d) make repairs and improvements to the Property which Lender at its discretion deems necessary; (e) collect all Rents from the Property; (f) enforce the Leases; (g) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of the Leases; (h) in the name of either Assignor or Lender enter into real or personal property leases, subleases or tenancy agreements, or other contracts or agreements, with such third parties as Lender may at its discretion select, and upon such terms and conditions as Lender in its discretion may determine; (i) sue for unpaid rents, payments or proceeds in the name of Assignor or Lender; (j) maintain actions for possession of property or for rent; (k) compromise or give acquittance for rents, payments or proceeds that may become due; (l) maintain suits on contracts and agreements; (m) delegate any and all rights and powers given to Lender by this Assignment; and (n) use such measures, legal or equitable, as in its discretion may carry out and effectuate the provisions of this Assignment.

In addition, upon the occurrence of an Event of Default, Lender may, at its option, and without any notice whatsoever to Assignor, and without regard to the value of the Property or the adequacy of the Property (together with any other property securing the Debt) to secure repayment of the Debt, have a receiver appointed to do all of the actions set forth in the immediately preceding paragraph and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver is appointed.

All such actions shall be taken at the expense of the Assignor, who agrees to reimburse Lender for all amounts expended, together with interest thereon from the date of expenditure at the Default Rate stated in the Note, upon demand.

**7. Appointment.** Assignor irrevocably appoints Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, exercisable following the occurrence of an Event of Default, to execute any or all of the rights or powers described in this Assignment, with the same force and effect as if executed by the Assignor, and Assignor ratifies and confirms any and all acts done or omitted to be done by Lender, its agents, servants, employees or attorneys under the authority of such power of attorney.

**8. Instructions to Lessees.** This Assignment constitutes an irrevocable direction to and full authority from Assignor to any lessee, tenant, subtenant, occupant of premises, or other contracting party to pay directly to Lender, upon Lender's request, all Rents and other amounts which may be or become due to Assignor. No proof of the occurrence of an Event of Default shall be required. Any lessee, tenant, subtenant or other contracting party is hereby irrevocably authorized by Assignor to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under its Lease, or for the performance of any obligations under such Lease. Assignor irrevocably agrees that the lessee, tenant, subtenant, or other contracting party following such instructions from Lender shall not be liable to Assignor or any person claiming under Assignor, for making any payment or rendering any performance to Lender. The lessee, tenant, subtenant or other party to any Lease shall have no obligation or right to inquire whether any Event of Default has actually occurred or is then existing. By its execution of this Assignment, Assignor irrevocably makes and delivers the aforementioned instructions. Further, if requested by Lender, Assignor shall (a) give written notice to the tenants under the Leases of the assignment of Rents and Leases by Assignor to Lender herein and pursuant to Section 1.2 of the Security Instrument, of the grant of the revocable license by Lender to Assignor herein and pursuant to Section 7.1(i) of the Security Instrument, and of the respective rights of Assignor and Lender hereunder and under Article 7 of the Security Instrument; and (b) obtain such tenants' agreements to be bound by and comply with the provisions of such assignment and grant. All Leases hereafter executed with respect to the Property shall contain a reference to the foregoing assignment and grant and shall state that the tenant executing such Lease shall be bound by and shall comply with the provisions hereof.

**9. Application of Income.** The Rents, payments, proceeds and income collected by Lender may be applied as follows, in whatever order Lender in its discretion may determine:

(a) To the payment of the operating expenses of the Property, including costs of management (which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents); improvements, alterations, replacements and repairs to the Property; placing the Property in such condition as will, in the judgment of Lender, make it readily rentable; premiums on fire, flood, tornado, casualty, liability or other insurance if Lender deems such insurance necessary; and any claims for damages arising out of the ownership or management of the Property.

(b) To the payment of the actual costs and expenses incurred by Lender in collecting such Rents, payments, proceeds and income, including commissions paid to secure tenants or lessees; reasonable attorneys' fees incurred in recovering the Property or any personal property from any lessee or other contracting party for any cause whatsoever and in the collection of unpaid Rents, payments, income or proceeds; and attorneys' fees incurred by Lender in connection with the enforcement of this Assignment or in protecting Lender or its interest in any of the collateral securing the Loan (including attorney's fees and litigation expenses related to or arising out of any lawsuit or proceeding brought by or

against Lender in any court or other forum, including actions or proceedings brought by or on behalf of Assignor's bankruptcy estate or any guarantor or indemnitor).

(c) To the payment of taxes, special assessments and insurance premiums which become due and delinquent on the Property; all obligations contained in the Loan Documents; and any liens or encumbrances on the Property or any personal property of Assignor.

(d) To the payment of bills for reasonable and necessary repairs and improvements on the Property.

(e) To the payment of the Debt and any and all indebtedness, together with interest, evidenced by the Loan Documents, or any deficiency which may result from any foreclosure sale, in such amount and manner as Lender shall determine in its discretion.

**10. Lien on Property.** If the Rents, payments, income and proceeds from the Property are insufficient to reimburse Lender for any expenses incurred by Lender pursuant to this Assignment, any unpaid disbursements shall be a lien on the Property with priority equal to the lien of the Security Instrument.

**11. Lender as Agent.** Lender is acting solely as agent of Assignor in taking any actions in connection with the Property. Lender assumes no liability in any other capacity. Lender shall not be obligated to perform any obligation or duty, or discharge any liability under any of the Leases under or by reason of this Assignment.

**12. Bankruptcy.**

12.1 If Lender determines at any time and from time to time that it is necessary or desirable to protect Lender's interest in the Loan and the Property, Lender shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. Assignor shall give Lender notice promptly upon Assignor learning that a petition under the Bankruptcy Code has been filed by or against Tenant.

12.2 If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Lender not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Assignor within such ten (10) day period a notice stating that (i) Lender demands that Assignor assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

**13. No Liability of Lender; Indemnification of Lender.**

13.1 Lender shall not in any way be liable to Assignor for any action or inaction of Lender, its employees or agents with respect to Lender's exercise of the powers granted Lender by this

Assignment, including any liability relating to the renting or leasing of the Property after an Event of Default by Assignor, or damage to the Property (unless caused by the willful misconduct or gross negligence of Lender). Assignor expressly waives and releases Lender from all such liability.

13.2 Lender shall not be responsible for any failure to perform any covenants in any of the Leases, either before or after the exercise of any assignments or remedies contained in this Assignment. Lender shall not be responsible for the condition or operation of the Property or for any damage or harm to the Property or any additions, improvements, or fixtures to the Property. This Assignment shall not operate to place upon Lender any obligation for the control, care, management or repair of the Property, or for the discovery of or correction of any dangerous or defective condition on the Property, including any environmental matters described in the separate Environmental Indemnity, or any negligence in the management, upkeep, repair or control of the Property. Lender also shall not be liable to any person or entity for any accidents or other occurrences occurring on or with respect to any part of the Property, except for any such accidents or other occurrences resulting from the willful misconduct or grossly negligent actions of Lender.

13.3 Assignor shall save, defend, indemnify and hold Lender and its agents, employees, contractors, and managers harmless from and against any and all costs, expenses, liability, damages, claims or assertions that may be incurred by or made against Lender or any such persons or entities arising from or related to the Leases or Rents, or by reason of this Assignment, including any claims by reason of any alleged obligations and undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases, or any right to maintain, inspect, manage or otherwise exercise any control or supervision over the Property or the condition thereof, or any claims described in the preceding subsection of this Assignment, except for any claims resulting from the willful misconduct or grossly negligent actions of Lender. Should Lender incur any such liability, loss or damage, Assignor shall on demand pay to Lender any and all cost, expense, liability, or damage arising therefrom plus costs, expenses and attorneys' fees and expenses, with interest from the date the cost or loss is incurred, at the Default Rate stated in the Note, and all of the foregoing shall be secured by this Assignment and by the other Loan Documents.

14. **Remedies Cumulative.** The remedies provided in this Assignment and in the other Loan Documents are cumulative and not mutually exclusive. The remedies can be exercised successively or concurrently, as many times as and as often as the occurrence of an occasion for which Lender is entitled to a remedy under the Loan Documents or applicable law, and the exercise of any one or more remedies shall not be a waiver of or preclude the exercise of any one or more remedies at the same or any later time for the same or any later default.

15. **Continuing Effect.** No judgment or decree which may be entered on any Debt secured or intended to be secured by the Security Instrument or any other Loan Documents shall lessen the effect of this instrument, but this Assignment shall continue in full effect until the full payment and discharge of (a) the Debt secured by the Security Instrument or any other Loan Documents, and (b) all expenses incurred by Lender relating to the Property. This Assignment shall remain in full effect during the pendency of any foreclosure proceedings under any of the other Loan Documents, both before and after sale, until the issuance of a deed to the foreclosure sale purchaser.

16. **Further Assurances; Receivership and Other Proceedings.**

16.1 Upon Lender's request, Assignor shall execute any documents or instruments Lender may request, for the purpose of providing further evidence of this Assignment, to carry out the intent and terms of this Assignment, to evidence other amounts that may become payable from Assignor

to Lender as referred to in this Assignment, or to accomplish any other purpose deemed appropriate by Lender.

16.2 Assignor consents and authorizes any court of competent jurisdiction to issue, *ex parte* and without any notice to Assignor or its counsel (which notice is hereby waived), any orders that may be appropriate, in Lender's discretion, to enforce the terms of this Assignment or to grant Lender such powers and authority as Lender may need to enforce this Assignment, including the appointment of a receiver for the Property. No bond shall be required of Lender. The parties recognize and agree that time will be of the essence in any such proceeding. Such receiver shall be entitled without notice to take possession of and protect the Property, operate the same, collect the Rents therefrom, and otherwise exercise any rights or authority granted to Assignor in this Assignment or any other Loan Documents. Lender's right to the appointment of a receiver shall continue regardless of the value of the Property as security for the Debt or the solvency of any person or corporation liable for the payment of such amount. Notwithstanding the appointment of any receiver, liquidator or trustee for Assignor, or of any of its property, or of the Property, Lender shall be entitled to retain possession and control of all Property now or hereafter held under this Assignment and any other Loan Documents, including the Rents.

17. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LAND IS LOCATED WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF ("GOVERNING STATE"). ASSIGNOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. ASSIGNOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Assignor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Assignment may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

18. **Legal Challenges.** Assignor shall appear for itself (and for Lender, if Lender so requests) in any action or proceeding affecting the Property, the Leases, the Rents or this Assignment, and shall at its own cost vigorously defend title to the Property and the enforceability of the Leases and this Assignment against all legal challenges. Where necessary or where requested by Lender, Assignor shall at its own cost institute any legal actions respecting the same. Assignor shall not challenge, and irrevocably waives any challenge to, the legality or enforceability of this Assignment and all provisions of this Assignment.

19. **Set-Off.** Upon default by Assignor under this Assignment, Lender (or the holder or owner of any Debt secured by this Assignment) shall immediately have the right, without further notice to Borrower, to set off against the Note and any other debts secured by this Assignment all debts of Lender (or such holder or owner) to Borrower, whether or not then due.

20. **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing (including by facsimile) and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid answer back acknowledged), addressed as follows:

If to Lender:

Romspen California Mortgage Limited Partnership  
162 Cumberland Street, Suite 300  
Toronto, Ontario M5R 3N5  
Attention: Joel Mickelson and Blake Cassidy  
Telephone: (416) 928-4870  
Facsimile: (416) 966-1161  
JoelMickelson@romspen.com  
BlakeCassidy@romspen.com

with a copy to:

Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201  
Attention: Clifton M. Dugas, II  
Telephone: (214) 661-5545  
Facsimile: (214) 397-0033  
cdugas@polsinelli.com

If to Assignor:

Coldwater Development LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

with a copy to:

Law Offices of Abdulaziz, Grossbart & Rudman  
6454 Coldwater Canyon Avenue  
North Hollywood, California 91606  
Telephone: (818) 760-2000  
Facsimile: (818) 760-3908  
Email: bdr@agrlaw.com

or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day, in the case of facsimile, upon completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) with receipt acknowledged by the recipient thereof.

21. **Miscellaneous.** The following provisions are additional terms of this Assignment:

21.1 Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the reduction or satisfaction of the Debt, without prejudice to any of its rights under this Assignment.

21.2 No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion.

21.3 All rights and remedies of Lender are cumulative and may be exercised successively or concurrently, and shall inure to the benefit of Lender's successors and assigns.

21.4 Nothing herein shall be interpreted to make Lender a "mortgagee in possession" in the absence of Lender's taking of actual possession of the Property. Assignor hereby waives any claims against Lender by reason of Lender's exercise of any remedies hereunder.

21.5 All obligations of Assignor shall bind its heirs, executors, administrators, trustees, custodians, successors and assigns.

21.6 In case of any conflict between the terms of this Assignment and the terms of the Security Instrument or Loan Agreement, the terms of the Security Instrument or Loan Agreement shall prevail.

21.7 This Assignment, including this Section, may only be modified or amended by written documents and no oral amendment, waiver, extension or other modification hereof shall be enforceable, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Assignment; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Assignment; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Assignment.

21.8 If any provision of this Assignment is held invalid or unenforceable, the holding shall affect only the provision in question and all other provisions of this Assignment shall remain in full force and effect.

21.9 For the purpose of facilitating the execution of this Assignment and for other purposes, this Assignment may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

## 22. Definitions; Rules of Construction.

22.1 All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "individually and collectively, jointly and severally, each Assignor (if more than one) and any subsequent owner or owners of the Property or any part thereof or any interest therein and Assignor in its capacity as debtor-in-possession after the commencement of a proceeding under the United States Bankruptcy Code"; "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 Assignment," the word "person" shall include an individual, corporation, limited liability company, 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 fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender (a) in protecting its interest in the Property, the Leases and the Rents, (b) relating to or arising out of any lawsuit or proceeding brought by or against Lender in any court or other forum (including actions or proceedings brought by or on behalf of Assignor's bankruptcy estate or any guarantor or indemnitor), or (c) in enforcing its rights under this Assignment.

22.2 The following rules of construction shall be applicable for all purposes of this Assignment and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

(a) the terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";

(b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;

(c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Assignment;

(d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";

(e) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Assignment refer to this Assignment as a whole and not to any particular provision or section of this Assignment;

(f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;

(g) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document; and

(h) wherever Lender's judgment, consent, approval or discretion is required under this Assignment for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Assignment, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Assignment or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Assignor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

23. **Trial by Jury.** ASSIGNOR AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT, THE SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY ASSIGNOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. ASSIGNOR AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, ASSIGNOR HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE (PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO JUDICIAL REFERENCE SHALL BE APPLICABLE WITH RESPECT TO ANY ACTION IN RESPECT OF THE FORECLOSURE OF THE SECURITY INSTRUMENT). PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640 TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER. ASSIGNOR HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARMS-LENGTH BASIS, WITH ASSIGNOR AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN.



Assignor's Initials

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**24. Local Law Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment (other than the terms and conditions of Section 25), the terms and conditions of this Section shall be binding.

**24.1 Lender's Remedies Upon Default.** Without limiting any other right or remedies of Lender set forth in this Assignment or under any of the other Loan Documents to which Assignor is a party, or available at law or in equity, at any time upon or following the occurrence of any Event of Default, Lender shall have the right to enforce all of the rights and remedies of a Lender under Section 2938 of the California Civil Code ("Section 2938"). In the event that Lender shall elect to enforce this Assignment in accordance with Section 2938, the following procedures shall apply, as applicable:

(a) Lender may send a demand notice in the form prescribed by Section 2938 to, in the case of enforcement under Section 2938(c)(3), one or more of the tenants of the Property, with a copy to Assignor and any other lender under a recorded assignment of leases, rents, issues and profits with respect to the Property, or, in the case of enforcement under Section 2938(c)(4), to Assignor with a copy to any such other lenders in accordance with the procedures set forth therein; provided, however, nothing herein shall grant Assignor the right to encumber the Property in violation of the Loan Documents. Without limiting Lender's rights to any amounts received by Assignor after an Event of Default, Assignor shall immediately turn over to Lender any Rents or any other Assigned Property received by Assignor from any tenant of the Property from and after Lender's enforcement of this Assignment under either such Sections 2938(c)(3) or (4), it being understood that Assignor shall be deemed to hold such amounts as trustee for Lender until such amounts have been paid to Lender. In addition, Assignor shall also cause any collection agent for Assignor or any other person who has collected for Assignor's benefit relating to the period from and after Lender's enforcement of this Assignment under either such Sections 2938(c)(3) or (4), to turn such Rents or other Assigned Property over to Lender

(i) Notwithstanding anything to the contrary contained in this Assignment or any other Loan Document, if Lender shall proceed to enforce this Assignment by means other than the appointment of a receiver and consequently receives Rents or other Assigned Property as a result thereof, and Lender receives written demand from Assignor (or any other party entitled under law to make demand on Lender) to pay reasonable costs of protecting and preserving the Property, Lender may elect either to pay (either directly to the party to whom owed, or by joint check payable to Assignor and such party) or authorize Assignor to pay, such costs (such payments being referred to herein as "Protective Payments"), conditioned upon Assignor furnishing to Lender all information (such as invoices, bills, contracts, or purchase orders) necessary in order for Lender to identify the party to whom payment is owed or the work, service or item for which payment is requested and to establish that such Protective Payments are required to be paid or authorized under this Paragraph. If Assignor is authorized to pay any Protective Payments under this Paragraph, Lender reserves the right to deposit the amounts necessary to pay such Protective Payments into a non-interest bearing checking account, in which Assignor shall have granted to Lender a perfected, first priority security interest, from which Assignor shall be obligated to draw the funds necessary to pay such Protective Payments. In the event that Lender agrees or is required under any circumstances to pay or authorize the payment of any Protective Payments consisting of improvement of the Property or any portion thereof (or any other costs the non-payment of which would entitle the payee to enforce mechanic's or materialmen's liens or similar rights), Lender shall be authorized, before paying or authorizing the payment of any such

payments, to require compliance with standard construction loan disbursement conditions with respect to such costs, including without limitation, the receipt of unconditional mechanic's lien waivers with respect to the work for which such costs are to be paid.

(ii) In no event shall Lender be obligated to pay or authorize the payment of Protective Payments in excess of any Rents and other Assigned Property actually received by Lender as a result of the enforcement of this clause of this Paragraph.

(iii) Nothing contained in this Paragraph shall limit the rights of Lender under any other provision of this Assignment or in any other Loan Document.

(iv) Nothing contained in this Paragraph shall limit either (x) Lender's right to cease at any time any further enforcement of this Assignment under Section 2938 by sending written notice of the cancellation thereof to each party to whom a demand notice was sent, or (y) Lender's right to seek appointment of a receiver, either of which if enforced by Lender, shall terminate Lender's obligations under this clause (a)(i) of this Paragraph.

(v) In no event shall any enforcement of Lender's rights under this Paragraph, including, without limitation, the payment or authorization of payment of any Protective Payments, make Lender a "mortgagee-in-possession" or limit, waive, or otherwise derogate any of Lender's other rights and remedies available to it under the Loan Documents to which Assignor is a party or at law. In no event shall any exercise of rights by the Lender under this Paragraph, including, without limitation, the payment or authorization of payment of any Protective Payments, be construed to require the Lender to operate or manage the Property or be construed as an assumption by Lender of any obligation to operate or manage the Property, and all liabilities and obligations in relation to the operation and management of the Property shall remain exclusively that of the Assignor.

(b) Any Rents and other Assigned Property received by Lender as a result of any such enforcement measures shall be applied as provided in this Assignment and/or the other Loan Documents.

(c) Without in any way limiting Assignor's other indemnification obligations set forth in this Assignment and in any of the Loan Documents to which Assignor is a party, Assignor shall indemnify, defend, protect and hold harmless Lender, and its successors and assigns, from and against any and all losses, costs, expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), damages, liabilities or claims asserted against or suffered by Lender arising from any work performed or goods or services furnished in connection with the ownership or operation of the Property at any time during which Lender shall be enforcing its rights under this Paragraph.

**24.2 Leases.** Assignor acknowledges and agrees that all Leases shall be subordinate to the Security Instrument unless Lender shall specify otherwise at any time during the term of this Assignment. Assignor further agrees that, if required by Lender, Assignor shall, at Assignor's expense, cause each lessee under each of such Leases to enter into a subordination and attornment agreement with Lender (and Assignor, if Lender requires that Assignor be a party to such agreement) which is in form and substance satisfactory to Lender, or cause such Leases to be made superior to the Security Instrument in a manner satisfactory to Lender. Each Lease executed subsequent to the recording of the Security

Instrument shall contain a provision permitting the Lender to notify the tenant at any time that the Lease will be prior to the Security Instrument. Lender shall be a third party beneficiary of all attorney provisions contained in all Leases executed subsequent to this Assignment. All lessees who execute Leases or Lease amendments subsequent to the date of recording of this Assignment shall be bound by the terms of this provision.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Leases and Rents the day and year first above written.

**ASSIGNOR:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On 3-14, 2017, before me, Thomas Gallagher, Notary Public

(insert name and title of the officer)

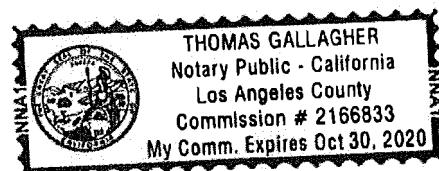
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**Exhibit "A"**

**Legal Description**

**PARCEL 1:**

THAT PORTION OF LOT 1 OF COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT 7 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS; IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT ALONG SAID PROLONGATION AND NORTHERLY LINE NORTH 78° 17' 00" WEST 311.77 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 7; THENCE ALONG SAID PROLONGATION SOUTH 78° 17' 00" EAST 31.03 FEET TO A POINT DISTANT NORTH 78° 17' 00" WEST 150.74 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE SOUTH 51° 53' 58" WEST TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT 1 NORTH 85° 57' 00" WEST TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1 NORTH 00° 34' 40" EAST 213.54 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1 SOUTH 88° 22' 30" EAST 1277.69 FEET TO THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CHARLES B. DIAMOND, RECORDED ON JULY 24, 1961 AS INSTRUMENT NO. 1259, IN BOOK D-1296 PAGES 51 AND 52, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LAND TO DIAMOND, SOUTH 05° 06' 00" WEST 224.43 FEET TO THE TRUE POINT OF BEGINNING, PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-022 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556400, OF OFFICIAL RECORDS.

**PARCEL 2:**

THAT PORTION OF LOT 2 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 85° 57' 00" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2 TO A POINT IN THAT CERTAIN COURSE RECITED AS SOUTH 51° 53' 58" WEST 96.80 FEET" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CERTAIN COURSE SOUTH 51° 53' 58" WEST TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST RECORDED ON FEBRUARY 6, 1962 AS INSTRUMENT NO. 186, IN BOOK T-2216 PAGE 834, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 57° 54' 35" WEST 143.29 FEET TO A POINT IN THAT CERTAIN COURSE RECITED AS "NORTH 55° 00' 00" WEST 100.00 FEET" IN THE DEED OF TRUST RECORDED ON

APRIL 4, 1963 AS INSTRUMENT NO. 2537, IN BOOK T-2938 PAGE 145 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH  $55^{\circ} 00' 00''$  EAST 12.00 FEET FROM THE WESTERLY TERMINUS OF SAID LAST MENTIONED CERTAIN COURSE; THENCE NORTH  $55^{\circ} 00' 00''$  EAST 42.00 FEET; THENCE SOUTH  $35^{\circ} 00' 00''$  WEST 23.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET SAID CURVE BEING TANGENT AT ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES, FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTHERLY ALONG SAID CURVE TO A POINT ON THE SOUTHERLY LINE OF LOT 2 OF SAID COLDWATER CANYON TRACT; THENCE NORTH  $76^{\circ} 50' 30''$  WEST ALONG SAID SOUTHERLY LINE TO AN ANGLE POINT IN SAID SOUTHERLY LINE DISTANT SOUTH  $89^{\circ} 08' 15''$  EAST 672.10 FEET FROM THE SOUTHWEST CORNER OF SAID LAST MENTIONED LOT 2 OF THE COLDWATER CANYON TRACT; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH  $89^{\circ} 08' 15''$  WEST 672.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 NORTH  $00^{\circ} 34' 40''$  EAST 222.09 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-021 RECORDED NOVEMBER 3, 1988 AS INSTRUMENT NO. 88-1776821, OF OFFICIAL RECORDS.

PARCEL 3:

THAT PORTION OF LOT 3 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 3 SOUTH  $89^{\circ} 08' 15''$  EAST 672.10 FEET TO AN ANGLE IN SAID NORTHERLY LINE; THENCE SOUTH  $76^{\circ} 50' 30''$  EAST TO A POINT IN THAT CERTAIN CURVE RECITED AS A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET, SAID CURVE BEING TANGENT AS ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF SAID TRACT NO. 11859" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY SOUTHEASTERLY ALONG SAID CURVE TO THAT CERTAIN POINT DESCRIBED IN SAID CORPORATION GRANT DEED AS BEING AN ARC DISTANCE OF 221.11 FEET" (FROM THE BEGINNING OF SAID CURVE IN SAID DEED); THENCE SOUTH  $41^{\circ} 00' 00''$  WEST 111.09 FEET; THENCE SOUTH  $66^{\circ} 48' 37''$  12.00 FEET; THENCE SOUTH  $23^{\circ} 11' 23''$  WEST 103.00 FEET; THENCE SOUTH  $71^{\circ} 15' 00''$  EAST 31.00 FEET; THENCE SOUTH  $15^{\circ} 45' 00''$  WEST 36.00 FEET; THENCE SOUTH  $71^{\circ} 15' 00''$  EAST 23.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 47.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $02^{\circ} 02' 22''$ , AN ARC DISTANCE OF 17.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE

NORTHERLY, HAVING A RADIUS OF 103.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $37^{\circ} 15' 57''$ ; AN ARC DISTANT OF 66.99 FEET; ALONG THE PROLONGATION OF A RADIAL LINE OF SAID LAST MENTIONED CURVE SOUTH  $02^{\circ} 31' 25''$  WEST 39.36 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID SOUTHERLY LINE NORTH  $77^{\circ} 35' 30''$  WEST 384.04 FEET, MORE OR LESS TO AN ANGLE POINT IN SAID SOUTHERLY LINE; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH  $88^{\circ} 30' 30''$  WEST 716.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE WESTERLY LINE OF SAID LOT 3 NORTH  $00^{\circ} 34' 40''$  EAST 402.58 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-019 RECORDED MAY 15, 1992 AS INSTRUMENT NO. 92-885381 OF OFFICIAL RECORDS.

PARCEL 4:

THAT PORTION OF LOT 4 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH  $79^{\circ} 33' 10''$  WEST 235.00 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN BOUNDARY LINE OF SAID LOT 4 SHOWN AS HAVING A BEARING AND DISTANCE OF SOUTH  $79^{\circ} 33' 10''$  EAST 1057.13 FEET; THENCE NORTHWESTERLY ON A DIRECT LINE TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4, DISTANT THEREON SOUTH  $88^{\circ} 30' 30''$  WEST 40.00 FEET FROM THE NORTHEASTERLY TERMINUS OF THAT CERTAIN NORTHERLY LINE SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH  $88^{\circ} 30' 30''$  WEST 716.84 FEET. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-020 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556401 OF OFFICIAL RECORDS.

# EXHIBIT 7

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310863**



Pages:  
0019

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

**03/20/17 AT 08:00AM**

FEES:	87.00
TAXES:	0.00
OTHER:	0.00
<hr/>	
PAID:	87.00



**LEADSHEET**



**20170320020001**

**00013489028**



**008212116**

**SEQ:  
11**

**SECURE - 8:00AM**



**THIS FORM IS NOT TO BE DUPLICATED**

E454776

**E08\_170320\_5657394**

This document was prepared  
by and after recording should  
be returned to:

Polsinelli PC  
2950 N Harwood, Suite 2100  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(space above reserved for recorder's use)

**ASSIGNMENT OF LEASES AND RENTS**

**LYDDA LUD, LLC,**  
a California limited liability company

(Assignor)

to

**ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,**  
an Ontario limited partnership  
(Lender)

Dated: March 16, 2017

RECORDED CONCURRENTLY HEREWITH

### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of March 16, 2017, by and between LYDDA LUD, LLC, a California limited liability company (together with its successors and assigns, "Assignor"), and ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP, an Ontario limited partnership (together with its successors and assigns, "Lender").

#### Recitals of Fact

The following recitals are a material part of this instrument:

A. Assignor is the owner of the Property (as defined in the Loan Agreement (defined below)), with a legal description as set forth in Exhibit A attached hereto and incorporated herein.

B. Lender is prepared to make a loan (the "Loan") to Assignor and COLDWATER DEVELOPMENT LLC, a California limited liability company (together with Assignor, individually and collectively, jointly and severally, "Borrower"), in the principal amount of \$25,000,000.00 pursuant to a Loan Agreement of even date herewith between Lender and Borrower (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Loan Agreement"), which Loan shall be evidenced by that certain Promissory Note of even date herewith given by Borrower in favor of Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Note") and secured by, among other things, those certain Deeds of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof given by each Borrower to Lender and encumbering the Property (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Security Instrument"). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

C. Assignor desires to assign to Lender the rents, leases and profits of and from the Property and the proceeds therefrom, as primary and not as secondary security for the payment of the Note and the Debt (as such term is hereinafter defined), and for the performance of the obligations in the Loan Agreement, Security Instrument and the other Loan Documents.

#### Agreement

In consideration of the Loan from Lender to Borrower, which is of direct and substantial benefit to Assignor, the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Assignment.** Assignor absolutely and unconditionally assigns, transfers, sets over and conveys to Lender the following, absolutely and not as additional security:

(a) **Leases and Other Agreements.** All existing and future written and oral leases, subleases, tenancies, subtenancies, licenses, contracts, contract rights, and occupancy and all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property, now or hereafter made, whether before or after the filing by or against Assignor 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"), together with any extension, renewal or replacement of the same (collectively the "Leases"); this Assignment of all such present and future leases and present and future agreements being effective without further or supplemental assignment.

ASSIGNMENT OF LEASES AND RENTS

57612960

(b) Rents. All rents, additional rents, revenues, payments (including payments in connection with the exercise of any purchase option or termination rights), income, issues and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts and other benefits arising from the Leases or otherwise from the use, enjoyment and occupancy of the Property and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(c) Bankruptcy Claims. All claims and rights to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the "Bankruptcy Claims").

(d) Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty," and collectively, the "Lease Guaranties") given to Assignor by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor," and collectively, the "Lease Guarantors").

(e) Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other Rights of Lessor. All rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases and beneficiary under the Lease Guaranties, including the immediate and continuing right to make claim for, receive, collect and apply all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry and Possession. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and enforce the Leases.

(h) Power of Attorney. Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(i) Other Rights and Agreements. Any and all other rights of Assignor in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements and substitutions thereof.

2. **Debt.** This Assignment secures the "Debt," as such term is defined in the Loan Agreement. Nothing herein shall be construed to obligate Lender to make any renewals or additional loans or advances, including increasing the amount of the Note.

3. **Term.** This Assignment shall remain in effect until the Debt and all other obligations evidenced by the Note or advanced under the Loan Documents are paid in full, or this Assignment is voluntarily released by Lender. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

4. **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Assignment: (a) the failure of Borrower to perform or to observe any agreement, covenant, or condition required under this Assignment, which failure is not cured within fifteen (15) days

after written notice from Lender to Borrower (provided that Borrower shall not be entitled to a cure period hereunder if such breach or default is not capable of being cured as determined by Lender); (b) the breach by Assignor of any representation or warranty given or made hereunder by Assignor or in any writing furnished or to be furnished by Assignor under this Assignment; or (c) the occurrence of an Event of Default under any of the Loan Documents which has continued beyond any applicable cure period therefor.

**5. License to Assignor Prior to Default.** Notwithstanding that this Assignment is an absolute assignment of the Leases and Rents and not merely the collateral assignment of, or the grant of a lien or security interest in the Leases and Rents, Lender hereby grants to Assignor an exclusive license revocable upon occurrence of an Event of Default to possess, use and enjoy the Property and to collect and retain the Rents of and from the Property, unless and until an Event of Default occurs. Even prior to the occurrence of an Event of Default, no Rents or other payment in excess of one month in advance shall be collected or accepted by Assignor without the prior written consent of Lender.

**6. Lender's Remedies Upon Default.** Upon the occurrence of an Event of Default, Assignor's license to collect and retain the Rents under Section 5 above shall immediately terminate. Lender will have the right at its option to enforce and to exercise any or all of its rights under this Assignment or otherwise, but Assignor expressly agrees that Lender's exercise of any rights hereunder or Lender's affirmative act to collect the Rents or other income or to acquire possession of the Property shall not be a prerequisite or precondition to the full enforceability of Lender's rights hereunder.

**6.1** Upon the occurrence of an Event of Default, and upon Lender's election, Assignor shall deliver to Lender all of the original Leases, and all modifications, extensions, renewals, amendments, and other agreements relating thereto and to the Property. Any oral Leases shall be described in a writing delivered by Assignor to Lender.

**6.2** Upon the occurrence of an Event of Default, Lender, at its option, and without any notice whatsoever to Assignor, shall have the right and is hereby authorized to: (a) take possession and control of the Property; (b) manage and operate the Property; (c) preserve and maintain the Property; (d) make repairs and improvements to the Property which Lender at its discretion deems necessary; (e) collect all Rents from the Property; (f) enforce the Leases; (g) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of the Leases; (h) in the name of either Assignor or Lender enter into real or personal property leases, subleases or tenancy agreements, or other contracts or agreements, with such third parties as Lender may at its discretion select, and upon such terms and conditions as Lender in its discretion may determine; (i) sue for unpaid rents, payments or proceeds in the name of Assignor or Lender; (j) maintain actions for possession of property or for rent; (k) compromise or give acquittance for rents, payments or proceeds that may become due; (l) maintain suits on contracts and agreements; (m) delegate any and all rights and powers given to Lender by this Assignment; and (n) use such measures, legal or equitable, as in its discretion may carry out and effectuate the provisions of this Assignment.

In addition, upon the occurrence of an Event of Default, Lender may, at its option, and without any notice whatsoever to Assignor, and without regard to the value of the Property or the adequacy of the Property (together with any other property securing the Debt) to secure repayment of the Debt, have a receiver appointed to do all of the actions set forth in the immediately preceding paragraph and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver is appointed.

All such actions shall be taken at the expense of the Assignor, who agrees to reimburse Lender for all amounts expended, together with interest thereon from the date of expenditure at the Default Rate stated in the Note, upon demand.

**7. Appointment.** Assignor irrevocably appoints Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, exercisable following the occurrence of an Event of Default, to execute any or all of the rights or powers described in this Assignment, with the same force and effect as if executed by the Assignor, and Assignor ratifies and confirms any and all acts done or omitted to be done by Lender, its agents, servants, employees or attorneys under the authority of such power of attorney.

**8. Instructions to Lessees.** This Assignment constitutes an irrevocable direction to and full authority from Assignor to any lessee, tenant, subtenant, occupant of premises, or other contracting party to pay directly to Lender, upon Lender's request, all Rents and other amounts which may be or become due to Assignor. No proof of the occurrence of an Event of Default shall be required. Any lessee, tenant, subtenant or other contracting party is hereby irrevocably authorized by Assignor to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under its Lease, or for the performance of any obligations under such Lease. Assignor irrevocably agrees that the lessee, tenant, subtenant, or other contracting party following such instructions from Lender shall not be liable to Assignor or any person claiming under Assignor, for making any payment or rendering any performance to Lender. The lessee, tenant, subtenant or other party to any Lease shall have no obligation or right to inquire whether any Event of Default has actually occurred or is then existing. By its execution of this Assignment, Assignor irrevocably makes and delivers the aforementioned instructions. Further, if requested by Lender, Assignor shall (a) give written notice to the tenants under the Leases of the assignment of Rents and Leases by Assignor to Lender herein and pursuant to Section 1.2 of the Security Instrument, of the grant of the revocable license by Lender to Assignor herein and pursuant to Section 7.1(i) of the Security Instrument, and of the respective rights of Assignor and Lender hereunder and under Article 7 of the Security Instrument; and (b) obtain such tenants' agreements to be bound by and comply with the provisions of such assignment and grant. All Leases hereafter executed with respect to the Property shall contain a reference to the foregoing assignment and grant and shall state that the tenant executing such Lease shall be bound by and shall comply with the provisions hereof.

**9. Application of Income.** The Rents, payments, proceeds and income collected by Lender may be applied as follows, in whatever order Lender in its discretion may determine:

(a) To the payment of the operating expenses of the Property, including costs of management (which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents); improvements, alterations, replacements and repairs to the Property; placing the Property in such condition as will, in the judgment of Lender, make it readily rentable; premiums on fire, flood, tornado, casualty, liability or other insurance if Lender deems such insurance necessary; and any claims for damages arising out of the ownership or management of the Property.

(b) To the payment of the actual costs and expenses incurred by Lender in collecting such Rents, payments, proceeds and income, including commissions paid to secure tenants or lessees; reasonable attorneys' fees incurred in recovering the Property or any personal property from any lessee or other contracting party for any cause whatsoever and in the collection of unpaid Rents, payments, income or proceeds; and attorneys' fees incurred by Lender in connection with the enforcement of this Assignment or in protecting Lender or its interest in any of the collateral securing the Loan (including attorney's fees and litigation expenses related to or arising out of any lawsuit or proceeding brought by or

against Lender in any court or other forum, including actions or proceedings brought by or on behalf of Assignor's bankruptcy estate or any guarantor or indemnitor).

(c) To the payment of taxes, special assessments and insurance premiums which become due and delinquent on the Property; all obligations contained in the Loan Documents; and any liens or encumbrances on the Property or any personal property of Assignor.

(d) To the payment of bills for reasonable and necessary repairs and improvements on the Property.

(e) To the payment of the Debt and any and all indebtedness, together with interest, evidenced by the Loan Documents, or any deficiency which may result from any foreclosure sale, in such amount and manner as Lender shall determine in its discretion.

10. **Lien on Property.** If the Rents, payments, income and proceeds from the Property are insufficient to reimburse Lender for any expenses incurred by Lender pursuant to this Assignment, any unpaid disbursements shall be a lien on the Property with priority equal to the lien of the Security Instrument.

11. **Lender as Agent.** Lender is acting solely as agent of Assignor in taking any actions in connection with the Property. Lender assumes no liability in any other capacity. Lender shall not be obligated to perform any obligation or duty, or discharge any liability under any of the Leases under or by reason of this Assignment.

12. **Bankruptcy.**

12.1 If Lender determines at any time and from time to time that it is necessary or desirable to protect Lender's interest in the Loan and the Property, Lender shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. Assignor shall give Lender notice promptly upon Assignor learning that a petition under the Bankruptcy Code has been filed by or against Tenant.

12.2 If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Lender not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Assignor within such ten (10) day period a notice stating that (i) Lender demands that Assignor assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

13. **No Liability of Lender; Indemnification of Lender.**

13.1 Lender shall not in any way be liable to Assignor for any action or inaction of Lender, its employees or agents with respect to Lender's exercise of the powers granted Lender by this

Assignment, including any liability relating to the renting or leasing of the Property after an Event of Default by Assignor, or damage to the Property (unless caused by the willful misconduct or gross negligence of Lender). Assignor expressly waives and releases Lender from all such liability.

13.2 Lender shall not be responsible for any failure to perform any covenants in any of the Leases, either before or after the exercise of any assignments or remedies contained in this Assignment. Lender shall not be responsible for the condition or operation of the Property or for any damage or harm to the Property or any additions, improvements, or fixtures to the Property. This Assignment shall not operate to place upon Lender any obligation for the control, care, management or repair of the Property, or for the discovery of or correction of any dangerous or defective condition on the Property, including any environmental matters described in the separate Environmental Indemnity, or any negligence in the management, upkeep, repair or control of the Property. Lender also shall not be liable to any person or entity for any accidents or other occurrences occurring on or with respect to any part of the Property, except for any such accidents or other occurrences resulting from the willful misconduct or grossly negligent actions of Lender.

13.3 Assignor shall save, defend, indemnify and hold Lender and its agents, employees, contractors, and managers harmless from and against any and all costs, expenses, liability, damages, claims or assertions that may be incurred by or made against Lender or any such persons or entities arising from or related to the Leases or Rents, or by reason of this Assignment, including any claims by reason of any alleged obligations and undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases, or any right to maintain, inspect, manage or otherwise exercise any control or supervision over the Property or the condition thereof, or any claims described in the preceding subsection of this Assignment, except for any claims resulting from the willful misconduct or grossly negligent actions of Lender. Should Lender incur any such liability, loss or damage, Assignor shall on demand pay to Lender any and all cost, expense, liability, or damage arising therefrom plus costs, expenses and attorneys' fees and expenses, with interest from the date the cost or loss is incurred, at the Default Rate stated in the Note, and all of the foregoing shall be secured by this Assignment and by the other Loan Documents.

14. **Remedies Cumulative.** The remedies provided in this Assignment and in the other Loan Documents are cumulative and not mutually exclusive. The remedies can be exercised successively or concurrently, as many times as and as often as the occurrence of an occasion for which Lender is entitled to a remedy under the Loan Documents or applicable law, and the exercise of any one or more remedies shall not be a waiver of or preclude the exercise of any one or more remedies at the same or any later time for the same or any later default.

15. **Continuing Effect.** No judgment or decree which may be entered on any Debt secured or intended to be secured by the Security Instrument or any other Loan Documents shall lessen the effect of this instrument, but this Assignment shall continue in full effect until the full payment and discharge of (a) the Debt secured by the Security Instrument or any other Loan Documents, and (b) all expenses incurred by Lender relating to the Property. This Assignment shall remain in full effect during the pendency of any foreclosure proceedings under any of the other Loan Documents, both before and after sale, until the issuance of a deed to the foreclosure sale purchaser.

16. **Further Assurances; Receivership and Other Proceedings.**

16.1 Upon Lender's request, Assignor shall execute any documents or instruments Lender may request, for the purpose of providing further evidence of this Assignment, to carry out the intent and terms of this Assignment, to evidence other amounts that may become payable from Assignor

to Lender as referred to in this Assignment, or to accomplish any other purpose deemed appropriate by Lender.

16.2 Assignor consents and authorizes any court of competent jurisdiction to issue, *ex parte* and without any notice to Assignor or its counsel (which notice is hereby waived), any orders that may be appropriate, in Lender's discretion, to enforce the terms of this Assignment or to grant Lender such powers and authority as Lender may need to enforce this Assignment, including the appointment of a receiver for the Property. No bond shall be required of Lender. The parties recognize and agree that time will be of the essence in any such proceeding. Such receiver shall be entitled without notice to take possession of and protect the Property, operate the same, collect the Rents therefrom, and otherwise exercise any rights or authority granted to Assignor in this Assignment or any other Loan Documents. Lender's right to the appointment of a receiver shall continue regardless of the value of the Property as security for the Debt or the solvency of any person or corporation liable for the payment of such amount. Notwithstanding the appointment of any receiver, liquidator or trustee for Assignor, or of any of its property, or of the Property, Lender shall be entitled to retain possession and control of all Property now or hereafter held under this Assignment and any other Loan Documents, including the Rents.

17. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LAND IS LOCATED WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF ("GOVERNING STATE"). ASSIGNOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. ASSIGNOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Assignor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Assignment may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

18. **Legal Challenges.** Assignor shall appear for itself (and for Lender, if Lender so requests) in any action or proceeding affecting the Property, the Leases, the Rents or this Assignment, and shall at its own cost vigorously defend title to the Property and the enforceability of the Leases and this Assignment against all legal challenges. Where necessary or where requested by Lender, Assignor shall at its own cost institute any legal actions respecting the same. Assignor shall not challenge, and irrevocably waives any challenge to, the legality or enforceability of this Assignment and all provisions of this Assignment.

19. **Set-Off.** Upon default by Assignor under this Assignment, Lender (or the holder or owner of any Debt secured by this Assignment) shall immediately have the right, without further notice to Borrower, to set off against the Note and any other debts secured by this Assignment all debts of Lender (or such holder or owner) to Borrower, whether or not then due.

20. **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing (including by facsimile) and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid answer back acknowledged), addressed as follows:

If to Lender:	Romspen California Mortgage Limited Partnership 162 Cumberland Street, Suite 300 Toronto, Ontario M5R 3N5 Attention: Joel Mickelson and Blake Cassidy Telephone: (416) 928-4870 Facsimile: (416) 966-1161 <a href="mailto:JoelMickelson@romspen.com">JoelMickelson@romspen.com</a> <a href="mailto:BlakeCassidy@romspen.com">BlakeCassidy@romspen.com</a>
with a copy to:	Polsinelli PC 2950 N. Harwood, Suite 2100 Dallas, Texas 75201 Attention: Clifton M. Dugas, II Telephone: (214) 661-5545 Facsimile: (214) 397-0033 <a href="mailto:cdugas@polsinelli.com">cdugas@polsinelli.com</a>
If to Assignor:	Lydda Lud, LLC 630 Nimes Road Bel Air, California 90077 Attention: Mohamed Hadid Email: <a href="mailto:hadiaspenn@aol.com">hadiaspenn@aol.com</a>
with a copy to:	Law Offices of Abdulaziz, Grossbart & Rudman 6454 Coldwater Canyon Avenue North Hollywood, California 91606 Telephone: (818) 760-2000 Facsimile: (818) 760-3908 Email: <a href="mailto:bdr@agrlaw.com">bdr@agrlaw.com</a>

or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day, in the case of facsimile, upon completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) with receipt acknowledged by the recipient thereof.

21. **Miscellaneous.** The following provisions are additional terms of this Assignment:

21.1 Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the reduction or satisfaction of the Debt, without prejudice to any of its rights under this Assignment.

21.2 No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion.

21.3 All rights and remedies of Lender are cumulative and may be exercised successively or concurrently, and shall inure to the benefit of Lender's successors and assigns.

21.4 Nothing herein shall be interpreted to make Lender a "mortgagee in possession" in the absence of Lender's taking of actual possession of the Property. Assignor hereby waives any claims against Lender by reason of Lender's exercise of any remedies hereunder.

21.5 All obligations of Assignor shall bind its heirs, executors, administrators, trustees, custodians, successors and assigns.

21.6 In case of any conflict between the terms of this Assignment and the terms of the Security Instrument or Loan Agreement, the terms of the Security Instrument or Loan Agreement shall prevail.

21.7 This Assignment, including this Section, may only be modified or amended by written documents and no oral amendment, waiver, extension or other modification hereof shall be enforceable, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Assignment; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Assignment; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Assignment.

21.8 If any provision of this Assignment is held invalid or unenforceable, the holding shall affect only the provision in question and all other provisions of this Assignment shall remain in full force and effect.

21.9 For the purpose of facilitating the execution of this Assignment and for other purposes, this Assignment may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

## 22. Definitions; Rules of Construction.

22.1 All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "**Assignor**" shall mean "individually and collectively, jointly and severally, each Assignor (if more than one) and any subsequent owner or owners of the Property or any part thereof or any interest therein and Assignor in its capacity as debtor-in-possession after the commencement of a proceeding under the United States Bankruptcy Code"; "**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 Assignment," the word "**person**" shall include an individual, corporation, limited liability company, 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 fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender (a) in protecting its interest in the Property, the Leases and the Rents, (b) relating to or arising out of any lawsuit or proceeding brought by or against Lender in any court or other forum (including actions or proceedings brought by or on behalf of Assignor's bankruptcy estate or any guarantor or indemnitor), or (c) in enforcing its rights under this Assignment.

22.2 The following rules of construction shall be applicable for all purposes of this Assignment and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) the terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";
- (b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Assignment;
- (d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";
- (e) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Assignment refer to this Assignment as a whole and not to any particular provision or section of this Assignment;
- (f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;
- (g) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document; and
- (h) wherever Lender's judgment, consent, approval or discretion is required under this Assignment for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Assignment, including any right to determine that something is satisfactory or not ("Decision Power"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Assignment or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Assignor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

23. **Trial by Jury.** ASSIGNOR AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT, THE SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY ASSIGNOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. ASSIGNOR AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, ASSIGNOR HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE (PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO JUDICIAL REFERENCE SHALL BE APPLICABLE WITH RESPECT TO ANY ACTION IN RESPECT OF THE FORECLOSURE OF THE SECURITY INSTRUMENT). PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640 TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER. ASSIGNOR HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARMS-LENGTH BASIS, WITH ASSIGNOR AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN.



Assignor's Initials

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**24. Local Law Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment (other than the terms and conditions of Section 25), the terms and conditions of this Section shall be binding.

**24.1 Lender's Remedies Upon Default.** Without limiting any other right or remedies of Lender set forth in this Assignment or under any of the other Loan Documents to which Assignor is a party, or available at law or in equity, at any time upon or following the occurrence of any Event of Default, Lender shall have the right to enforce all of the rights and remedies of a Lender under Section 2938 of the California Civil Code ("Section 2938"). In the event that Lender shall elect to enforce this Assignment in accordance with Section 2938, the following procedures shall apply, as applicable:

(a) Lender may send a demand notice in the form prescribed by Section 2938 to, in the case of enforcement under Section 2938(c)(3), one or more of the tenants of the Property, with a copy to Assignor and any other lender under a recorded assignment of leases, rents, issues and profits with respect to the Property, or, in the case of enforcement under Section 2938(c)(4), to Assignor with a copy to any such other lenders in accordance with the procedures set forth therein; provided, however, nothing herein shall grant Assignor the right to encumber the Property in violation of the Loan Documents. Without limiting Lender's rights to any amounts received by Assignor after an Event of Default, Assignor shall immediately turn over to Lender any Rents or any other Assigned Property received by Assignor from any tenant of the Property from and after Lender's enforcement of this Assignment under either such Sections 2938(c)(3) or (4), it being understood that Assignor shall be deemed to hold such amounts as trustee for Lender until such amounts have been paid to Lender. In addition, Assignor shall also cause any collection agent for Assignor or any other person who has collected for Assignor's benefit relating to the period from and after Lender's enforcement of this Assignment under either such Sections 2938(c)(3) or (4), to turn such Rents or other Assigned Property over to Lender

(i) Notwithstanding anything to the contrary contained in this Assignment or any other Loan Document, if Lender shall proceed to enforce this Assignment by means other than the appointment of a receiver and consequently receives Rents or other Assigned Property as a result thereof, and Lender receives written demand from Assignor (or any other party entitled under law to make demand on Lender) to pay reasonable costs of protecting and preserving the Property, Lender may elect either to pay (either directly to the party to whom owed, or by joint check payable to Assignor and such party) or authorize Assignor to pay, such costs (such payments being referred to herein as "Protective Payments"), conditioned upon Assignor furnishing to Lender all information (such as invoices, bills, contracts, or purchase orders) necessary in order for Lender to identify the party to whom payment is owed or the work, service or item for which payment is requested and to establish that such Protective Payments are required to be paid or authorized under this Paragraph. If Assignor is authorized to pay any Protective Payments under this Paragraph, Lender reserves the right to deposit the amounts necessary to pay such Protective Payments into a non-interest bearing checking account, in which Assignor shall have granted to Lender a perfected, first priority security interest, from which Assignor shall be obligated to draw the funds necessary to pay such Protective Payments. In the event that Lender agrees or is required under any circumstances to pay or authorize the payment of any Protective Payments consisting of improvement of the Property or any portion thereof (or any other costs the non-payment of which would entitle the payee to enforce mechanic's or materialmen's liens or similar rights), Lender shall be authorized, before paying or authorizing the payment of any such

payments, to require compliance with standard construction loan disbursement conditions with respect to such costs, including without limitation, the receipt of unconditional mechanic's lien waivers with respect to the work for which such costs are to be paid.

(ii) In no event shall Lender be obligated to pay or authorize the payment of Protective Payments in excess of any Rents and other Assigned Property actually received by Lender as a result of the enforcement of this clause of this Paragraph.

(iii) Nothing contained in this Paragraph shall limit the rights of Lender under any other provision of this Assignment or in any other Loan Document.

(iv) Nothing contained in this Paragraph shall limit either (x) Lender's right to cease at any time any further enforcement of this Assignment under Section 2938 by sending written notice of the cancellation thereof to each party to whom a demand notice was sent, or (y) Lender's right to seek appointment of a receiver, either of which if enforced by Lender, shall terminate Lender's obligations under this clause (a)(i) of this Paragraph.

(v) In no event shall any enforcement of Lender's rights under this Paragraph, including, without limitation, the payment or authorization of payment of any Protective Payments, make Lender a "mortgagee-in-possession" or limit, waive, or otherwise derogate any of Lender's other rights and remedies available to it under the Loan Documents to which Assignor is a party or at law. In no event shall any exercise of rights by the Lender under this Paragraph, including, without limitation, the payment or authorization of payment of any Protective Payments, be construed to require the Lender to operate or manage the Property or be construed as an assumption by Lender of any obligation to operate or manage the Property, and all liabilities and obligations in relation to the operation and management of the Property shall remain exclusively that of the Assignor.

(b) Any Rents and other Assigned Property received by Lender as a result of any such enforcement measures shall be applied as provided in this Assignment and/or the other Loan Documents.

(c) Without in any way limiting Assignor's other indemnification obligations set forth in this Assignment and in any of the Loan Documents to which Assignor is a party, Assignor shall indemnify, defend, protect and hold harmless Lender, and its successors and assigns, from and against any and all losses, costs, expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), damages, liabilities or claims asserted against or suffered by Lender arising from any work performed or goods or services furnished in connection with the ownership or operation of the Property at any time during which Lender shall be enforcing its rights under this Paragraph.

24.2 **Leases.** Assignor acknowledges and agrees that all Leases shall be subordinate to the Security Instrument unless Lender shall specify otherwise at any time during the term of this Assignment. Assignor further agrees that, if required by Lender, Assignor shall, at Assignor's expense, cause each lessee under each of such Leases to enter into a subordination and attornment agreement with Lender (and Assignor, if Lender requires that Assignor be a party to such agreement) which is in form and substance satisfactory to Lender, or cause such Leases to be made superior to the Security Instrument in a manner satisfactory to Lender. Each Lease executed subsequent to the recording of the Security

Instrument shall contain a provision permitting the Lender to notify the tenant at any time that the Lease will be prior to the Security Instrument. Lender shall be a third party beneficiary of all attornment provisions contained in all Leases executed subsequent to this Assignment. All lessees who execute Leases or Lease amendments subsequent to the date of recording of this Assignment shall be bound by the terms of this provision.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Leases and Rents the day and year first above written.

**ASSIGNOR:**

**LYDDA LUD, LLC,**  
a California limited liability company  
BY AM FAMILY FUND LLC, A VIRGINIA  
LIMITED LIABILITY COMPANY  
By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

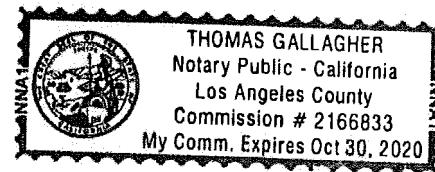
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**Exhibit "A"**

**Legal Description**

**PARCEL 5:**

THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND IN THE DISTRICT LAND ON JUNE 25, 1887.

**PARCEL 6:**

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND LYING NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, DISTANT THEREON SOUTH  $88^{\circ} 42' 03''$  EAST 434.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE SOUTHWESTERLY IN A DIRECT LINE TO A POINT IN THE WESTERLY LINE OF SAID SOUTHWEST QUARTER; DISTANT THEREON SOUTHERLY 200.00 FEET FROM SAID NORTHWEST QUARTER SECTION CORNER.

**PARCEL 7:**

THAT PORTION OF LOTS 5 AND 6 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY AND NORTHERLY BOUNDARY LINES OF TRACT NO. 20500, AS PER MAP RECORDED IN BOOK 580 PAGES 25 AND 26, OF MAPS, RECORDS OF SAID COUNTY, SAID WESTERLY AND NORTHERLY LINES OF SAID TRACT NO. 20500 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID TRACT NO. 20500; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT NO. 20500 NORTH  $02^{\circ} 44' 45''$  WEST 200.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 OF TRACT NO. 20500; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NO. 20500, NORTH  $86^{\circ} 27' 03''$  EAST 214.00 FEET TO AN ANGLE POINT IN THE BOUNDARY OF SAID TRACT NO. 20500, NORTH  $13^{\circ} 11' 03''$  EAST 292.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 OF SAID TRACT NO. 20500, BEING A POINT ON THE NORTHERLY LINE OF SAID LOT 5 OF THE COLDWATER CANYON TRACT.

EXCEPT THAT PORTION, IF ANY, OF SAID LOT 6 LYING WITHIN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1, RANGE 15 WEST, SAN BERNARDINO MERIDIAN.

# EXHIBIT 8

**ASSIGNMENT OF AGREEMENTS,  
LICENSES, PERMITS AND CONTRACTS**

THIS ASSIGNMENT OF AGREEMENTS, LICENSES, PERMITS AND CONTRACTS (this "Assignment"), is made as of the 17th day of March, 2017, by **COLDWATER DEVELOPMENT LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077, and **LYDDA LUD, LLC**, a California limited liability company, having an address at 630 Nimes Road, Bel Air, California 90077 (individually and collectively, jointly and severally, "Borrower"), in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, together with its successors and assigns ("Lender"), having an office at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5.

**RECITALS**

**WHEREAS**, pursuant to the terms of a Loan Agreement (as the same may be modified, amended, restated, extended, supplemented, or otherwise modified from time to time, the "Loan Agreement") between Borrower and Lender, of even date herewith, Lender is making a loan to Borrower in the maximum principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement. Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement; and

**WHEREAS**, it is a condition to Lender's agreement to make the Loan that Borrower enter into this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the making of the Loan by Lender to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, as additional security for the payment of all principal, interest, charges, fees and other sums due Lender under the Loan Documents and for the observance, performance and discharge of each and every other obligation, covenant and agreement to be observed, performed or discharged under the Loan Documents, hereby absolutely grants a first Lien on, and security interest in, and hereby assigns, transfers and sets over to Lender, its successors and assigns, all of Borrower's right, title and interest in and to the following (collectively, the "Collateral"):

(A) any and all contracts or agreements with management agents, leasing agents, sales agents, service and maintenance agents, contractors and other Persons (collectively, the "Contracting Parties"), whether now existing or hereafter arising, relating to the development, management, operation, construction, renovation, leasing, sale, service, maintenance or repair of the Property, including all design agreements, surveys, plats, plans and specifications, construction agreements, general contractor agreements, architect agreements, engineering agreements, subcontractor agreements, license agreements, operating contracts, equipment leases and personal property leases, franchise agreements and all management, service, supply and maintenance contracts and agreements, and any other agreements or contracts of any nature whatsoever now or hereafter obtained or entered into by Borrower with respect to the ownership, condition, use, occupancy, operation, development, construction, renovation, maintenance and administration of the Property, together with any amendments or modifications thereto and any replacements thereof executed during the term of the Loan (collectively, the "Agreements");

(B) any and all warranties and guaranties relating to the Property now existing or hereafter arising;

(C) to the extent assignable under applicable law, any and all permits, licenses, franchises, certificates, authorizations, consents and approvals (including, without limitation, all agreements, certificates of use and occupancy (or their equivalent) and applications, entitlements, and approvals issued by any Governmental Authority) relating to the design, construction, ownership, use, occupancy, development, renovation, management, operation, space leasing, maintenance or repair of, or otherwise in respect of, the Property, whether now existing or hereafter arising;

(D) any and all rights, powers, privileges, claims, remedies and causes of action of every kind which Borrower now has or may in the future have with respect to or by reason of its interest in the Agreements or any other items referenced above; and

(E) any and all proceeds (including non-cash proceeds) of any of the foregoing, and all claims of Borrower with respect thereto, together with all right, title and interest of Borrower in and to any and all extensions and renewals of any of the foregoing.

This Assignment is made upon the following terms and conditions:

1. Borrower represents, warrants and covenants to and with Lender that: (a) Borrower shall not make any changes in or amendments to any of the Collateral without the prior written consent of Lender; provided, however, that, notwithstanding the foregoing, Lender's consent shall not be required with respect to changes in or amendments to any Agreement which meet all of the following requirements (i) – (iv): (i) which is not material and does not relate to the overall development, management or operation of the Property, (ii) which is terminable without cause and without payment of any penalty or termination fee on thirty (30) days' or less notice, (iii) under which the Contracting Party does not have any right, by reason of applicable law or otherwise, to assert a Lien against the Property, and (iv) which change or amendment is done in the ordinary course of business; (b) Borrower shall not tender or accept a surrender, cancellation, or termination of any of the Collateral without the prior written consent of Lender where such surrender or cancellation would materially adversely affect the Property, Lender's interest or security therein, or where such surrender or cancellation would violate the terms of any Loan Document; (c) Borrower shall promptly provide to Lender copies of all material changes in or amendments to the Collateral whether or not Lender's consent thereto is required pursuant to clause (a) above and Borrower shall promptly notify Lender in writing of any surrender or cancellation of any Collateral whether or not Lender's consent thereto is required pursuant to clause (b) above; (d) Borrower has not sold, transferred, hypothecated, assigned, pledged, encumbered or granted and, without the prior written consent of Lender, shall not sell, transfer, hypothecate, assign, pledge, encumber or grant a security interest in any of the Collateral to anyone other than Lender; (e) there exists no default or event of default on the part of Borrower or any Contracting Party under any of the Collateral in existence as of the date hereof; (f) Borrower's interest in the Collateral is not subject to any claim, setoff, Lien, deduction or encumbrance of any nature (other than the encumbrance created hereby and the encumbrance created by the Security Instrument); (g) Borrower has full power and authority to make this Assignment; (h) Borrower shall make all required payments and otherwise perform Borrower's obligations under the Collateral; (i) Borrower shall give immediate notice to Lender of any notice of default served upon Borrower with respect to Borrower's obligations under any of the Collateral and, at the sole cost and expense of Borrower, shall enforce or secure the performance of each and every obligation of the Contracting Parties to be kept or performed under the Agreements; (j) as of the date hereof, all Agreements are listed on Exhibit A attached to this Assignment, are to the best of Borrower's knowledge, all of the Agreements in effect with respect to the Property, and Borrower shall from time to time, promptly after Lender's request therefor, update

such Exhibit A so that the same is a current and complete list as of the time in question of all Agreements then in existence and deliver copies of the same to Lender; and (k) all of the Agreements have been assigned to or are in the name of Borrower. True, correct and complete copies of all Agreements listed on Exhibit A have been delivered to Lender,

2. Neither this Assignment nor any action or inaction on the part of Lender (including any assumption by Lender of the rights and obligations under the Collateral pursuant to the provisions of Section 4 hereof) shall relieve Borrower of any obligation under the Collateral, and Borrower shall continue to be primarily liable for all obligations thereunder. Borrower hereby agrees to perform each and all of Borrower's obligations under the Collateral. Borrower hereby protects, defends, indemnifies and holds Lender free and harmless from and against any and all loss, cost, liability or expense (including attorneys' fees and accountants' fees) resulting from any failure of Borrower to so perform under the Collateral, and the amount thereof, together with interest on such amount at the Default Rate from the date such amount is incurred by Lender to the date of payment thereof by Borrower to Lender, shall be secured hereby and by the Loan Documents. Borrower shall reimburse Lender for such amounts within ten (10) days after written demand, and upon failure of Borrower to do so, the same shall be an Event of Default for which Lender shall be entitled to exercise any and all rights and remedies provided in the Loan Documents or at law or in equity.

3. It shall be an Event of Default hereunder upon the failure by Borrower in the performance or observance of any covenant or condition hereof and the continuance of such failure for thirty (30) days (or such shorter period of time provided under any of the other Loan Documents) after notice of such default from Lender (provided that no such notice of default shall be required if such failure by Borrower is a default under any of the other Loan Documents and such other Loan Document does not require the giving of notice prior to the same constituting an Event of Default thereunder).

4. Upon or at any time after the occurrence of an Event of Default, Lender shall be entitled to all of the rights, remedies, powers and privileges available to a secured party under applicable law, including, but not limited to the Uniform Commercial Code, as amended from time to time. Lender may, but shall not be obligated to, assume all of the obligations of Borrower under any or all of the Collateral and/or exercise the rights, benefits and privileges of Borrower under any of the Collateral, and in such event, Lender shall be entitled to utilize the Collateral in Borrower's place and stead, in the name of Borrower or otherwise. In connection therewith, Lender shall be entitled to take possession of and use all books of account and financial records of Borrower and its property managers and representatives relating to the Property. In such event, Lender may give notice to any or all of the Contracting Parties, either requiring the Contracting Party to continue performance under its Agreement or, alternatively, terminating the Agreement. This Assignment shall constitute a direction to and full authority to the Contracting Parties under the Agreements to act at Lender's written direction and otherwise perform on Lender's behalf under the Agreements, without proof of the Event of Default relied upon. The Contracting Parties shall be entitled to rely upon written notice from Lender that Lender has assumed all of the rights and obligations of Borrower under the applicable Agreement without any inquiry into whether Borrower is in default hereunder or under any of the Loan Documents. Such assumption of an Agreement by Lender shall be evidenced by written notice from Lender to the applicable Contracting Party. Under no circumstances shall Lender be deemed by any party to have assumed Borrower's rights and obligations under an Agreement unless and until such written notice is delivered to the Contracting Party in accordance with the foregoing provision. Borrower hereby releases and discharges Lender from any liability, claims or causes of action arising from any action taken by Lender in accordance with this paragraph.

5. Lender shall have the right at any time, but shall have no obligation, to take in Lender's name or in the name of Borrower, or otherwise, such action as Lender may at any time or from time to

time determine to be necessary to cure any default under the Collateral or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability to Borrower if any action taken by Lender or in Lender's behalf in good faith pursuant to this Assignment shall prove to be in whole or in part inadequate or invalid. Borrower hereby protects, defends, indemnifies and holds Lender free and harmless from and against any and all loss, cost, liability or expense (including attorneys' fees and accountants' fees) to which Lender may be exposed, or that Lender may incur, in exercising any of Lender's rights under this Assignment, and the amount thereof, together with interest on such amount at the Default Rate from the date such amount is incurred by Lender to the date of payment thereof by Borrower to Lender shall be secured hereby and by the Loan Documents and Borrower shall reimburse Lender therefor within ten (10) days after written demand, and upon failure of Borrower to do so, the same shall be an Event of Default under the Loan Agreement for which Lender shall be entitled to exercise any and all rights and remedies provided in the Loan Documents or at law or in equity.

6. Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact in Borrower's name or in Lender's name, or otherwise, from and after the occurrence of an Event of Default, to enforce all of the rights of Borrower under the Collateral. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable so long as any of the Debt remains outstanding.

7. Notwithstanding anything to the contrary contained herein, for so long as no Event of Default shall have occurred and be continuing, Borrower may exercise all of its rights and privileges under the Collateral and Lender shall have no right under this Assignment to assume any of the Collateral or to exercise any rights, benefits or privileges of Borrower under any of the Collateral. The exercise of any rights under this Assignment by Lender shall not cure or waive any Default or Event of Default, or invalidate any act done pursuant hereto or pursuant to any other Loan Documents, but shall be cumulative of all other rights and remedies under this Assignment and the other Loan Documents.

8. Borrower shall use reasonable efforts to promptly obtain, and upon obtaining same deliver to Lender, consents to the terms of this Assignment, in the form attached hereto as Exhibit B and made a part hereof or in such other form reasonably acceptable to Lender, from such Contracting Parties as Lender may request from time to time. Borrower covenants and agrees to make, execute and deliver all such further or additional instruments as may be necessary to satisfy the intents and purposes hereof and to perfect the assignment made hereby.

9. For so long as any portion of the Debt is outstanding, this Assignment and the agreements and undertakings of Borrower hereunder shall be binding upon Borrower, its successors and permitted assigns and any subsequent owner of the Property or any part thereof or interest therein, and shall inure to the benefit of Lender and its successors and assigns and any purchaser of any interest of Lender in any of the Note, the Loan Agreement, the Security Instrument and the other Loan Documents.

10. It is understood that this Assignment shall not operate to constitute Lender a mortgagee in possession of the Property, or to place responsibility for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by any party, or for any dangerous or defective condition of the Property, including the presence of any Hazardous Materials, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

11. This Assignment and the agreements and undertakings of Borrower hereunder shall be binding upon Borrower, Borrower's successors and assigns and any subsequent owner of the Property, and shall inure to the benefit of Lender and Lender's successors and assigns and any purchaser of any

interest of Lender in the Note, the Loan Agreement, the Security Instrument and the other Loan Documents.

12. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICTS OF LAW.

13. BORROWER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). BORROWER (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT LENDER AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS ASSIGNMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.

14. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS ASSIGNMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

15. Borrower, at Borrower's expense, shall execute and deliver all such instruments and take all such actions as Lender, from time to time, may request in order to obtain the full benefits of this Assignment and of the rights and powers herein created and to maintain and perfect the security interest granted by this Assignment.

16. All notices or other communications required or permitted to be given hereunder shall be given to the parties and become effective as provided in the Loan Agreement.

17. This Assignment and any provisions hereof 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 the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

18. If any term, covenant or condition of this Assignment or the application thereof to any Person or circumstance is held to be invalid, illegal or unenforceable in any respect, the remainder of this Assignment and the application of the provisions hereof to other Persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

19. Section and subsection headings in this Assignment are included in this Assignment for convenience of reference only and shall not constitute a part of this Assignment or be given any substantive effect. Unless the context of this Assignment clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where

otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Assignment refer to this Assignment as a whole and not exclusively to any particular provision of this Assignment. Article, section, subsection, exhibit, and schedule references are to this Assignment unless otherwise specified. All of the exhibits or schedules attached to this Assignment shall be deemed incorporated in this Assignment by reference. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Assignment or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Assignment, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Assignment and the other Loan Documents.

20. All rights and remedies herein conferred may be exercised whether or not foreclosure proceedings are pending under the Security Instrument or any other action or proceeding has been commenced under any Loan Document. Lender shall not be required to resort first to the security of this Assignment before resorting to the security of the Security Instrument or any of the Loan Documents and Lender may exercise the security hereby or thereof concurrently or independently and in any order of preference.

21. Upon payment in full of all sums due Lender under the Loan Documents and the delivery and recording of a satisfaction, release, reconveyance or discharge of the Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

22. Borrower acknowledges that there are no conditions precedent to the effectiveness of this Assignment, and that this Assignment is in full force and effect and is binding on Borrower as of the date written below, regardless of whether Lender obtains additional collateral or any guaranties from others or takes any other action contemplated by Borrower. Borrower waives the benefit of any statute of limitations affecting Borrower's liability hereunder or the enforcement thereof, and Borrower agrees that any payment of any obligations under the Loan Documents or other act which shall toll any statute of limitations applicable thereto shall similarly operate to toll such statute of limitations applicable to Borrower's liability hereunder. The liability of Borrower hereunder shall be reinstated and revived and the rights of Lender shall continue if and to the extent for any reason any amount at any time paid on account of any obligations secured hereby is rescinded or must be otherwise restored by Lender, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Lender in its sole discretion; provided, however, if Lender chooses to contest any such matter at the request of Borrower, Borrower agrees to indemnify and hold Lender harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Lender in connection therewith, including without limitation, in any litigation with respect thereto.

23. For the purpose of facilitating the execution of this Assignment and for other purposes, this Assignment may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

24. This Assignment shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns forever. Lender shall have the right to assign, sell, pledge, participate, delegate or transfer, as applicable, to one or more Persons, all or any portion of its rights and obligations under this Assignment in connection with any assignment of the Loan and the Loan Documents to any Person. Any assignee or transferee of Lender shall be entitled to all the

benefits afforded to Lender under this Assignment. Borrower shall not have the right to assign, delegate or transfer its rights or obligations under this Assignment without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment, delegation or transfer without such consent shall be null and void.

25. The recitals hereof are a part hereof, form a basis for this Assignment and shall be considered prima facie evidence of the facts and documents referred to therein.

26. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, (a) words used in this Assignment may be used interchangeably in the singular or plural form, (b) any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, (c) the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," (d) the word "Lender" shall mean "Lender and any subsequent holder of any of the Note," (e) the word "Note" shall mean "any of the Note and any other evidence of indebtedness secured by any of the Mortgage," (f) the word "Property" shall include any portion of the Property and any interest therein, and (g) 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 and/or in enforcing its rights hereunder.

*[Separate Signature Page Follows]*

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the day and year first above written.

**BORROWER:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**LYDDA LUD, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

SIGNATURE PAGE TO ASSIGNMENT OF AGREEMENTS

57169289

**EXHIBIT A**

**LIST OF EXISTING AGREEMENTS**

NONE

**EXHIBIT B**

**FORM OF CONTRACTING PARTY'S CONSENT**

**CONSENT AND AGREEMENT OF CONTRACTING PARTY**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned, \_\_\_\_\_ (hereinafter referred to as the "Contracting Party"), whose address is \_\_\_\_\_, hereby acknowledges and agrees as follows:

1. The Contracting Party hereby acknowledges receipt of a copy of that certain ASSIGNMENT OF AGREEMENTS, LICENSES, PERMITS AND CONTRACTS dated as of March 17, 2017 (the "Assignment"), made by COLDWATER DEVELOPMENT LLC, a California limited liability company, and LYDDA LUD, LLC, a California limited liability company (together with its permitted successors and assigns, collectively, "Borrower"), in favor of ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP, an Ontario limited partnership, (together with its successors and assigns "Lender"). All capitalized terms used but not otherwise defined in this Consent and Agreement (as amended, restated, supplemented or otherwise modified from time to time, this "Consent") shall have the meaning ascribed thereto in the Assignment.

2. The Contracting Party hereby consents to the assignment to Lender of the Collateral to which the Contracting Party is a party, in accordance with the terms of the Assignment.

3. The Contracting Party hereby acknowledges and agrees that any and all Collateral to which the Contracting Party is a party have been assigned by Borrower to Lender pursuant to the Assignment including, without limitation, that certain contract (the "Primary Contract") dated as of \_\_\_\_\_, by and between Borrower (or Borrower's predecessor-in-interest) and the Contracting Party, a copy of which (together with all amendments thereto) is attached hereto as Exhibit I and by this reference incorporated herein. The Contracting Party hereby certifies to Lender that the Primary Contract attached hereto as Exhibit I is a true, correct and complete copy of the Primary Contract between the parties and has not been modified or amended, that the Primary Contract has been executed by the duly authorized officers of the Contracting Party and that the Primary Contract is a valid, binding and enforceable obligation of the Contracting Party.

4. The Contracting Party hereby agrees to the terms of the Assignment, notwithstanding any contrary terms in the Primary Contract or in any such other Collateral to which the Contracting Party is a party. For purposes of giving effect to the provisions of the Assignment, the Contracting Party hereby grants to Lender the right and option at any time after the occurrence of a default under the Assignment, any Loan Agreement, any Note, any Security Instrument, or any of the other Loan Documents, which default is not cured within any applicable grace or cure period: (a) to use the Collateral without any cost or expense to Lender for the purpose of completing and maintaining the Property or other design or construction to which such Collateral relate, regardless of whether Lender exercises its right and option under the Assignment to require the Contracting Party to otherwise continue performance under the Primary Contract and/or any of the other Collateral to which the Contracting Party is a party; and/or (b) to assume the Primary Contract and/or any of the other Collateral to which the Contracting Party is a party without additional cost above the agreed contract price.

5. The Contracting Party expressly acknowledges that by accepting the Assignment or by exercising any of its rights under the Assignment, Lender assumes no obligations or liabilities of Borrower under the Primary Contract and/or under any of the other Collateral to which the Contracting

Party is a party and that Lender shall have no obligation to the Contracting Party to exercise its rights under the Assignment or to declare a default under the Assignment or any of the other Loan Documents, but that the right and option to exercise such rights or declare a default rests in the sole and absolute discretion of Lender. Upon the written request of Lender that the Contracting Party perform its obligations under the Primary Contract and/or under any of the other Collateral to which the Contracting Party is a party and upon the payment to the Contracting Party of any sums due and owing by Borrower thereunder at such time, the Contracting Party agrees to complete the performance pursuant to the Primary Contract and/or any of said other Collateral for which the request is made.

6. The Contracting Party acknowledges that it has no interest whatsoever enforceable against Lender in proceeds of the Loans or any right of action under the Loan Agreement, the Note, the Mortgage or any of the other Loan Documents to garnish, require or compel payment of proceeds of the Loans to be applied toward payment of Borrower's liabilities or obligations under the Primary Contract and/or under any of the other Agreements to which the Contracting Party is a party.

7. The Contracting Party further agrees that the liens of the Security Instrument and the other Loan Documents, and Lender's right to payment under the Note, the Loan Agreement and the other Loan Documents, shall be superior to and have priority over the Primary Contract and the other Collateral to which the Contracting Party is a party as well as any claim, security interest or right to payment of the Contracting Party arising out of or in any way connected with its services performed under the Primary Contract or any of the other Agreements to which the Contracting Party is a party. In furtherance of the foregoing, the Contracting Party hereby fully and completely subordinates to the liens of the Security Instrument and the other Loan Documents, and to Lender's right to payment under the Note, the Loan Agreement and the other Loan Documents, the following: (a) the Primary Contract and the other Agreements to which the Contracting Party is a party; (b) any such claim or security interest the Contracting Party may now or hereafter have against the Property and/or the rents, issues, profits and income therefrom; and (c) any right to payment of the Contracting Party arising out of or in any way connected with its services performed under the Primary Contract or any of the other Agreements to which the Contracting Party is a party.

8. The Contracting Party covenants and agrees that the Contracting Party shall not, without the prior written consent of Lender, which consent shall not be unreasonably withheld, make or permit any change, modification or amendment to the Primary Contract and/or any of the Collateral to which the Contracting Party is a party, or permit the performance of any work or a change in any agreement or arrangement that would result in a change, modification or amendment in the Primary Contract and/or any of the other Collateral to which the Contracting Party is a party.

9. As of the date hereof, the Contracting Party represents and warrants that it has no counterclaim, right of set-off, claim for additional payment, defense or like right against Borrower, that the Primary Contract is valid and in full force and effect, that no default exists thereunder, and that the Contracting Party has been paid all amounts due for all services, if any, furnished as of this date with respect to the Property.

10. The Contracting Party agrees that it will not terminate the Primary Contract and/or any of the other Agreements to which the Contracting Party is a party and will not cease to perform its services thereunder for any reason, including, but not limited to, Borrower's failure to make any payments to the Contracting Party or other breach or default, without giving written notice to Lender of such intention to terminate or cease performing its work at least thirty (30) days prior thereto in order to afford Lender the opportunity to cure such breach or default and/or to exercise its rights as described in the Assignment and this Consent.

**IN WITNESS WHEREOF**, this Consent and Agreement of Contracting Party is executed and delivered as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTING PARTY:

\_\_\_\_\_,  
a \_\_\_\_\_

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

**EXHIBIT I**

**PRIMARY CONTRACT**

**CERTIFICATION OF DOCUMENTS**

As of this 17th day of March, 2017, the undersigned, **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company (individually and collectively, jointly and severally, "Borrower"), hereby certifies as follows to **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, "Lender") in connection with, and as an inducement for, loans and advances in a maximum outstanding principal amount not to exceed at any time \$25,000,000.00 (the "Loan") to be made by Lender to Borrower pursuant to the terms of a Loan Agreement dated the date hereof by and between Borrower and Lender (as amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time the "**Loan Agreement**") (all capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement):

1. Exhibit A attached hereto lists the most recent tax bills relating to the Property, true, correct and complete copies of which have been provided to Lender prior to the date hereof. There are no tax bills relating to the Property other than those listed on Exhibit A.

2. Exhibit B attached hereto lists all service contracts and/or agreements (identified by vendor) relating to the Property, true, correct and complete copies of which have been provided to Lender prior to the date hereof. There are no service contracts and/or agreements relating to the Property other than those listed on Exhibit B.

3. Exhibit C attached hereto lists all licenses, permits and approvals relating to the Property that are required to operate and develop the Property as currently contemplated. Said licenses, permits and approvals have been provided to Lender prior to the date hereof.

4. Exhibit D attached hereto lists all redevelopment and other similar agreements relating to the development of the Property as currently contemplated, true, correct and complete copies of which have been provided to Lender prior to the date hereof.

5. Exhibit E attached hereto lists all Lot Sale Agreements relating to the Property, true, correct and complete copies of which have been provided to Lender prior to the date hereof.

6. Exhibit F attached hereto lists all construction, renovation, and other similar agreements relating to the construction and renovation of the Property as currently contemplated, true, correct and complete copies of which have been provided to Lender prior to the date hereof. There are no construction, renovation, or other similar agreements relating to the Property other than those listed on Exhibit F.

***[SEPARATE SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the undersigned has executed this Certification of Documents as of the day and year first above written.

**BORROWER:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me,

Thomas Gallagher, Notary Public  
(insert name and title of the officer)

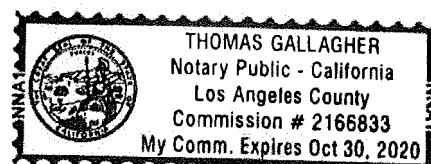
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



IN WITNESS WHEREOF, the undersigned has executed this Certification of Documents as of the day and year first above written.

**BORROWER:**

**LYDDA LUD, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public

(insert name and title of the officer)

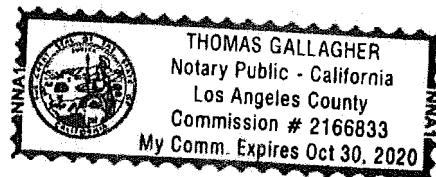
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A**

**TAX BILLS**

1. 2016-2017 Tax Roll; Order LA1630779

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 1 OF 8
		COMMENT:

PAYMENTS AS OF 03/03/2017  
SEARCH PARAMETERS

ENTERED APN: 4387-020-001  
ENTERED APN: 4387-020-009  
ENTERED APN: 4387-021-018  
ENTERED APN: 4387-021-019  
ENTERED APN: 4387-022-001  
ENTERED APN: 4387-022-002

APN: 4387-020-001

TRA: 00067 - CITY OF LOS ANGELES - 44 ACQ DATE: 06/30/2009  
LEGAL: LOT/SECT 1 BLK/DIV/TWN 1S REG/RNG 15 20 ACS E 1/2 OF NW 1/4 OF SW 1/4 OF  
MAIL: 11301 W OLYMPIC BLVD # 537 LOS ANGELES CA 90064

FOR 2016-17 TAX YEAR

ASSESSED OWNER(S)	2016-17 ASSESSED VALUES		
LYDDA LUD LLC	LAND	707,083	
	TAXABLE	707,083	
2016-17 TAXES	1ST INST	2ND INST	TOTAL TAX
STATUS	**DELQ**	OPEN	
DELINQUENT DATE	12/12/2016	04/10/2017	
INSTALLMENT	4,471.63	4,471.63	8,943.26
PENALTY	447.16	457.16	904.32
BALANCE DUE	4,918.79	4,471.63	9,390.42

WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
030.71	FLOOD CONTROL	172.10	L.A. COUNTY FLOOD CONTROL
188.50	CITY LDSC/LT 96-1	155.97	LA CITY LDSCP & LIGHT DIST 96-1
188.69	CITY STORMWATER	137.20	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
061.11	MOSQUITO ABATE	18.85	L.A. CNTY WEST MOSQ ABATE
068.51	MRCA FIRE	2.25	MRCA - BRUSH FIRE CLEARING DIST #1
		515.90	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION					
REGION #:	07	COUNTY USE CODE:	010V	ZONE:	LARE40
SQ FEET:		YR-BLT:			
STANDARD LAND USE:		RESIDENTIAL LOT			

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 3 OF 8
		COMMENT:

✓ APN: 4387-020-009
TRA: 00067 - CITY OF LOS ANGELES - 44 ACQ DATE: 06/30/2009
LEGAL: LOT/SECT 1 BLK/DIV/TWN 1S REG/RNG 15 LOT COM S 88 41 48" E 434 FT FROM NW COR OF SW 1/4 OF SEC 1 T 1S R 15W TH SW TO A PT IN W LINE OF SD SW 1/4 S THEREON 200 FT FROM SD NW COR TH S TO SW COR OF NW 1/4 OF NW 1/4 OF SW 1/4 OF SD SEC TH
MAIL: 11301 W OLYMPIC BLVD # 537 LOS ANGELES CA 90064
FOR 2016-17 TAX YEAR

ASSESSED OWNER(S)	2016-17 ASSESSED VALUES		
LYDDA LUD LLC	LAND		598,301
	TAXABLE		598,301
<b>2016-17 TAXES</b>	<b>1ST INST</b>	<b>2ND INST</b>	<b>TOTAL TAX</b>
STATUS	**DELQ**	OPEN	
DELINQUENT DATE	12/12/2016	04/10/2017	
INSTALLMENT	3,747.19	3,747.19	7,494.38
PENALTY	374.71	384.71	759.42
BALANCE DUE	4,121.90	3,747.19	<b>7,869.09</b>

#### WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
188.50	CITY LDSC/LT 96-1	155.97	LA CITY LDSCP & LIGHT DIST 96-1
030.71	FLOOD CONTROL	77.45	L.A. COUNTY FLOOD CONTROL
188.69	CITY STORMWATER	61.74	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
068.51	MRCA FIRE	20.00	MRCA - BRUSH FIRE CLEARING DIST #1
061.11	MOSQUITO ABATE	18.85	L.A. CNTY WEST MOSQ ABATE
		363.54	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION					
REGION #:	07	COUNTY USE CODE:	010V	ZONE:	LARE40
SQ FEET:		YR-BLT:			
STANDARD LAND USE:		RESIDENTIAL LOT			

CURRENT OPEN ORDERS			
TOF	COMPANY	ORDER	DATE
30	EQ	LA1630329	03/01/2016
30	EQ	LA1630779	05/13/2016
30	EQ	LA1630809	05/19/2016

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 4 OF 8 COMMENT:
--	-----------------------------	--

✓ APN: 4387-021-018	ACQ DATE: 02/15/2011		
TRA: 00067 - CITY OF LOS ANGELES - 44			
LEGAL: LOT/SECT 4 COLDWATER CANON TRACT 5.7 MORE OR LESS ACS COM AT NW COR OF LOT 4 TH S ON W LINE OF SD LOT 256.75 FT TH S 79 33 10" W 822.13 FT TH NW TO A PT E ON N LINE OF SD LOT 676.84 FT FROM BEG TH W TO BEG PART OF			
MAIL: 11301 W OLYMPIC BLVD STE 537 LOS ANGELES CA 90064			
FOR 2016-17 TAX YEAR			
ASSESSED OWNER(S)	2016-17 ASSESSED VALUES		
COLDWATER DEVELOPMENT LLC	LAND 1,298,712		
	TAXABLE 1,298,712		
2016-17 TAXES	1ST INST	2ND INST	TOTAL TAX
STATUS	**DELQ**	OPEN	
DELINQUENT DATE	12/12/2016	04/10/2017	
INSTALLMENT	7,895.59	7,895.59	15,791.18
PENALTY	789.55	799.55	1,589.10
BALANCE DUE	8,685.14	7,895.59	16,580.73

#### WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
188.50	CITY LDSC/LT 96-1	155.97	LA CITY LDSCP & LIGHT DIST 96-1
030.71	FLOOD CONTROL	49.05	L.A. COUNTY FLOOD CONTROL
188.69	CITY STORMWATER	39.10	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
068.51	MRCA FIRE	20.00	MRCA - BRUSH FIRE CLEARING DIST #1
061.11	MOSQUITO ABATE	18.85	L.A. CNTY WEST MOSQ ABATE
		312.50	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION				
REGION #:	07	COUNTY USE CODE:	010V	ZONE:
SQ FEET:		YR-BLT:		
STANDARD LAND USE:	RESIDENTIAL LOT			

CURRENT OPEN ORDERS			
TOF	COMPANY	ORDER	DATE
30	EQ	LA1630329	03/01/2016
30	EQ	LA1630779	05/13/2016
30	EQ	LA1630809	05/19/2016

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 5 OF 8
		COMMENT:

APN: 4387-021-019

TRA: 00067 - CITY OF LOS ANGELES - 44 ACQ DATE: 02/15/2011  
 LEGAL: GOLDWATER CANON TRACT FOR DESC SEE ASSESSOR S MAPS POR OF LOT 3  
 MAIL: 11301 W OLYMPIC BLVD STE 537 LOS ANGELES CA 90064  
 FOR 2016-17 TAX YEAR

ASSESSED OWNER(S)	2016-17 ASSESSED VALUES		
COLDWATER DEVELOPMENT LLC	LAND		5,194,854
	TAXABLE		5,194,854
2016-17 TAXES	1ST INST	2ND INST	TOTAL TAX
STATUS	**DELQ**	OPEN	
DELINQUENT DATE	12/12/2016	04/10/2017	
INSTALLMENT	31,225.03	31,225.02	62,450.05
PENALTY	3,122.50	3,132.50	6,255.00
BALANCE DUE	34,347.53	31,225.02	65,572.55

WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
030.71	FLOOD CONTROL	182.86	L.A. COUNTY FLOOD CONTROL
188.50	CITY LDSC/LT 96-1	155.97	LA CITY LDSCP & LIGHT DIST 96-1
188.69	CITY STORMWATER	145.78	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
061.11	MOSQUITO ABATE	18.85	L.A. CNTY WEST MOSQ ABATE
068.51	MRCA FIRE	2.25	MRCA - BRUSH FIRE CLEARING DIST #1
		535.24	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION

REGION #: 07 COUNTY USE CODE: 010V ZONE: LARE40  
 SQ FEET: YR-BLT:

STANDARD LAND USE: RESIDENTIAL LOT

CURRENT OPEN ORDERS			
TOF	COMPANY	ORDER	DATE
30	EQ	LA1630329	03/01/2016
30	EQ	LA1630779	05/13/2016
30	EQ	LA1630809	05/19/2016

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 6 OF 8 COMMENT:
--	-----------------------------	--

✓ APN: 4387-022-001
TRA: 00067 - CITY OF LOS ANGELES - 44 ACQ DATE: 06/30/2009
LEGAL: LOT/SECT 5 COLDWATER CANON TRACT THAT PART W OF TRACT # 20500 OF
MAIL: 11301 W OLYMPIC BLVD # 537 LOS ANGELES CA 90064
FOR 2016-17 TAX YEAR

ASSESSED OWNER(S)	2016-17 ASSESSED VALUES		
LYDDA LUD LLC	LAND		320,905
	TAXABLE		320,905
2016-17 TAXES	1ST INST	2ND INST	TOTAL TAX
STATUS	**DELQ**	OPEN	
DELINQUENT DATE	12/12/2016	04/10/2017	
INSTALLMENT	2,060.97	2,060.96	4,121.93
PENALTY	206.09	216.09	422.18
BALANCE DUE	2,267.06	2,060.96	4,328.02

#### WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
188.50	CITY LDSC/LT 96-1	155.97	LA CITY LDSCP & LIGHT DIST 96-1
030.71	FLOOD CONTROL	50.43	L.A. COUNTY FLOOD CONTROL
188.69	CITY STORMWATER	40.20	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
061.11	MOSQUITO ABATE	18.85	L.A. CNTY WEST MOSQ ABATE
068.51	MRCA FIRE	2.25	MRCA - BRUSH FIRE CLEARING DIST #1
		297.23	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION				
REGION #:	07	COUNTY USE CODE:	010V	ZONE:
SQ FEET:		YR-BLT:		
STANDARD LAND USE:		RESIDENTIAL LOT		

CURRENT OPEN ORDERS			
TOF	COMPANY	ORDER	DATE
30	EQ	LA1630329	03/01/2016
30	EQ	LA1630779	05/13/2016
30	EQ	LA1630809	05/19/2016
30	EQ	LA16307780	05/13/2016

- EQUITY TITLE, ETQ, T048 03/14/2017 11:52AM X8HN LOS ANGELES 2016-17 TAX ROLL ORDER: LA1630779	DATEDOWN RESULTS TOF: 30	LOS ANGELES, CA PAGE 7 OF 8 COMMENT:
--	-----------------------------	--

✓ APN: 4387-022-002 TRA: 00067 - CITY OF LOS ANGELES - 44 LEGAL: LOT/SECT 6 COLDWATER CANON TRACT THAT PART W OF TRACT # 20500 OF MAIL: 11301 W OLYMPIC BLVD # 537 LOS ANGELES CA 90064 FOR 2016-17 TAX YEAR	ACQ DATE: 06/30/2009
--	----------------------

ASSESSED OWNER(S)	2016-17 ASSESSED VALUES	
LYDDA LUD LLC	LAND	114,217
	TAXABLE	114,217
2016-17 TAXES	1ST INST	2ND INST
STATUS	**DELQ**	OPEN
DELINQUENT DATE	12/12/2016	04/10/2017
INSTALLMENT	822.12	822.11
PENALTY	82.21	92.21
BALANCE DUE	904.33	822.11
		1,726.44

#### WARNINGS AND/OR COMMENTS

\*\* NO BONDS OR PRIOR YEAR DELQ TAXES \*\*

ASSESSMENT DETAIL			
ACCT #	TYPE	AMOUNT	DESCRIPTION OF ASSESSMENT(S)
188.50	CITY LDSC/LT 96-1	155.34	LA CITY LDSCP & LIGHT DIST 96-1
030.71	FLOOD CONTROL	42.85	L.A. COUNTY FLOOD CONTROL
188.69	CITY STORMWATER	34.16	L.A. STORMWATER POLL ABATE
036.92	LA-CO PARK DIST	29.53	LA CO PARK DISTRICT
061.11	MOSQUITO ABATE	18.81	L.A. CNTY WEST MOSQ ABATE
068.51	MRCA FIRE	2.25	MRCA - BRUSH FIRE CLEARING DIST #1
		282.94	TOTAL OF SPECIAL ASSESSMENTS

ADDITIONAL PROPERTY INFORMATION					
REGION #:	07	COUNTY USE CODE:	010V	ZONE:	LARE40
SQ FEET:		YR-BLT:			
STANDARD LAND USE:		RESIDENTIAL LOT			

CURRENT OPEN ORDERS			
TOF	COMPANY	ORDER	DATE
30	EQ	LA1630329	03/01/2016
30	EQ	LA1630779	05/13/2016
30	EQ	LA1630809	05/19/2016

#### CONDITIONS, DISCLAIMERS AND EXCLUSIONS:

This Tax Certificate/Tax Order Report does not constitute a report on or certification of: (1) mineral (productive and/or non-productive) taxes or leases; (2) personal property taxes; or (3) other non ad valorem taxes (such as paving liens, stand-by charges or maintenance assessments).

**EXHIBIT B**

**SERVICE CONTRACTS AND/OR AGREEMENTS**

NONE

EXHIBIT B TO CERTIFICATION OF DOCUMENTS

57513313

**EXHIBIT C**

**LICENSES, PERMITS AND APPROVALS**

NONE

**EXHIBIT D**

**REDEVELOPMENT AND OTHER SIMILAR AGREEMENTS**

NONE

**EXHIBIT D TO CERTIFICATION OF DOCUMENTS**

57513313

**EXHIBIT E**

**LOT SALE AGREEMENTS**

NONE

EXHIBIT E TO CERTIFICATION OF DOCUMENTS

57513313

**EXHIBIT F**

**CONSTRUCTION, RENOVATION, AND OTHER SIMILAR AGREEMENTS**

NONE

**EXHIBIT F TO CERTIFICATION OF DOCUMENTS**

57513313

# EXHIBIT 9

## **GUARANTY**

THIS GUARANTY (this “**Guaranty**”) is made as of March 17, 2017, by **MOHAMED HADID**, an individual (“**Guarantor**”), for the benefit of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (“**Lender**”).

### **RECITALS**

The following recitals are a material part of this Agreement.

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company (individually and collectively, jointly and severally, “**Borrower**”), and Lender (as the same may be modified, amended or restated from time to time, the “**Loan Agreement**”), Lender is making a loan to Borrower in the maximum principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the “**Loan**”) for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the “**Property**”). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. The Loan Agreement provides that the Loan shall be evidenced by the Note and shall be secured by the Security Instrument and by other security instruments, if any, specified in the Loan Agreement.

C. Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lender of the Guaranteed Obligations (as herein defined).

D. Guarantor is a direct or indirect owner of Borrower and will derive substantial direct and indirect benefits from the Loan and the transactions contemplated by the Loan Agreement, and the making of this Guaranty and such benefits are at least equal to the obligations incurred under this Guaranty.

### **AGREEMENT**

NOW, THEREFORE, to induce Lender to enter into the Loan Agreement and make the Loan, and in consideration thereof and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor unconditionally, absolutely and irrevocably guarantees and agrees as follows:

1. **Guaranty**. Guarantor absolutely, unconditionally, and irrevocably guarantees to Lender, as primary obligor and not merely as surety, the due, prompt, and full payment and performance of all liabilities, obligations, or undertakings owing by Borrower to Lender of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by the Loan Agreement or the other Loan Documents or in any other agreement between Borrower and Lender, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code) and any and all costs, fees (including attorneys fees), and expenses which Borrower is required to pay pursuant to any of the foregoing, by law, or otherwise (collectively, the “**Guaranteed Obligations**”). Guarantor

unconditionally agrees to pay to Lender the full amount of the Guaranteed Obligations. Guarantor further agrees that all or part of the Guaranteed Obligations may be increased, extended, substituted, amended, renewed or otherwise modified without notice to or consent from Guarantor and such actions shall not affect the liability of Guarantor hereunder. Without limiting the generality of the foregoing, Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Person to Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Person. If there shall be more than one guarantor with respect to any of the Guaranteed Obligations, then the obligations of each such guarantor (including Guarantor) shall be joint and several.

2. Remedies. If Guarantor fails to promptly perform its obligations under this Guaranty, Lender may from time to time, and without first requiring performance by Borrower or exhausting any or all security for the Loan, bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Lender as a direct or indirect consequence of the failure of Guarantor to perform its obligations together with interest thereon at the rate of interest applicable to the principal balance of the Note.

3. Rights Of Lender. Lender may at any time, without the consent of or notice to Guarantor, without incurring responsibility to Guarantor and without impairing, releasing, reducing or affecting the obligations of Guarantor hereunder: (i) change the manner, place or terms of payment of all or any part of the Guaranteed Obligations, or renew, extend, modify, rearrange or alter all or any part of the Guaranteed Obligations; (ii) change the interest rate accruing on any of the Guaranteed Obligations (including, without limitation, any periodic change in such interest rate that occurs because such Guaranteed Obligations accrue interest at a variable rate which may fluctuate from time to time); (iii) declare all sums owing to Lender under the Note and the other Loan Documents due and payable upon the occurrence of a Default or Event of Default under the Loan Documents; (iv) amend, restate, or otherwise modify the terms of any Loan Document; (v) sell, exchange, release, surrender, subordinate, realize upon or otherwise deal with in any manner and in any order any collateral for all or any part of the Guaranteed Obligations; (vi) neglect, delay, omit, fail or refuse to take or prosecute any action for the collection of all or any part of the Guaranteed Obligations or this Guaranty or to take or prosecute any action in connection with any of the Loan Documents; (vii) exercise or refrain from exercising any rights against Borrower or others, or otherwise act or refrain from acting; (viii) release, substitute or add any one or more endorsers of the Note or guarantors of Borrower's obligations under the Note or the other Loan Documents; (ix) settle or compromise all or any part of the Guaranteed Obligations and subordinate the payment of all or any part of the Guaranteed Obligations to the payment of any obligations, indebtedness or liabilities which may be due or become due to Lender or others; (x) apply any deposit balance, fund, payment, collections through process of law or otherwise or other collateral of Borrower to the satisfaction and liquidation of the Guaranteed Obligations; (xi) apply any sums paid to Lender by Guarantor, Borrower or others to the Guaranteed Obligations in such order and manner as Lender, in its sole discretion, may determine; (xii) assign this Guaranty in whole or in part; and (xiii) assign, transfer or negotiate all or any part of the Guaranteed Obligations.

4. Guarantor's Waivers.

(a) Regardless of whether Guarantor may have made any payments to Lender, Guarantor hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Lender, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise, (b) all rights to enforce any remedy

that Lender may have against Borrower, and (c) all rights to participate in any security now or later to be held by Lender for the Loan. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against Borrower or against any collateral or security, shall be junior and subordinate to any rights Lender may have against Borrower, and to all right, title and interest Lender may have in any such collateral or security.

(b) Guarantor understands and acknowledges that if Lender forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution, or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. By executing this Guaranty, Guarantor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that Guarantor shall be fully liable under this Guaranty even though Lender may foreclose judicially or nonjudicially against any real property security for the Loan; (ii) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one-action, anti-deficiency, reimbursement, or other borrower or guarantor protective statute (including, without limitation, any defense that any exercise by Lender of any right or remedy hereunder or under the Loan Documents violates, or would, in combination with the previous or subsequent exercise by Guarantor of any rights of subrogation, reimbursement, contribution, or indemnification against Borrower or any other person, directly or indirectly result in, or be deemed to be, a violation of any of such statutory provisions); and (iii) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration which Lender is receiving for making the Loan.

(c) Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, may destroy Guarantor's rights of subrogation and reimbursement against Borrower.

(d) Guarantor waives any rights and defenses that are or may become available to Guarantor by reason of any statute governing guarantees or suretyship.

(e) Guarantor waives all rights and defenses that Guarantor may have because the Loan is secured by real property. This means, among other things:

- (i) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.
- (ii) If Lender forecloses on any real property collateral pledged by Borrower:
  - (A) The amount of the Loan may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

(f) This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Loan is secured by real property.

(g) Guarantor waives any right or defense it may have at law or equity, which may provide, among other things: that a creditor must file a complaint for deficiency within a specified period of time after a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security.

(h) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Guaranteed Obligations.

(i) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, intention to accelerate, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that Lender protect, secure, perfect or insure any Lien or any property subject thereto.

(j) Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or recoupment or counterclaim against or in respect of the Guaranteed Obligations.

(k) No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty.

(l) Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to any Loan Document shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

5. Guarantor's Warranties. Guarantor warrants and acknowledges that: (a) Lender would not make the Loan but for this Guaranty; (b) there are no conditions precedent to the effectiveness of this Guaranty; (c) Guarantor has established adequate means of obtaining from sources other than Lender, on a continuing basis, financial and other information pertaining to Borrower's financial condition, the Property and Borrower's activities relating thereto and the status of Borrower's performance of obligations under the Loan Documents, and Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Guarantor's risks hereunder and Lender has made no representation to Guarantor as to any such matters; (d) the most recent financial statements of Guarantor previously delivered to Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to Lender) and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; and (e) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, other than in the ordinary course of Guarantor's business. Notwithstanding the foregoing, the calculation of Guarantor's liabilities shall NOT include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities. Therefore, the amount of liabilities shall be the historical cost basis, which generally is the contractual amount owed adjusted for

amortization or accretion of any premium or discount. Guarantor acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

6. Subordination. Guarantor subordinates all present and future indebtedness owing by Borrower to Guarantor to the obligations at any time owing by Borrower to Lender under the Note and the other Loan Documents. Guarantor assigns all such indebtedness to Lender, as security for this Guaranty, the Note and the other Loan Documents. Guarantor agrees to make no claim for such indebtedness until all obligations of Borrower under the Note and the other Loan Documents have been fully and indefeasibly discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless Lender is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If Lender so requests, (a) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Lender, (b) all security for such indebtedness shall be duly assigned and delivered to Lender, (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for Lender and shall be paid over to Lender on account of the Loan but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce Lender's rights in and to such indebtedness and any security therefor. If Guarantor fails to take any such action, Lender, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

7. Bankruptcy of Borrower. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to Lender all rights of Guarantor thereunder. If Guarantor does not file any such claim, Lender, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lender's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Lender or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Lender all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. The liability of Guarantor hereunder shall be reinstated and revised, and the rights of Lender shall continue, with respect to any amount at any time paid by Borrower on account of the Note or the other Loan Documents which Lender shall be required to restore or return upon the bankruptcy, insolvency or reorganization of Borrower or for any other reasons, all as though such amount had not been paid. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from Lender as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

8. Loan Sales and Participations; Disclosure of Information. Guarantor agrees that Lender may elect, at any time, to sell, assign, or grant participations in all or any portion of its rights and obligations under the Loan Documents and this Guaranty, and that any such sale, assignment or

participation may be to one or more financial institutions, private investors, and/or other entities, at such Lender's sole discretion. Guarantor further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Guarantor, Borrower, any partner, joint venturer or member of Borrower, any constituent partner, joint venturer or member of Borrower, any other guarantor and any non-borrower trustor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan. In the event of any such sale, assignment or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Guarantor further agrees that the Guaranty shall be sufficient evidence of the obligations of Guarantor to each purchaser, assignee, or participant, and upon written request by Lender, Guarantor shall within ten (10) days after such request by Lender, (x) deliver to Lender and any other party designated by Lender an estoppel certificate, in form and substance acceptable to Lender verifying for the benefit of Lender and any such other party the status, terms and provisions of this Guaranty and (y) enter into such amendments or modifications to this Guaranty and the Loan Documents as Lender may reasonably request in order to evidence and facilitate any such sale, assignment, or participation without impairing Guarantor's rights or increasing Guarantor's obligations hereunder.

Anything in this Guaranty to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Guaranty, including this Section 8, Lender may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents; provided that no such pledge or assignment shall release Lender from its obligations thereunder.

9. Additional, Independent, and Absolute Obligations. This Guaranty is a continuing guaranty of payment and not of collection and cannot be revoked by Guarantor and shall continue to be effective with respect to any indebtedness referenced in Section 1 hereof arising or created after any attempted revocation hereof or after the death of Guarantor (if Guarantor is a natural person, in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs). The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guaranties unless said other guaranties are expressly modified or revoked in writing. This Guaranty is independent of the obligations of Borrower under the Note, the Security Instrument, and the other Loan Documents. Lender may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Borrower or any other party or joining Borrower or any other party as a party to such action. The liability of Guarantor hereunder is irrevocable, continuing, absolute and unconditional and the obligations of Guarantor hereunder, shall not be discharged or impaired or otherwise effected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

- (a) any illegality or lack of validity or enforceability of any Guaranteed Obligation or any Loan Document or any related agreement or instrument;
- (b) any change in the time, place or manner of payment of, or in any other term of, the Guaranteed Obligations or any other obligation of any Borrower Party under any Loan Document, or any rescission, waiver, amendment or other modification of any Loan Document or any other agreement, including any increase in the Guaranteed Obligations resulting from any extension of additional credit or otherwise;

(c) any taking, exchange, substitution, release, impairment or non-perfection of any collateral, or any taking, release, impairment, amendment, waiver or other modification of any guaranty, for the Guaranteed Obligations;

(d) any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Guaranteed Obligations;

(e) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations;

(f) any change, restructuring or termination of the corporate, company, partnership, or other entity structure, ownership or existence of Borrower or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Borrower or its assets or any resulting release or discharge of any Guaranteed Obligation;

(g) any failure of Lender to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower or any other guarantor now or hereafter known to Lender, the Guarantor waiving any duty of Lender to disclose such information;

(h) the failure of any other Person to execute or deliver any other guaranty or agreement or the release or reduction of liability of any other guarantor or surety with respect to the Guaranteed Obligations;

(i) the failure of Lender to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(j) any defense, set-off or counterclaim (other than a defense of payment or performance) that may at any time be available to, or be asserted by, Borrower against Lender; or

(k) any other circumstance (including, without limitation, any statute of limitations) or manner of administering the Loan or any existence of or reliance on any representation by Lender that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Borrower or any other guarantor or surety.

10. Attorneys' Fees; Enforcement. If any attorney is engaged by Lender to enforce or defend any provision of this Guaranty, or any of the other Loan Documents, or as a consequence of any Default under the Loan Documents, with or without the filing of any legal action or proceeding, Guarantor shall pay to Lender, immediately upon demand all attorneys' fees and costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein. This provision is separate and several, and shall survive the merger of this provision into any judgment.

11. Rules Of Construction. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Notes and the other Loan Documents. Section and subsection headings in this Guaranty are included in this Guaranty for convenience of reference only and shall not constitute a part of this Guaranty or be given any substantive effect. Unless the context of this Guaranty clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the

inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Guaranty refer to this Guaranty as a whole and not exclusively to any particular provision of this Guaranty. Article, section, subsection, exhibit, and schedule references are to this Guaranty unless otherwise specified. All of the exhibits or schedules attached to this Guaranty shall be deemed incorporated in this Guaranty by reference. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Guaranty or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Guaranty, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Guaranty and the other Loan Documents.

12. Credit Reports. Guarantor hereby authorizes Lender to order and obtain, from a credit reporting agency of Lender's choice, third party credit reports on Guarantor.

13. Governing Law; Venue. This Guaranty shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Guarantor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Guarantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

14. Waiver of Jury Trial. GUARANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) 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 GUARANTY, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. GUARANTOR AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, GUARANTOR HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE (PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO JUDICIAL REFERENCE SHALL BE APPLICABLE WITH RESPECT TO ANY ACTION IN RESPECT OF THE FORECLOSURE (OR SALE BY POWER OF SALE) OF THE SECURITY INSTRUMENT). PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640 TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. GUARANTOR ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER. GUARANTOR HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARMS-LENGTH BASIS, WITH GUARANTOR AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN.

Guarantor's Initials

GUARANTY

57519823

15. Waiver of Special Damages. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, GUARANTOR AGREES THAT NONE OF LENDER, OR ITS AGENTS OR EMPLOYEES SHALL BE LIABLE TO GUARANTOR FOR ANY MONETARY DAMAGES (INCLUDING ANY SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE AND GUARANTOR'S SOLE REMEDIES SHALL BE LIMITED TO COMMENCING AN ACTION FOR SPECIFIC PERFORMANCE.

16. Miscellaneous. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of Guarantor and Lender. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty. Time is of the essence with respect to each provision of this Guaranty. The recitals to this Guaranty are hereby incorporated by this reference.

17. Additional Provisions. Such additional terms, covenants and conditions as may be set forth on any exhibit executed by Guarantor and attached hereto, if any, which recites that it is an exhibit to this Guaranty are incorporated herein by this reference.

18. Enforceability. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, (c) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses, and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to Lender that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

19. Counterparts. For the purpose of facilitating the execution of this Guaranty and for other purposes, this Guaranty may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

20. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing (including by facsimile) and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid) answer back acknowledged, addressed as follows:

If to Guarantor: Mohamed Hadid  
630 Nimes Road  
Bel Air, California 90077  
Email: hadidaspen@aol.com

with a copy to: Law Offices of Abdulaziz, Grossbart & Rudman  
6454 Coldwater Canyon Avenue  
North Hollywood, California 91606  
Telephone: (818) 760-2000  
Facsimile: (818) 760-3908  
Email: bdr@agrlaw.com

If to Lender: Romspen California Mortgage Limited Partnership  
162 Cumberland Street, Suite 300  
Toronto, Ontario M5R 3N5  
Telephone: (416) 928-4870  
Facsimile: (416) 966-1161  
JoelMickelson@romspen.com  
BlakeCassidy@romspen.com

with a copy to: Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201  
Attention: Clifton M. Dugas, II  
Telephone: (214) 661-5545  
Facsimile: (214) 397-0033  
cdugas@polsinelli.com

or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day, in the case of facsimile, upon completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) with receipt acknowledged by the recipient thereof.

21. Principles of Construction. To the extent any of the provisions of this Section 21 conflict with any of the other provisions of this Guaranty, the terms and provisions of this Section 21 shall control. Notwithstanding the foregoing, nothing in this Section 21 shall be deemed to contradict or supersede the terms and provisions of Section 13 hereof with respect to the governing law applicable to this Guaranty.

(a) Waiver. Guarantor expressly waives any and all suretyship defenses that may be available to Guarantor. Without limiting the generality of the foregoing, Guarantor makes the following additional waivers and covenants: Guarantor agrees that its obligations under this Guaranty shall not be subject to any counterclaims, offsets or defenses against Lender or against Borrower of any kind which may arise in the future. Guarantor agrees that nothing contained herein shall prevent Lender from foreclosing on the lien of the Security Instrument, or from exercising any rights available to Lender thereunder, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor agrees that it hereby knowingly waives any defense which may arise in the future to enforcement of this Guaranty under California Code of Civil Procedure Sections 580b,

580d, 580a and 726 (or any other statute limiting a Lender's right to a deficiency) based on Lender's election to conduct a private, non-judicial foreclosure sale following a default by Borrower even though such an election destroyed, diminished or otherwise affected Guarantor's rights of subrogation against Borrower or other trustor under a deed of trust or the right of contribution, reimbursement or indemnity from any party, with the result that Guarantor's liability under this Guaranty became nonreimbursable in whole or in part. Nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits under California Civil Code Sections 2809, 2810, 2815, 2819, 2822, 2839, 2845, 2846, 2847, 2848, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580b, 580a, 580d and 726. Notwithstanding any foreclosure of the lien of the Security Instrument or security agreement with respect to any or all of any real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor further waives any right to cause a fair value hearing to be conducted under Code of Civil Procedure Section 580a, or any other provision of law respecting the amount of any deficiency following a non-judicial foreclosure, and agrees that Guarantor's liability hereunder shall not be limited to the excess of the Guaranteed Obligations over the fair or market value of any real property which secured the indebtedness of Borrower. Nothing shall discharge or satisfy the liability of Guarantor hereunder except the full performance and payment of the Guaranteed Obligations of Borrower with interest.

22. Additional Waivers. In addition to and not in limitation of the other waivers agreed to and made by Guarantor set forth in this Guaranty, and pursuant to the provisions of Section 2856 of the California Civil Code, Guarantor acknowledges and understands that if Lender forecloses judicially or nonjudicially against any real property security for the Note, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty based on California Code of Civil Procedure Section 580d as interpreted in Union Bank vs. Gradsky, to the extent applicable. By executing this Guaranty, Guarantor freely, irrevocably and unconditionally: (1) waives and relinquishes that defense, and agrees that Guarantor will be fully liable under this Guaranty, even though Lender may foreclose judicially or nonjudicially against any real property security for the Note; (2) agrees that Guarantor will not assert that defense in any action or proceeding that Lender may commence to enforce this Guaranty; (3) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one or more of the following: (A) California Code of Civil Procedure Sections 580a (which if Guarantor had not given this waiver, would otherwise limit Guarantor's liability after any nonjudicial foreclosure sale to the difference between the obligations for which Guarantor is liable and the fair market value of the property or interests sold at such nonjudicial foreclosure sale rather than the actual proceeds of such sale), 580b and 580d (which if Guarantor had not given this waiver, would otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after any nonjudicial foreclosure sale, respectively), or 726 (which, if Guarantor had not given this waiver, among other things, would otherwise require Lender to exhaust all of its security before a personal judgment may be obtained for a deficiency); or (B) California Civil Code Section 2848; and (4) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Lender is receiving for making the Loan. In addition, and without limiting the foregoing, GUARANTOR WAIVES ALL RIGHTS AND DEFENSES THAT

GUARANTOR MAY HAVE BECAUSE BORROWER'S DEBT IS SECURED BY REAL PROPERTY.  
THIS MEANS, AMONG OTHER THINGS:

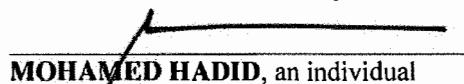
- (i) LENDER MAY COLLECT FROM GUARANTOR WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER.
- (ii) IF THE CREDITOR FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER:
  - (A) THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT THE FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE.
  - (B) LENDER MAY COLLECT FROM GUARANTOR EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT GUARANTOR MAY HAVE TO COLLECT FROM BORROWER.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES GUARANTOR MAY HAVE BECAUSE BORROWER'S DEBT IS SECURED BY REAL PROPERTY. THESE RIGHTS AND DEFENSES INCLUDE, BUT ARE NOT LIMITED TO, ANY RIGHTS OR DEFENSES BASED UPON CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580d, or 726.

*[Separate Signature Page Follows]*

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

**GUARANTOR:**

  
**MOHAMED HADID**, an individual

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me,

Thomas Gallagher, Notary Public  
(insert name and title of the officer)

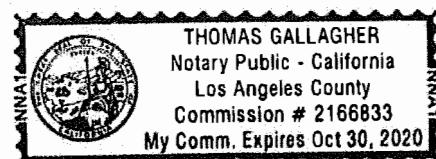
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



SIGNATURE PAGE TO GUARANTY

57519823

# EXHIBIT 10

## **SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made and entered into as of March 17, 2017, by and between **COLDWATER DEVELOPMENT LLC**, a California limited liability company (the "Grantor"), in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, the "Secured Party").

### **RECITALS**

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between the Grantor and **LYDDA LUD, LLC**, a California limited liability company (together with Grantor, individually and collectively, jointly and severally, "Borrower"), and the Secured Party (as the same may be modified, amended or restated from time to time, the "Loan Agreement"), the Secured Party is making a loan to Borrower in the maximum aggregate principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property"). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. The Secured Party has required, as security for making the Loan and the observance and performance of all the terms, covenants and provisions of the Loan Documents on the part of the Grantor to be observed and performed, a pledge of, and security interest in, all Collateral (as hereinafter defined) associated therewith as evidenced by this Agreement.

C. This Agreement is given by the Grantor in favor of the Secured Party to secure the payment and performance of all of the Secured Obligations (as defined below).

D. It is a condition to the Secured Party's agreement to make the Loan that the Grantor enter into this Agreement.

### **AGREEMENT**

NOW, THEREFORE, to induce the Secured Party to enter into the Loan Agreement and make the Loan, and in consideration of the mutual promises, covenants, terms, conditions, representations, and warranties set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Definitions.

(a) Unless otherwise specified herein, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement.

(b) Unless otherwise defined herein, any term used herein that is defined in the UCC shall have the meaning assigned to such term in the UCC whether or not such term is capitalized herein. However, if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9.

(c) For purposes of this Agreement, the following terms shall have the following meanings:

“**Collateral**” has the meaning set forth in Section 2.

“**Event of Default**” has the meaning set forth in Section 11.

“**First Priority**” means, with respect to any lien and security interest purported to be created in any Collateral pursuant to this Agreement, such lien and security interest is the most senior lien to which such Collateral is subject (subject only to liens permitted under the Loan Agreement).

“**Proceeds**” means “proceeds” as such term is defined in section 9-102 of the UCC and, in any event, shall include, without limitation, all dividends or other income from the Collateral, collections thereon or distributions with respect thereto.

“**Secured Obligations**” has the meaning set forth in Section 3.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of California or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code as in effect from time to time in such state.

2. Grant of Security Interest. The Grantor hereby pledges and grants to the Secured Party, and hereby creates a continuing First Priority lien and security interest in favor of the Secured Party in and to all of its right, title and interest in and to the following, wherever located, whether now existing or hereafter from time to time arising or acquired (collectively, the “**Collateral**”):

- (a) all Accounts;
- (b) all Goods, including, without limitation: (i) all Equipment; (ii) all Inventory; (iii) all Fixtures; and (iv) all Accessions;
- (c) all Documents, Instruments and Chattel Paper, including, without limitation, all Electronic Chattel Paper and Tangible Chattel Paper;
- (d) all Letters of Credit and Letter-of-Credit Rights;
- (e) all Investment Property;
- (f) all Intellectual Property Collateral;
- (g) the Commercial Tort Claims described on Schedule 1 hereof as supplemented by any written notification given by the Grantor to the Secured Party pursuant to Section 4(d);
- (h) all General Intangibles, including, without limitation, all Payment Intangibles and Software;
- (i) all Money and all Deposit Accounts;
- (j) all Supporting Obligations;
- (k) all books and Records relating to the Collateral;
- (l) to the extent not covered by clauses (a) through (k) of this sentence, all other assets, personal property and rights of the Grantor, whether tangible or intangible; and

(m) all Proceeds and products, whether tangible or intangible, of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing, and any and all Accounts, Chattel Paper, Deposit Accounts, Documents, General Intangibles, Goods, Instruments, Investment Property, Letter of Credit Rights, Letters of Credit, real property, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the Proceeds thereof.

3. **Secured Obligations.** The Collateral secures the due and prompt payment and performance of the following (collectively, the “**Secured Obligations**”): all liabilities, obligations, or undertakings owing by the Grantor to the Secured Party of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by this Agreement, the Loan Agreement, or the other Loan Documents, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code regardless of whether allowed or allowable in such proceeding) and any and all costs, fees (including attorneys fees), and expenses which the Grantor is required to pay pursuant to any of the foregoing, by law, or otherwise.

4. **Perfection of Security Interest and Further Assurances.**

(a) The Grantor shall, from time to time, as may be required by the Secured Party with respect to all Collateral, immediately take all actions as may be requested by the Secured Party to perfect the security interest of the Secured Party in the Collateral, including, without limitation, with respect to all Collateral over which control may be obtained within the meaning of sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable, the Grantor shall immediately take all actions as may be requested from time to time by the Secured Party so that control of such Collateral is obtained and at all times held by the Secured Party. All of the foregoing shall be at the sole cost and expense of the Grantor.

(b) The Grantor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including any financing or continuation statements or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by the Grantor hereunder, without the signature of the Grantor where permitted by law, including the filing of a financing statement describing the Collateral as “all assets now owned or hereafter acquired by the Grantor,” or words of similar effect. The Grantor agrees to provide all information required by the Secured Party pursuant to this Section promptly to the Secured Party upon request.

(c) If the Grantor shall at any time hold or acquire any certificated securities, promissory notes, tangible chattel paper, negotiable documents or warehouse receipts relating to the Collateral, the Grantor shall immediately endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

(d) If the Grantor shall at any time hold or acquire a commercial tort claim, the Grantor shall (i) immediately notify the Secured Party in a writing signed by the Grantor of the particulars thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon

the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party and (ii) deliver to the Secured Party an updated Schedule 1.

(e) If any Collateral is at any time in the possession of a bailee, the Grantor shall promptly notify the Secured Party thereof and, at the Secured Party's request and option, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party and the bailee agrees to comply, without further consent of the Grantor, at any time with instructions of the Secured Party as to such Collateral.

(f) The Grantor agrees that at any time and from time to time, at the expense of the Grantor, the Grantor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that the Secured Party may request, in order to perfect and protect any security interest granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral.

5. Representations and Warranties. The Grantor represents and warrants as follows:

(a) (i) the Grantor's exact legal name as shown in its Articles of Incorporation on file with the Secretary of State of the State of California is that indicated in the first paragraph of this Agreement and on the signature page hereof, (ii) the Grantor is limited liability company, and is organized in the State of California, (iii) the Grantor's organizational identification number issued by the State of California is 201101410052, and (iv) the Grantor's place of business (or, if more than one, its chief executive office), and its mailing address is 630 Nimes Road, Bel Air, California 90077, and the books and records relating to the Collateral are located at such address.

(b) The Grantor holds no commercial tort claims except as indicated on Schedule 1. None of the Collateral constitutes, or is the proceeds of, "farm products" as defined in section 9-102(a)(34) of the UCC. None of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral. The Grantor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(c) At the time the Collateral becomes subject to the lien and security interest created by this Agreement, the Grantor will be the sole, direct, legal and beneficial owner thereof, free and clear of any lien, security interest, encumbrance, claim, option or right of others except for the security interest created by this Agreement and other liens expressly permitted by the Loan Agreement.

(d) The pledge of the Collateral pursuant to this Agreement creates a valid and perfected First Priority security interest in the Collateral, securing the payment and performance when due of the Secured Obligations.

(e) It has full power, authority and legal right to borrow the Loans and pledge the Collateral pursuant to this Agreement.

(f) Each of this Agreement and the Loan Agreement has been duly authorized, executed and delivered by the Grantor and constitutes a legal, valid and binding obligation of the Grantor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or

other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).

(g) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the borrowing of the Loans and the pledge by the Grantor of the Collateral pursuant to this Agreement or for the execution and delivery of the Loan Agreement and this Agreement by the Grantor or the performance by the Grantor of its obligations thereunder.

(h) The execution and delivery of the Loan Agreement and this Agreement by the Grantor and the performance by the Grantor of its obligations thereunder, will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to the Grantor or any of its property, or the organizational or governing documents of the Grantor or any agreement or instrument to which the Grantor is party or by which it or its property is bound.

(i) The Grantor has taken all action required on its part for control (as defined in sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable) to have been obtained by the Secured Party over all Collateral with respect to which such control may be obtained pursuant to the UCC. No person other than the Secured Party has control or possession of all or any part of the Collateral.

6. Receivables. If any Event of Default shall have occurred and be continuing, the Secured Party may, or at the request and option of the Secured Party the Grantor shall, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Secured Party in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Party.

7. Covenants. The Grantor covenants as follows:

(a) The Grantor will not, without providing at least 30 days' prior written notice to the Secured Party, change its legal name, identity, type of organization, jurisdiction of organization, corporate structure, location of its chief executive office or its principal place of business or its organizational identification number. The Grantor will, prior to any change described in the preceding sentence, take all actions requested by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(b) The Collateral, to the extent not delivered to the Secured Party pursuant to Section 4, will be kept at the Property or the address set forth in Section 5(a), and the Grantor will not remove the Collateral from such locations without providing at least 30 days' prior written notice to the Secured Party. The Grantor will, prior to any change described in the preceding sentence, take all actions required by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(c) The Grantor shall, at its own cost and expense, defend title to the Collateral and the First Priority lien and security interest of the Secured Party therein against the claim of any person claiming against or through the Grantor and shall maintain and preserve such perfected First Priority security interest for so long as this Agreement shall remain in effect.

(d) The Grantor will not sell, offer to sell, dispose of, convey, assign or otherwise transfer, grant any option with respect to, restrict, or grant, create, permit or suffer to exist any mortgage, pledge,

lien, security interest, option, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever on, any of the Collateral or any interest therein.

(e) The Grantor will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon. The Grantor will permit the Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located.

(f) The Grantor will pay promptly when due all taxes, assessments, governmental charges, and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement.

(g) The Grantor will continue to operate its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(h) The Grantor shall maintain accurate records of the Collateral, furnish the Secured Party any requested information related to the Collateral, and allow the Secured Party to inspect and copy all records relating to the Collateral.

(i) The Grantor shall do, make, execute and deliver all such additional and further acts, things, assurances and instruments which the Secured Party may reasonably require to more completely vest in and assure to the Secured Party its lien in all Collateral.

(j) The Grantor shall promptly notify the Secured Party in writing of any loss, damage, investigation, action, suit, proceeding or claim relating to a material portion of the Collateral or which may result in any material adverse change in the Grantor's business, assets, liabilities or condition, financial or otherwise.

8. Secured Party Appointed Attorney-in-Fact. The Grantor hereby appoints the Secured Party the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement (but the Secured Party shall not be obligated to and shall have no liability to the Grantor or any third party for failure to do so or take action). This appointment, being coupled with an interest, shall be irrevocable. The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

9. Secured Party May Perform. If the Grantor fails to perform any obligation contained in this Agreement, the Secured Party may itself perform, or cause performance of, such obligation, and the expenses of the Secured Party incurred in connection therewith shall be payable by the Grantor; *provided that* the Secured Party shall not be required to perform or discharge any obligation of the Grantor.

10. Reasonable Care. The Secured Party shall have no duty with respect to the care and preservation of the Collateral beyond the exercise of reasonable care. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property, it being understood that the Secured Party shall not have any responsibility for (a) ascertaining or taking action with respect to any claims, the nature or sufficiency of any payment or performance by any party under or pursuant to any agreement relating to the Collateral or other matters relative to any Collateral, whether or not the Secured Party has or is deemed to have knowledge of such matters, or (b)

taking any necessary steps to preserve rights against any parties with respect to any Collateral. Nothing set forth in this Agreement, nor the exercise by the Secured Party of any of the rights and remedies hereunder, shall relieve the Grantor from the performance of any obligation on the Grantor's part to be performed or observed in respect of any of the Collateral.

11. Events of Default.

(a) The occurrence of any of the following events shall constitute and is hereby defined to be an "Event of Default" hereunder:

- (i) The Grantor fails to timely pay any monetary obligation under this Agreement in accordance with the terms hereof as and when such payment is due; or
- (ii) The Grantor fails or neglects to timely perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement; or
- (iii) an "Event of Default" under any other Loan Document shall have occurred.

(b) Upon the occurrence of any Event of Default (whether or not the Secured Party has knowledge that such Event of Default exists), all Secured Obligations, shall, at the option of the Secured Party, immediately become due and payable without demand and without notice to the Grantor.

12. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Secured Party, without any other notice to or demand upon the Grantor, may assert all rights and remedies of a secured party under the UCC or other applicable law, including, without limitation, the right to take possession of, hold, collect, sell, lease, deliver, grant options to purchase or otherwise retain, liquidate or dispose of all or any portion of the Collateral. If notice prior to disposition of the Collateral or any portion thereof is necessary under applicable law, written notice mailed to the Grantor at its notice address as provided in Section 16 hereof at least ten days prior to the date of such disposition shall constitute reasonable notice, but notice given in any other reasonable manner shall be sufficient. So long as the sale of the Collateral is made in a commercially reasonable manner, the Secured Party may sell such Collateral on such terms and to such purchaser(s) as the Secured Party in its absolute discretion may choose, without assuming any credit risk and without any obligation to advertise or give notice of any kind other than that necessary under applicable law. Without precluding any other methods of sale, the sale of the Collateral or any portion thereof shall have been made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of creditors disposing of similar property. At any sale of the Collateral, if permitted by applicable law, the Secured Party may be the purchaser, licensee, assignee or recipient of the Collateral or any part thereof and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price of the Collateral or any part thereof payable at such sale. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by it of any rights hereunder. The Grantor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security for the Secured Obligations or otherwise. At any such sale, unless prohibited by applicable law, the Secured Party or any custodian may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither the Secured Party nor any custodian shall be liable for failure to collect or realize upon any or all of the Collateral or

for any delay in so doing, nor shall it be under any obligation to take any action whatsoever with regard thereto. The Secured Party shall not be obligated to clean-up or otherwise prepare the Collateral for sale.

(b) Any cash held by the Secured Party as Collateral and all cash Proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in whole or in part by the Secured Party to the payment of expenses incurred by the Secured Party in connection with the foregoing or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party hereunder, including reasonable attorneys' fees, and the balance of such proceeds shall be applied or set off against all or any part of the Secured Obligations in such order as the Secured Party may elect. Any surplus of such cash or cash Proceeds held by the Secured Party and remaining after payment in full of all the Secured Obligations shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive such surplus. The Grantor shall remain liable for any deficiency if such cash and the cash Proceeds of any sale or other realization of the Collateral are insufficient to pay the Secured Obligations and the fees and other charges of any attorneys employed by the Secured Party to collect such deficiency.

(c) If the Secured Party shall determine to exercise its rights to sell all or any of the Collateral pursuant to this Section, the Grantor agrees that, upon request of the Secured Party, the Grantor will, at its own expense, do or cause to be done all such acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

13. No Waiver and Cumulative Remedies. The Secured Party shall not by any act (except by a written instrument pursuant to Section 14), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.

14. Amendments. None of the terms or provisions of this Agreement may be amended, modified, supplemented, terminated or waived, and no consent to any departure by the Grantor therefrom shall be effective unless the same shall be in writing and signed by the Secured Party and the Grantor, and then such amendment, modification, supplement, waiver or consent shall be effective only in the specific instance and for the specific purpose for which made or given.

15. Addresses For Notices. All notices and other communications provided for in this Agreement shall be in writing and shall be given in the manner and become effective as set forth in the Loan Agreement, and addressed to the respective parties at their addresses as specified on the signature pages hereof or as to either party at such other address as shall be designated by such party in a written notice to each other party.

16. Continuing Security Interest; Further Actions. This Agreement shall create a continuing First Priority lien and security interest in the Collateral and shall (a) subject to Section 17, remain in full force and effect until payment and performance in full of the Secured Obligations, (b) be binding upon the Grantor, its successors and assigns, and (c) inure to the benefit of the Secured Party and its successors, transferees and assigns; *provided that* the Grantor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party. Without limiting the generality of the foregoing clause (c), any assignee of the Secured Party's interest in any agreement or document which includes all or any of the Secured Obligations shall, upon assignment, become vested with all the benefits granted to the Secured Party herein with respect to such Secured Obligations.

17. Termination; Release. On the date on which all Secured Obligations have been paid and performed in full, the Secured Party will, at the request and sole expense of the Grantor, (a) duly assign,

transfer and deliver to or at the direction of the Grantor (without recourse and without any representation or warranty) such of the Collateral as may then remain in the possession of the Secured Party, together with any monies at the time held by the Secured Party hereunder, and (b) execute and deliver to the Grantor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement.

18. Expenses. The Grantor agrees to pay promptly to the Secured Party upon demand all expenses, costs, charges, fees and disbursements of any kind, type, nature, and description, including attorneys' fees, litigation expenses, and all court costs, incurred by the Secured Party in connection with the underwriting, origination, making, documentation, administration, enforcement, or collection of the Loan Documents, including this Agreement, and the creation, perfection, administration, defense of, and enforcement of the assignments, pledges, and security interests granted herein, and all expenses incurred by the Secured Party shall be a part of the Secured Obligations.

19. Severability. The provisions of this Agreement are severable, and if any clause or provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement in any jurisdiction.

20. Governing Law; Venue. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Grantor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF SECURED PARTY, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF SECURED PARTY BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

21. Rules Of Construction. Section and subsection headings in this Agreement are included in this Agreement for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. Article, section, subsection, exhibit, and schedule references are to this Agreement unless otherwise specified. All of the exhibits or schedules attached to this Agreement shall be deemed incorporated in this Agreement by reference. Any

reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Agreement and the other Loan Documents.

22. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

23. Waiver of Jury Trial. GRANTOR 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 AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, 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 GRANTOR.

*[Separate Signature Pages Follow]*

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

**GRANTOR:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

Address:

Coldwater Development LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me,

Thomas Gallagher, Notary Public  
(insert name and title of the officer)

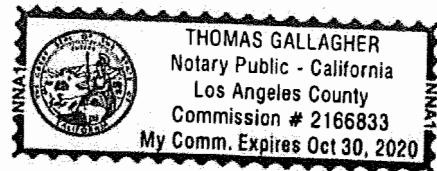
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



GRANTOR SIGNATURE PAGE TO SECURITY AGREEMENT

57513498

**SECURED PARTY:**

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,  
an Ontario limited partnership**

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

**SECURED PARTY SIGNATURE PAGE TO SECURITY AGREEMENT**

57513498

**SCHEDULE 1**

**COMMERCIAL TORT CLAIMS**

NONE

# **EXHIBIT 11**

## **SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made and entered into as of March 17, 2017, by and between **LYDDA LUD, LLC**, a California limited liability company (the "Grantor"), in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, the "Secured Party").

### **RECITALS**

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between the Grantor and **COLDWATER DEVELOPMENT LLC**, a California limited liability company (together with Grantor, individually and collectively, jointly and severally, "Borrower"), and the Secured Party (as the same may be modified, amended or restated from time to time, the "Loan Agreement"), the Secured Party is making a loan to Borrower in the maximum aggregate principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property"). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. The Secured Party has required, as security for making the Loan and the observance and performance of all the terms, covenants and provisions of the Loan Documents on the part of the Grantor to be observed and performed, a pledge of, and security interest in, all Collateral (as hereinafter defined) associated therewith as evidenced by this Agreement.

C. This Agreement is given by the Grantor in favor of the Secured Party to secure the payment and performance of all of the Secured Obligations (as defined below).

D. It is a condition to the Secured Party's agreement to make the Loan that the Grantor enter into this Agreement.

### **AGREEMENT**

NOW, THEREFORE, to induce the Secured Party to enter into the Loan Agreement and make the Loan, and in consideration of the mutual promises, covenants, terms, conditions, representations, and warranties set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. **Definitions.**

(a) Unless otherwise specified herein, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement.

(b) Unless otherwise defined herein, any term used herein that is defined in the UCC shall have the meaning assigned to such term in the UCC whether or not such term is capitalized herein. However, if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9.

(c) For purposes of this Agreement, the following terms shall have the following meanings:

“**Collateral**” has the meaning set forth in Section 2.

“**Event of Default**” has the meaning set forth in Section 11.

“**First Priority**” means, with respect to any lien and security interest purported to be created in any Collateral pursuant to this Agreement, such lien and security interest is the most senior lien to which such Collateral is subject (subject only to liens permitted under the Loan Agreement).

“**Proceeds**” means “proceeds” as such term is defined in section 9-102 of the UCC and, in any event, shall include, without limitation, all dividends or other income from the Collateral, collections thereon or distributions with respect thereto.

“**Secured Obligations**” has the meaning set forth in Section 3.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of California or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code as in effect from time to time in such state.

2. Grant of Security Interest. The Grantor hereby pledges and grants to the Secured Party, and hereby creates a continuing First Priority lien and security interest in favor of the Secured Party in and to all of its right, title and interest in and to the following, wherever located, whether now existing or hereafter from time to time arising or acquired (collectively, the “**Collateral**”):

- (a) all Accounts;
- (b) all Goods, including, without limitation: (i) all Equipment; (ii) all Inventory; (iii) all Fixtures; and (iv) all Accessions;
- (c) all Documents, Instruments and Chattel Paper, including, without limitation, all Electronic Chattel Paper and Tangible Chattel Paper;
- (d) all Letters of Credit and Letter-of-Credit Rights;
- (e) all Investment Property;
- (f) all Intellectual Property Collateral;
- (g) the Commercial Tort Claims described on Schedule 1 hereof as supplemented by any written notification given by the Grantor to the Secured Party pursuant to Section 4(d);
- (h) all General Intangibles, including, without limitation, all Payment Intangibles and Software;
- (i) all Money and all Deposit Accounts;
- (j) all Supporting Obligations;
- (k) all books and Records relating to the Collateral;
- (l) to the extent not covered by clauses (a) through (k) of this sentence, all other assets, personal property and rights of the Grantor, whether tangible or intangible; and

(m) all Proceeds and products, whether tangible or intangible, of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing, and any and all Accounts, Chattel Paper, Deposit Accounts, Documents, General Intangibles, Goods, Instruments, Investment Property, Letter of Credit Rights, Letters of Credit, real property, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the Proceeds thereof.

3. **Secured Obligations.** The Collateral secures the due and prompt payment and performance of the following (collectively, the “**Secured Obligations**”): all liabilities, obligations, or undertakings owing by the Grantor to the Secured Party of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by this Agreement, the Loan Agreement, or the other Loan Documents, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code regardless of whether allowed or allowable in such proceeding) and any and all costs, fees (including attorneys fees), and expenses which the Grantor is required to pay pursuant to any of the foregoing, by law, or otherwise.

4. **Perfection of Security Interest and Further Assurances.**

(a) The Grantor shall, from time to time, as may be required by the Secured Party with respect to all Collateral, immediately take all actions as may be requested by the Secured Party to perfect the security interest of the Secured Party in the Collateral, including, without limitation, with respect to all Collateral over which control may be obtained within the meaning of sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable, the Grantor shall immediately take all actions as may be requested from time to time by the Secured Party so that control of such Collateral is obtained and at all times held by the Secured Party. All of the foregoing shall be at the sole cost and expense of the Grantor.

(b) The Grantor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including any financing or continuation statements or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by the Grantor hereunder, without the signature of the Grantor where permitted by law, including the filing of a financing statement describing the Collateral as “all assets now owned or hereafter acquired by the Grantor,” or words of similar effect. The Grantor agrees to provide all information required by the Secured Party pursuant to this Section promptly to the Secured Party upon request.

(c) If the Grantor shall at any time hold or acquire any certificated securities, promissory notes, tangible chattel paper, negotiable documents or warehouse receipts relating to the Collateral, the Grantor shall immediately endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

(d) If the Grantor shall at any time hold or acquire a commercial tort claim, the Grantor shall (i) immediately notify the Secured Party in a writing signed by the Grantor of the particulars thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon

the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party and (ii) deliver to the Secured Party an updated Schedule 1.

(e) If any Collateral is at any time in the possession of a bailee, the Grantor shall promptly notify the Secured Party thereof and, at the Secured Party's request and option, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party and the bailee agrees to comply, without further consent of the Grantor, at any time with instructions of the Secured Party as to such Collateral.

(f) The Grantor agrees that at any time and from time to time, at the expense of the Grantor, the Grantor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that the Secured Party may request, in order to perfect and protect any security interest granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral.

5. Representations and Warranties. The Grantor represents and warrants as follows:

(a) (i) the Grantor's exact legal name as shown in its Articles of Incorporation on file with the Secretary of State of the State of California is that indicated in the first paragraph of this Agreement and on the signature page hereof, (ii) the Grantor is limited liability company, and is organized in the State of California, (iii) the Grantor's organizational identification number issued by the State of California is 200916810138, and (iv) the Grantor's place of business (or, if more than one, its chief executive office), and its mailing address is 630 Nimes Road, Bel Air, California 90077, and the books and records relating to the Collateral are located at such address.

(b) The Grantor holds no commercial tort claims except as indicated on Schedule 1. None of the Collateral constitutes, or is the proceeds of, "farm products" as defined in section 9-102(a)(34) of the UCC. None of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral. The Grantor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(c) At the time the Collateral becomes subject to the lien and security interest created by this Agreement, the Grantor will be the sole, direct, legal and beneficial owner thereof, free and clear of any lien, security interest, encumbrance, claim, option or right of others except for the security interest created by this Agreement and other liens expressly permitted by the Loan Agreement.

(d) The pledge of the Collateral pursuant to this Agreement creates a valid and perfected First Priority security interest in the Collateral, securing the payment and performance when due of the Secured Obligations.

(e) It has full power, authority and legal right to borrow the Loans and pledge the Collateral pursuant to this Agreement.

(f) Each of this Agreement and the Loan Agreement has been duly authorized, executed and delivered by the Grantor and constitutes a legal, valid and binding obligation of the Grantor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or

other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).

(g) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the borrowing of the Loans and the pledge by the Grantor of the Collateral pursuant to this Agreement or for the execution and delivery of the Loan Agreement and this Agreement by the Grantor or the performance by the Grantor of its obligations thereunder.

(h) The execution and delivery of the Loan Agreement and this Agreement by the Grantor and the performance by the Grantor of its obligations thereunder, will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to the Grantor or any of its property, or the organizational or governing documents of the Grantor or any agreement or instrument to which the Grantor is party or by which it or its property is bound.

(i) The Grantor has taken all action required on its part for control (as defined in sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable) to have been obtained by the Secured Party over all Collateral with respect to which such control may be obtained pursuant to the UCC. No person other than the Secured Party has control or possession of all or any part of the Collateral.

6. Receivables. If any Event of Default shall have occurred and be continuing, the Secured Party may, or at the request and option of the Secured Party the Grantor shall, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Secured Party in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Party.

7. Covenants. The Grantor covenants as follows:

(a) The Grantor will not, without providing at least 30 days' prior written notice to the Secured Party, change its legal name, identity, type of organization, jurisdiction of organization, corporate structure, location of its chief executive office or its principal place of business or its organizational identification number. The Grantor will, prior to any change described in the preceding sentence, take all actions requested by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(b) The Collateral, to the extent not delivered to the Secured Party pursuant to Section 4, will be kept at the Property or the address set forth in Section 5(a), and the Grantor will not remove the Collateral from such locations without providing at least 30 days' prior written notice to the Secured Party. The Grantor will, prior to any change described in the preceding sentence, take all actions required by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(c) The Grantor shall, at its own cost and expense, defend title to the Collateral and the First Priority lien and security interest of the Secured Party therein against the claim of any person claiming against or through the Grantor and shall maintain and preserve such perfected First Priority security interest for so long as this Agreement shall remain in effect.

(d) The Grantor will not sell, offer to sell, dispose of, convey, assign or otherwise transfer, grant any option with respect to, restrict, or grant, create, permit or suffer to exist any mortgage, pledge,

lien, security interest, option, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever on, any of the Collateral or any interest therein.

(e) The Grantor will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon. The Grantor will permit the Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located.

(f) The Grantor will pay promptly when due all taxes, assessments, governmental charges, and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement.

(g) The Grantor will continue to operate its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(h) The Grantor shall maintain accurate records of the Collateral, furnish the Secured Party any requested information related to the Collateral, and allow the Secured Party to inspect and copy all records relating to the Collateral.

(i) The Grantor shall do, make, execute and deliver all such additional and further acts, things, assurances and instruments which the Secured Party may reasonably require to more completely vest in and assure to the Secured Party its lien in all Collateral.

(j) The Grantor shall promptly notify the Secured Party in writing of any loss, damage, investigation, action, suit, proceeding or claim relating to a material portion of the Collateral or which may result in any material adverse change in the Grantor's business, assets, liabilities or condition, financial or otherwise.

8. Secured Party Appointed Attorney-in-Fact. The Grantor hereby appoints the Secured Party the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement (but the Secured Party shall not be obligated to and shall have no liability to the Grantor or any third party for failure to do so or take action). This appointment, being coupled with an interest, shall be irrevocable. The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

9. Secured Party May Perform. If the Grantor fails to perform any obligation contained in this Agreement, the Secured Party may itself perform, or cause performance of, such obligation, and the expenses of the Secured Party incurred in connection therewith shall be payable by the Grantor; *provided that* the Secured Party shall not be required to perform or discharge any obligation of the Grantor.

10. Reasonable Care. The Secured Party shall have no duty with respect to the care and preservation of the Collateral beyond the exercise of reasonable care. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property, it being understood that the Secured Party shall not have any responsibility for (a) ascertaining or taking action with respect to any claims, the nature or sufficiency of any payment or performance by any party under or pursuant to any agreement relating to the Collateral or other matters relative to any Collateral, whether or not the Secured Party has or is deemed to have knowledge of such matters, or (b)

taking any necessary steps to preserve rights against any parties with respect to any Collateral. Nothing set forth in this Agreement, nor the exercise by the Secured Party of any of the rights and remedies hereunder, shall relieve the Grantor from the performance of any obligation on the Grantor's part to be performed or observed in respect of any of the Collateral.

11. Events of Default.

(a) The occurrence of any of the following events shall constitute and is hereby defined to be an "Event of Default" hereunder:

- (i) The Grantor fails to timely pay any monetary obligation under this Agreement in accordance with the terms hereof as and when such payment is due; or
- (ii) The Grantor fails or neglects to timely perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement; or
- (iii) an "Event of Default" under any other Loan Document shall have occurred.

(b) Upon the occurrence of any Event of Default (whether or not the Secured Party has knowledge that such Event of Default exists), all Secured Obligations, shall, at the option of the Secured Party, immediately become due and payable without demand and without notice to the Grantor.

12. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Secured Party, without any other notice to or demand upon the Grantor, may assert all rights and remedies of a secured party under the UCC or other applicable law, including, without limitation, the right to take possession of, hold, collect, sell, lease, deliver, grant options to purchase or otherwise retain, liquidate or dispose of all or any portion of the Collateral. If notice prior to disposition of the Collateral or any portion thereof is necessary under applicable law, written notice mailed to the Grantor at its notice address as provided in Section 16 hereof at least ten days prior to the date of such disposition shall constitute reasonable notice, but notice given in any other reasonable manner shall be sufficient. So long as the sale of the Collateral is made in a commercially reasonable manner, the Secured Party may sell such Collateral on such terms and to such purchaser(s) as the Secured Party in its absolute discretion may choose, without assuming any credit risk and without any obligation to advertise or give notice of any kind other than that necessary under applicable law. Without precluding any other methods of sale, the sale of the Collateral or any portion thereof shall have been made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of creditors disposing of similar property. At any sale of the Collateral, if permitted by applicable law, the Secured Party may be the purchaser, licensee, assignee or recipient of the Collateral or any part thereof and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price of the Collateral or any part thereof payable at such sale. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by it of any rights hereunder. The Grantor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security for the Secured Obligations or otherwise. At any such sale, unless prohibited by applicable law, the Secured Party or any custodian may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither the Secured Party nor any custodian shall be liable for failure to collect or realize upon any or all of the Collateral or

for any delay in so doing, nor shall it be under any obligation to take any action whatsoever with regard thereto. The Secured Party shall not be obligated to clean-up or otherwise prepare the Collateral for sale.

(b) Any cash held by the Secured Party as Collateral and all cash Proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in whole or in part by the Secured Party to the payment of expenses incurred by the Secured Party in connection with the foregoing or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party hereunder, including reasonable attorneys' fees, and the balance of such proceeds shall be applied or set off against all or any part of the Secured Obligations in such order as the Secured Party may elect. Any surplus of such cash or cash Proceeds held by the Secured Party and remaining after payment in full of all the Secured Obligations shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive such surplus. The Grantor shall remain liable for any deficiency if such cash and the cash Proceeds of any sale or other realization of the Collateral are insufficient to pay the Secured Obligations and the fees and other charges of any attorneys employed by the Secured Party to collect such deficiency.

(c) If the Secured Party shall determine to exercise its rights to sell all or any of the Collateral pursuant to this Section, the Grantor agrees that, upon request of the Secured Party, the Grantor will, at its own expense, do or cause to be done all such acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

13. No Waiver and Cumulative Remedies. The Secured Party shall not by any act (except by a written instrument pursuant to Section 14), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.

14. Amendments. None of the terms or provisions of this Agreement may be amended, modified, supplemented, terminated or waived, and no consent to any departure by the Grantor therefrom shall be effective unless the same shall be in writing and signed by the Secured Party and the Grantor, and then such amendment, modification, supplement, waiver or consent shall be effective only in the specific instance and for the specific purpose for which made or given.

15. Addresses For Notices. All notices and other communications provided for in this Agreement shall be in writing and shall be given in the manner and become effective as set forth in the Loan Agreement, and addressed to the respective parties at their addresses as specified on the signature pages hereof or as to either party at such other address as shall be designated by such party in a written notice to each other party.

16. Continuing Security Interest; Further Actions. This Agreement shall create a continuing First Priority lien and security interest in the Collateral and shall (a) subject to Section 17, remain in full force and effect until payment and performance in full of the Secured Obligations, (b) be binding upon the Grantor, its successors and assigns, and (c) inure to the benefit of the Secured Party and its successors, transferees and assigns; *provided that* the Grantor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party. Without limiting the generality of the foregoing clause (c), any assignee of the Secured Party's interest in any agreement or document which includes all or any of the Secured Obligations shall, upon assignment, become vested with all the benefits granted to the Secured Party herein with respect to such Secured Obligations.

17. Termination; Release. On the date on which all Secured Obligations have been paid and performed in full, the Secured Party will, at the request and sole expense of the Grantor, (a) duly assign,

transfer and deliver to or at the direction of the Grantor (without recourse and without any representation or warranty) such of the Collateral as may then remain in the possession of the Secured Party, together with any monies at the time held by the Secured Party hereunder, and (b) execute and deliver to the Grantor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement.

18. Expenses. The Grantor agrees to pay promptly to the Secured Party upon demand all expenses, costs, charges, fees and disbursements of any kind, type, nature, and description, including attorneys' fees, litigation expenses, and all court costs, incurred by the Secured Party in connection with the underwriting, origination, making, documentation, administration, enforcement, or collection of the Loan Documents, including this Agreement, and the creation, perfection, administration, defense of, and enforcement of the assignments, pledges, and security interests granted herein, and all expenses incurred by the Secured Party shall be a part of the Secured Obligations.

19. Severability. The provisions of this Agreement are severable, and if any clause or provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement in any jurisdiction.

20. Governing Law; Venue. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Grantor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF SECURED PARTY, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF SECURED PARTY BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

21. Rules Of Construction. Section and subsection headings in this Agreement are included in this Agreement for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. Article, section, subsection, exhibit, and schedule references are to this Agreement unless otherwise specified. All of the exhibits or schedules attached to this Agreement shall be deemed incorporated in this Agreement by reference. Any

reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Agreement and the other Loan Documents.

22. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

23. Waiver of Jury Trial. GRANTOR 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 AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, 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 GRANTOR.

*[Separate Signature Pages Follow]*

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

**GRANTOR:**

**LYDDA LUD, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

Address:

Lydda Lud, LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public

(insert name and title of the officer)

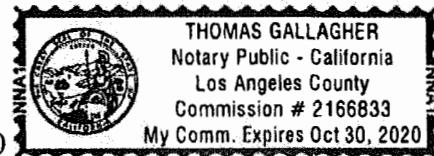
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Signature \_\_\_\_\_

(Seal)



**GRANTOR SIGNATURE PAGE TO SECURITY AGREEMENT**

57613420

**SECURED PARTY:**

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,  
an Ontario limited partnership**

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

**SECURED PARTY SIGNATURE PAGE TO SECURITY AGREEMENT**

57613420

**SCHEDULE 1**

**COMMERCIAL TORT CLAIMS**

NONE

# EXHIBIT 12

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made and entered into as of March 17, 2017, by and between **MOHAMED HADID**, an individual (the "Grantor"), in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, the "Secured Party").

**RECITALS**

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company (individually and collectively, jointly and severally, "Borrower"), and the Secured Party (as the same may be modified, amended or restated from time to time, the "Loan Agreement"), the Secured Party is making a loan to Borrower in the maximum aggregate principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property"). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. The Grantor has executed a Guaranty, dated of even date herewith, in favor of the Secured Party (as amended, restated, supplemented, ratified, or otherwise modified from time to time, the "Guaranty"), pursuant to which the Grantor has guarantied Borrower's obligations to the Secured Party under the Loan Documents.

C. The Grantor is a direct or indirect owner of each Borrower and will derive substantial direct and indirect benefits from the Loan and the transactions contemplated by the Loan Agreement, and the making of this Agreement and the Guaranty, and such benefits are at least equal to the obligations incurred under this Agreement.

D. The Secured Party has required, as security for making the Loan and the observance and performance of all the terms, covenants and provisions of the Loan Documents on the part of the Grantor to be observed and performed, a pledge of, and security interest in, all Collateral (as hereinafter defined) associated therewith as evidenced by this Agreement.

E. This Agreement is given by the Grantor in favor of the Secured Party to secure the payment and performance of all of the Secured Obligations (as defined below).

F. It is a condition to the Secured Party's agreement to make the Loan that the Grantor enter into this Agreement.

**AGREEMENT**

NOW, THEREFORE, to induce the Secured Party to enter into the Loan Agreement and make the Loan, and in consideration of the mutual promises, covenants, terms, conditions, representations, and warranties set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Definitions.

(a) Unless otherwise specified herein, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement.

(b) Unless otherwise defined herein, any term used herein that is defined in the UCC shall have the meaning assigned to such term in the UCC whether or not such term is capitalized herein. However, if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9.

(c) For purposes of this Agreement, the following terms shall have the following meanings:

**“Collateral”** has the meaning set forth in Section 2.

**“Event of Default”** has the meaning set forth in Section 11.

**“First Priority”** means, with respect to any lien and security interest purported to be created in any Collateral pursuant to this Agreement, such lien and security interest is the most senior lien to which such Collateral is subject (subject only to liens permitted under the Loan Agreement).

**“Proceeds”** means “proceeds” as such term is defined in section 9-102 of the UCC and, in any event, shall include, without limitation, all dividends or other income from the Collateral, collections thereon or distributions with respect thereto.

**“Secured Obligations”** has the meaning set forth in Section 3.

**“UCC”** means the Uniform Commercial Code as in effect from time to time in the State of California or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code as in effect from time to time in such state.

2. Grant of Security Interest. The Grantor hereby pledges and grants to the Secured Party, and hereby creates a continuing First Priority lien and security interest in favor of the Secured Party in and to all of its right, title and interest in and to the following, wherever located, whether now existing or hereafter from time to time arising or acquired (collectively, the “**Collateral**”):

(a) all Accounts;

(b) all Goods, including, without limitation: (i) all Equipment; (ii) all Inventory; (iii) all Fixtures; and (iv) all Accessions;

(c) all Documents, Instruments and Chattel Paper, including, without limitation, all Electronic Chattel Paper and Tangible Chattel Paper;

(d) all Letters of Credit and Letter-of-Credit Rights;

(e) all Investment Property;

(f) all Intellectual Property Collateral;

(g) the Commercial Tort Claims described on Schedule 1 hereof as supplemented by any written notification given by the Grantor to the Secured Party pursuant to Section 4(d);

- (h) all General Intangibles, including, without limitation, all Payment Intangibles and Software;
- (i) all Money and all Deposit Accounts;
- (j) all Supporting Obligations;
- (k) all books and Records relating to the Collateral;
- (l) to the extent not covered by clauses (a) through (k) of this sentence, all other assets, personal property and rights of the Grantor, whether tangible or intangible; and
- (m) all Proceeds and products, whether tangible or intangible, of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing, and any and all Accounts, Chattel Paper, Deposit Accounts, Documents, General Intangibles, Goods, Instruments, Investment Property, Letter of Credit Rights, Letters of Credit, real property, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the Proceeds thereof.

3. **Secured Obligations.** The Collateral secures the due and prompt payment and performance of the following (collectively, the “**Secured Obligations**”): all liabilities, obligations, or undertakings owing by the Grantor to the Secured Party of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by this Agreement, the Loan Agreement, or the other Loan Documents, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code regardless of whether allowed or allowable in such proceeding) and any and all costs, fees (including attorneys fees), and expenses which the Grantor is required to pay pursuant to any of the foregoing, by law, or otherwise.

4. **Perfection of Security Interest and Further Assurances.**

(a) The Grantor shall, from time to time, as may be required by the Secured Party with respect to all Collateral, immediately take all actions as may be requested by the Secured Party to perfect the security interest of the Secured Party in the Collateral, including, without limitation, with respect to all Collateral over which control may be obtained within the meaning of sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable, the Grantor shall immediately take all actions as may be requested from time to time by the Secured Party so that control of such Collateral is obtained and at all times held by the Secured Party. All of the foregoing shall be at the sole cost and expense of the Grantor.

(b) The Grantor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including any financing or continuation statements or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by the Grantor hereunder, without the signature of the Grantor where permitted by law, including the filing of a financing statement describing the Collateral as “all assets now owned or hereafter acquired by the Grantor,” or words of similar effect. The Grantor agrees to provide all information required by the Secured Party pursuant to this Section promptly to the Secured

Party upon request. Notwithstanding the foregoing, Secured Party shall not file any such UCC financing statements as permitted herein until such time as an Event of Default occurs under any Loan Document.

(c) If the Grantor shall at any time hold or acquire any certificated securities, promissory notes, tangible chattel paper, negotiable documents or warehouse receipts relating to the Collateral, the Grantor shall immediately endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

(d) If the Grantor shall at any time hold or acquire a commercial tort claim, the Grantor shall (i) immediately notify the Secured Party in a writing signed by the Grantor of the particulars thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party and (ii) deliver to the Secured Party an updated Schedule 1.

(e) If any Collateral is at any time in the possession of a bailee, the Grantor shall promptly notify the Secured Party thereof and, at the Secured Party's request and option, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party and the bailee agrees to comply, without further consent of the Grantor, at any time with instructions of the Secured Party as to such Collateral.

(f) The Grantor agrees that at any time and from time to time, at the expense of the Grantor, the Grantor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that the Secured Party may request, in order to perfect and protect any security interest granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral.

5. Representations and Warranties. The Grantor represents and warrants as follows:

(a) (i) the Grantor's exact legal name as shown on his/her driver's license issued by the State of California is that indicated in the first paragraph of this Agreement and on the signature page hereof, (ii) the Grantor is an individual, and (iii) the Grantor's mailing address is 630 Nimes Road, Bel Air, California 90077, and the books and records relating to the Collateral are located at such address.

(b) The Grantor holds no commercial tort claims except as indicated on Schedule 1. None of the Collateral constitutes, or is the proceeds of, "farm products" as defined in section 9-102(a)(34) of the UCC. None of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral. The Grantor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(c) At the time the Collateral becomes subject to the lien and security interest created by this Agreement, the Grantor will be the sole, direct, legal and beneficial owner thereof, free and clear of any lien, security interest, encumbrance, claim, option or right of others except for the security interest created by this Agreement and other liens expressly permitted by the Loan Agreement.

(d) The pledge of the Collateral pursuant to this Agreement creates a valid and perfected First Priority security interest in the Collateral, securing the payment and performance when due of the Secured Obligations.

(e) It has full power, authority and legal right to borrow the Loans and pledge the Collateral pursuant to this Agreement.

(f) Each of this Agreement and the Loan Agreement has been duly authorized, executed and delivered by the Grantor and constitutes a legal, valid and binding obligation of the Grantor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).

(g) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the borrowing of the Loans and the pledge by the Grantor of the Collateral pursuant to this Agreement or for the execution and delivery of the Loan Agreement and this Agreement by the Grantor or the performance by the Grantor of its obligations thereunder.

(h) The execution and delivery of the Loan Agreement and this Agreement by the Grantor and the performance by the Grantor of its obligations thereunder, will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to the Grantor or any of its property, or the organizational or governing documents of the Grantor or any agreement or instrument to which the Grantor is party or by which it or its property is bound.

(i) Other than the filing of UCC financing statements, the Grantor has taken all action required on its part for control (as defined in sections 8-106, 9-104, 9-105, 9-106 and 9-107 of the UCC, as applicable) to have been obtained by the Secured Party over all Collateral with respect to which such control may be obtained pursuant to the UCC. No person other than the Secured Party has control or possession of all or any part of the Collateral (unless such control requires the filing of a UCC financing statement).

6. Receivables. If any Event of Default shall have occurred and be continuing, the Secured Party may, or at the request and option of the Secured Party the Grantor shall, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Secured Party in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Party.

7. Covenants. The Grantor covenants as follows:

(a) The Grantor will not, without providing at least 30 days' prior written notice to the Secured Party, change its legal name, identity or location of its mailing address. The Grantor will, prior to any change described in the preceding sentence, take all actions requested by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(b) The Collateral, to the extent not delivered to the Secured Party pursuant to Section 4, will be kept at the Property or the address set forth in Section 5(a), and the Grantor will not remove the Collateral from such locations without providing at least 30 days' prior written notice to the Secured Party. The Grantor will, prior to any change described in the preceding sentence, take all actions required

by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.

(c) The Grantor shall, at its own cost and expense, defend title to the Collateral and the First Priority lien and security interest of the Secured Party therein against the claim of any person claiming against or through the Grantor and shall maintain and preserve such perfected First Priority security interest for so long as this Agreement shall remain in effect.

(d) The Grantor will not sell, offer to sell, dispose of, convey, assign or otherwise transfer, grant any option with respect to, restrict, or grant, create, permit or suffer to exist any mortgage, pledge, lien, security interest, option, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever on, any of the Property or any interest therein except as permitted by the Loan Documents, or any of the Collateral following the occurrence and during the continuance of an Event of Default.

(e) The Grantor will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon. The Grantor will permit the Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located.

(f) The Grantor will pay promptly when due all taxes, assessments, governmental charges, and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement.

(g) The Grantor will continue to operate its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(h) The Grantor shall maintain accurate records of the Collateral, furnish the Secured Party any requested information related to the Collateral, and allow the Secured Party to inspect and copy all records relating to the Collateral.

(i) The Grantor shall do, make, execute and deliver all such additional and further acts, things, assurances and instruments which the Secured Party may reasonably require to more completely vest in and assure to the Secured Party its lien in all Collateral.

(j) The Grantor shall promptly notify the Secured Party in writing of any loss, damage, investigation, action, suit, proceeding or claim relating to a material portion of the Collateral or which may result in any material adverse change in the Grantor's business, assets, liabilities or condition, financial or otherwise.

(k) If, prior to the Maturity Date, either (a) Pledgor sells or otherwise transfers his membership interests in **901 STRADA, LLC**, a California limited liability company ("Strada"), or (b) Strada or any entity owned by Strada sells or otherwise transfers the property described in Exhibit A of the Strada Deed of Trust, then Grantor shall, or shall cause Borrower to, prepay the Loan in part in the amount of \$1,000,000.00.

8. Secured Party Appointed Attorney-in-Fact. The Grantor hereby appoints the Secured Party the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of

this Agreement (but the Secured Party shall not be obligated to and shall have no liability to the Grantor or any third party for failure to do so or take action). This appointment, being coupled with an interest, shall be irrevocable. The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

9. Secured Party May Perform. If the Grantor fails to perform any obligation contained in this Agreement, the Secured Party may itself perform, or cause performance of, such obligation, and the expenses of the Secured Party incurred in connection therewith shall be payable by the Grantor; *provided that* the Secured Party shall not be required to perform or discharge any obligation of the Grantor.

10. Reasonable Care. The Secured Party shall have no duty with respect to the care and preservation of the Collateral beyond the exercise of reasonable care. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property, it being understood that the Secured Party shall not have any responsibility for (a) ascertaining or taking action with respect to any claims, the nature or sufficiency of any payment or performance by any party under or pursuant to any agreement relating to the Collateral or other matters relative to any Collateral, whether or not the Secured Party has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any parties with respect to any Collateral. Nothing set forth in this Agreement, nor the exercise by the Secured Party of any of the rights and remedies hereunder, shall relieve the Grantor from the performance of any obligation on the Grantor's part to be performed or observed in respect of any of the Collateral.

11. Events of Default.

(a) The occurrence of any of the following events shall constitute and is hereby defined to be an "**Event of Default**" hereunder:

(i) The Grantor fails to timely pay any monetary obligation under this Agreement in accordance with the terms hereof as and when such payment is due; or

(ii) The Grantor fails or neglects to timely perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement; or

(iii) an "Event of Default" under any other Loan Document shall have occurred.

(b) Upon the occurrence of any Event of Default (whether or not the Secured Party has knowledge that such Event of Default exists), all Secured Obligations, shall, at the option of the Secured Party, immediately become due and payable without demand and without notice to the Grantor.

12. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Secured Party, without any other notice to or demand upon the Grantor, may assert all rights and remedies of a secured party under the UCC or other applicable law, including, without limitation, the right to take possession of, hold, collect, sell, lease, deliver, grant options to purchase or otherwise retain, liquidate or dispose of all or any portion of the Collateral. If notice prior to disposition of the Collateral or any portion thereof is necessary under applicable law, written notice mailed to the Grantor at its notice address as provided in Section 16 hereof at least ten days prior to the date of such disposition shall constitute reasonable notice, but notice given in any other reasonable manner shall be sufficient. So long as the sale of the Collateral is made in a commercially reasonable manner, the Secured Party may sell such Collateral on such terms and to such purchaser(s) as the Secured Party in its absolute

discretion may choose, without assuming any credit risk and without any obligation to advertise or give notice of any kind other than that necessary under applicable law. Without precluding any other methods of sale, the sale of the Collateral or any portion thereof shall have been made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of creditors disposing of similar property. At any sale of the Collateral, if permitted by applicable law, the Secured Party may be the purchaser, licensee, assignee or recipient of the Collateral or any part thereof and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price of the Collateral or any part thereof payable at such sale. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by it of any rights hereunder. The Grantor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security for the Secured Obligations or otherwise. At any such sale, unless prohibited by applicable law, the Secured Party or any custodian may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither the Secured Party nor any custodian shall be liable for failure to collect or realize upon any or all of the Collateral or for any delay in so doing, nor shall it be under any obligation to take any action whatsoever with regard thereto. The Secured Party shall not be obligated to clean-up or otherwise prepare the Collateral for sale.

(b) Any cash held by the Secured Party as Collateral and all cash Proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in whole or in part by the Secured Party to the payment of expenses incurred by the Secured Party in connection with the foregoing or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party hereunder, including reasonable attorneys' fees, and the balance of such proceeds shall be applied or set off against all or any part of the Secured Obligations in such order as the Secured Party may elect. Any surplus of such cash or cash Proceeds held by the Secured Party and remaining after payment in full of all the Secured Obligations shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive such surplus. The Grantor shall remain liable for any deficiency if such cash and the cash Proceeds of any sale or other realization of the Collateral are insufficient to pay the Secured Obligations and the fees and other charges of any attorneys employed by the Secured Party to collect such deficiency.

(c) If the Secured Party shall determine to exercise its rights to sell all or any of the Collateral pursuant to this Section, the Grantor agrees that, upon request of the Secured Party, the Grantor will, at its own expense, do or cause to be done all such acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

13. No Waiver and Cumulative Remedies. The Secured Party shall not by any act (except by a written instrument pursuant to Section 14), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.

14. Amendments. None of the terms or provisions of this Agreement may be amended, modified, supplemented, terminated or waived, and no consent to any departure by the Grantor therefrom shall be effective unless the same shall be in writing and signed by the Secured Party and the Grantor, and then such amendment, modification, supplement, waiver or consent shall be effective only in the specific instance and for the specific purpose for which made or given.

15. **Addresses For Notices.** All notices and other communications provided for in this Agreement shall be in writing and shall be given in the manner and become effective as set forth in the Loan Agreement, and addressed to the respective parties at their addresses as specified on the signature pages hereof or as to either party at such other address as shall be designated by such party in a written notice to each other party.

16. **Continuing Security Interest; Further Actions.** This Agreement shall create a continuing First Priority lien and security interest in the Collateral and shall (a) subject to Section 17, remain in full force and effect until payment and performance in full of the Secured Obligations, (b) be binding upon the Grantor, its successors and assigns, and (c) inure to the benefit of the Secured Party and its successors, transferees and assigns; *provided that* the Grantor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party. Without limiting the generality of the foregoing clause (c), any assignee of the Secured Party's interest in any agreement or document which includes all or any of the Secured Obligations shall, upon assignment, become vested with all the benefits granted to the Secured Party herein with respect to such Secured Obligations.

17. **Termination; Release.** On the date on which all Secured Obligations have been paid and performed in full, the Secured Party will, at the request and sole expense of the Grantor, (a) duly assign, transfer and deliver to or at the direction of the Grantor (without recourse and without any representation or warranty) such of the Collateral as may then remain in the possession of the Secured Party, together with any monies at the time held by the Secured Party hereunder, and (b) execute and deliver to the Grantor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement.

18. **Expenses.** The Grantor agrees to pay promptly to the Secured Party upon demand all expenses, costs, charges, fees and disbursements of any kind, type, nature, and description, including attorneys' fees, litigation expenses, and all court costs, incurred by the Secured Party in connection with the underwriting, origination, making, documentation, administration, enforcement, or collection of the Loan Documents, including this Agreement, and the creation, perfection, administration, defense of, and enforcement of the assignments, pledges, and security interests granted herein, and all expenses incurred by the Secured Party shall be a part of the Secured Obligations.

19. **Severability.** The provisions of this Agreement are severable, and if any clause or provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement in any jurisdiction.

20. **Governing Law; Venue.** This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Grantor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF SECURED PARTY, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF SECURED PARTY BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE

LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Grantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

21. Rules Of Construction. Section and subsection headings in this Agreement are included in this Agreement for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. Article, section, subsection, exhibit, and schedule references are to this Agreement unless otherwise specified. All of the exhibits or schedules attached to this Agreement shall be deemed incorporated in this Agreement by reference. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Agreement and the other Loan Documents.

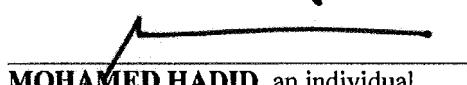
22. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

23. Waiver of Jury Trial. GRANTOR 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 AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, 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 GRANTOR.

*[Separate Signature Pages Follow]*

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

**GRANTOR:**

  
**MOHAMED HADID, an individual**

Address:

630 Nimes Road  
Bel Air, California 90077  
Email: [hadidaspen@aol.com](mailto:hadidaspen@aol.com)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

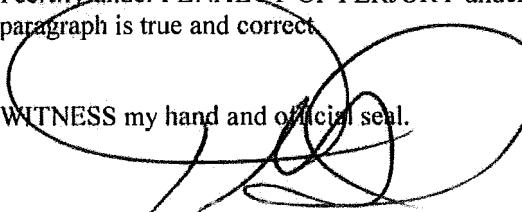
State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

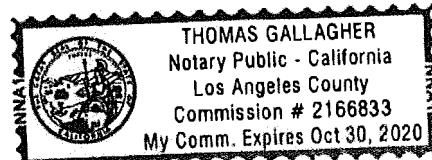
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

  
WITNESS my hand and official seal.

Signature

(Seal)



GRANTOR SIGNATURE PAGE TO SECURITY AGREEMENT

57523258

**SECURED PARTY:**

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,  
an Ontario limited partnership**

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

**SECURED PARTY SIGNATURE PAGE TO SECURITY AGREEMENT**

57523258

**SCHEDULE 1**

**COMMERCIAL TORT CLAIMS**

NONE

# EXHIBIT 13

▲ This page is part of your document - DO NOT DISCARD ▲



**20170310864**



Pages:  
0014

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

03/20/17 AT 08:00AM

FEES :	54.00
TAXES :	0.00
OTHER :	0.00
<hr/>	
PAID :	54.00



LEADSHEET



20170320020001

00013489029



008212116

SEQ:  
12

SECURE - 8:00AM



▲ THIS FORM IS NOT TO BE DUPLICATED ▲

E464776

E08\_170320\_5637394

When recorded, return to:

Clifton M. Dugas, II  
Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201

PLEDGE AND COLLATERAL ASSIGNMENT OF  
ECONOMIC INCENTIVES

THIS PLEDGE AND COLLATERAL ASSIGNMENT OF ECONOMIC INCENTIVES (this "Assignment") is executed as of March 16, 2017, by **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company (individually and collectively, jointly and severally, "Borrower"), in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership, having an address at 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5 ("Lender").

RECITALS:

A. Pursuant to that certain Loan Agreement (the "Loan Agreement") of even date herewith by Borrower, as borrower, and Lender, as lender, Borrower has issued and delivered to Lender that certain Promissory Note of even date herewith in the principal amount of Twenty-Five Million and 00/100 Dollars (\$25,000,000.00), bearing interest as specified therein (said Promissory Note together with any and all renewals, modifications and extensions thereof being hereinafter collectively called the "Note"), evidencing that certain loan (hereinafter called the "Loan") to be made in the principal amount of \$25,000,000.00, or so much thereof as may be advanced by Lender from time to time under the Note; and

B. Borrower has executed and delivered to Lender a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (hereinafter called the "Security Instrument" and together with the Note, the Loan Agreement and any other documents or instruments securing or evidencing the Loan (collectively, the "Loan Documents") conveying, as additional security for the Loan, that certain land described in **Exhibit A** attached hereto and incorporated herein by this reference and other collateral as specified in such Security Instrument (the "Property"); and

C. In order to induce Lender to make the Loan, Borrower desires to pledge and assign to Lender, as additional security for the Loan, all of Borrower's rights, title and interest under all of the Economic Incentives (as hereinafter defined) and Economic Incentive Agreements (as hereinafter defined).

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower hereby covenants and agrees with Lender as follows:

I. Definitions. As used in this Assignment, the following terms have the meanings ascribed to them below:

(a) Economic Incentive Agreements: Any and all agreements or understandings with any Incentive Provider, whether now existing or hereafter in effect, including all such agreements with the State of California, the County of Los Angeles, California, the City of Beverly Hills, California, any governing development district, and/or any other governmental,

quasi-governmental or municipal bodies or agencies, for the development of the Property and/or the surrounding area, pursuant to which any Economic Incentives are provided or are to be provided to Borrower or to any Affiliate of Borrower including, without limitation: any and all agreements, understandings or contracts related to Tax Increment Financing, triple freeport tax exemptions, foreign trade zone designations, historic site tax exemption agreements, historic preservation and restoration reimbursement agreements, redevelopment agreements, municipal utility district, and any and all other tax incentives, tax exemptions, tax abatements, tax reimbursements, tax waivers, tax or other governmental grants, tax benefits, tax designations, and other economic development incentives of any kind issued, granted or conveyed by any Incentive Provider and held by Borrower or any Affiliate of Borrower, whether created or established by contract, agreement, statute, court order, permit, issuance or otherwise and related, directly or indirectly, to all or any portion of the Property.

(b) Economic Incentive Payments: Any payments paid or to be paid to Borrower or any Affiliate of Borrower pursuant to any Economic Incentive Agreement, including, without limitation, any and all proceeds from Tax Increment Financing.

(c) Economic Incentives: Collectively, the right, title and interest of Borrower or any Affiliate of Borrower in the Economic Incentive Agreements and all of Borrower's rights (or such Affiliate's rights) to receive payments, receipts, refunds, revenues, abatements, interest, municipal personnel or services or other rights or benefits whatsoever under any of the Economic Incentive Agreements, including, without limitation, all right to receive Economic Incentive Payments.

(d) Incentive Provider: Any Governmental Authority or other Person which, pursuant to an Economic Incentive Agreement, is providing or under agreement to provide any of the Economic Incentives to Borrower or any Affiliate of Borrower, including, without limitation, the State of California, the County of Los Angeles, California, the City of Beverly Hills, California, and any governing development district.

(e) Tax Increment Financing: Any financing structure provided by any Incentive Provider or others with respect to all or any portion of the Property or the surrounding areas or rights associated therewith including, without limitation, any such financing structure which provides partial payment for or reimbursement of any and all infrastructure improvements based upon incremental real estate tax value increases within a designated area and during a certain period of time.

(f) Undefined Terms: Capitalized terms used but not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the Loan Agreement.

2. Pledge and Assignment. Borrower hereby collaterally pledges, assigns, transfers and sets over unto Lender, its successors and assigns, all of Borrower's right, title, interest, benefits, and entitlements in, to and under the Economic Incentives and the Economic Incentive Agreements, if any.

3. Proposal; Security Interest. This Assignment is granted as additional security for Borrower's full and timely payment of the Debt and the full and timely performance and discharge of the Obligations. This Assignment shall also constitute a pledge and security agreement with respect to the Economic Incentives and the Economic Incentive Agreements, and shall be, during the existence of the Loan Documents, a first and prior security interest under the Code as to the Economic Incentives and the Economic Incentive Agreements. In this regard, Borrower has GRANTED, PLEDGED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, PLEDGE, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in and to the Economic Incentives and the Economic Incentive Agreements, to secure the full and timely payment of the Debt and the full and timely performance and discharge of the Obligations.

Borrower hereby agrees to execute and deliver to Lender, in form and substance satisfactory to Lender, such Financing Statements 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, and Lender may cause such financing statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

4. Representations and Covenants. Borrower hereby represents, warrants and agrees that:

- (a) Borrower has the right, power and capacity to make this Assignment;
- (b) Borrower will, at Borrower's sole cost and expense, perform and discharge all of Borrower's obligations and undertakings as holder of the Economic Incentives and the Economic Incentive Agreements. Borrower will use all reasonable efforts to enforce or secure the performance of each and every obligation and undertaking of each Economic Incentives issued under the Economic Incentive Agreements and will appear in and prosecute or defend any action or proceeding arising under, or in any manner connected with, the Economic Incentive Agreements or the obligations and undertakings of the Economic Incentives issued thereunder;
- (c) Borrower will not without the prior written consent of Lender (i) pledge, transfer, mortgage or otherwise encumber or assign any portion of the Economic Incentives or any of Borrower's rights under any of the Economic Incentive Agreements; (ii) waive, excuse, condone or in any manner release or discharge any Economic Incentives issuer under any of the Economic Incentive Agreements; (iii) disaffirm, cancel, terminate or consent to any surrender of any of the Economic Incentives or the Economic Incentive Agreements; or (iv) modify, extend or in any way alter the terms of any of the Economic Incentive Agreements so as to reduce or diminish or postpone Borrower's receipt of any portion of the Economic Incentives;
- (d) Borrower shall provide Lender with copies of any material notice received by Borrower or issued by Borrower relative to the Economic Incentive Agreements or the Economic Incentives and, upon request of Lender shall provide Lender such supplement materials or information as Lender may require with respect to the circumstances of any such notice;
- (e) Each of the Economic Incentive Agreements will cover all or a portion of the Property and will be in a form reasonably satisfactory to Lender. If and to the extent that any Economic Incentive Agreement is not fully executed or issued as of the date hereof or, with Lender's written consent, is to be amended or replaced after the date hereof, then Borrower shall deliver such proposed Economic Incentive Agreement, or amendment or replacement thereof, to Lender for Lender's approval thereof, in Lender's reasonable discretion, prior to Borrower executing or accepting the issuance of the same.
- (f) Any default by Borrower in the performance of any obligation or undertaking hereunder shall constitute and be deemed to be an Event of Default so as to entitle Lender to exercise any and all of the rights and remedies thereunder, including the right to declare all sums payable under the Note immediately due and payable without notice or demand; and
- (g) Borrower hereby irrevocably designates and appoints Lender as its agent and attorney-in-fact to perform or observe on behalf of Borrower, without any notice to Borrower, any covenant or condition which Borrower fails to timely perform or observe under the Economic Incentive Agreements within the grace period specified therein, it being intended and agreed that the foregoing appointment be deemed coupled with an interest. Without limiting the generality of the other provisions of this Assignment, and without waiving and releasing Borrower from any of Borrowers' obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Economic Incentive Agreements on the part of Borrower,

to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under such Economic Incentive Agreements shall be kept unimpaired and free from default. In any such event, Lender and the person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. Any advances made by Lender in connection with such performance or observance shall be immediately due and payable by Borrower with interest thereon at the Default Rate from the date advanced to the date paid by Borrower and shall be secured by the lien of the Security Instrument. The performance or observance of such covenant or condition by Lender shall not prevent Borrower's failure to so perform or observe from constituting an Event of Default.

5. Lender Exculpation. These presents shall not be deemed or construed to constitute Lender as mortgagee in possession of all or any portion of the Property (or any part thereof) or to obligate Lender to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Economic Incentive Agreements.

6. Further Assurances. Until the Loan and all indebtedness evidenced by the Note shall have been paid in full, Borrower will from time to time take all of the following actions:

(a) Execute and deliver unto Lender upon demand any and all further assignments, agreements or security documents that Lender may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Lender to enforce any right or rights hereunder;

(b) Cause each Incentive Provider to execute and deliver to Lender a consent to this Assignment including an acknowledgment that upon foreclosure by Lender of the Property (or any part thereof), Lender (or another purchaser at foreclosure, or another entity which acquires the Property in lieu of foreclosure and any subsequent owner) shall be entitled to all Economic Incentives under the Economic Incentive Agreement, and such foreclosure and transfer of the Property to Lender shall not impair or terminate the obligation of Incentive Provider to provide Economic Incentives under the Economic Incentive Agreement, and an agreement of the Incentive Provider to make payments under the Economic Incentive Agreement directly to Lender (or other applicable party);

(c) To the extent it is ever determined or suspected that an Affiliate of Borrower has any right, title or interest in or to any Economic Incentive Agreement or any Economic Incentives, Borrower shall immediately cause such Affiliate to execute such assignment or similar documents as Lender may require to insure that the entire interest under the applicable Economic Incentive Agreement and all corresponding Economic Incentives are effectively assigned and pledged to Lender; and

(d) Without limitation to the foregoing, Borrower shall cause the Property to at all times to comply with the Economic Incentive Agreements and, specifically, to satisfy all conditions and requirements with respect to the provision of low income housing or other requirements necessary in order to assure prompt and complete payment of the proceeds of the Tax Increment Financing.

7. Default. The term "Event of Default" as used herein shall mean the occurrence of any one of the following:

(a) the occurrence of a Default or Event of Default under any of the other Loan Documents;

- (b) if Borrower shall fail, refuse or neglect, or cause others to fail, refuse or neglect, to perform and discharge fully and timely any of the covenants and agreements in this Assignment as and when called for; or
- (c) if at any time any representation or warranty made by Borrower herein shall be materially incorrect at any time.

8. Economic Incentive Payments. To the extent Borrower receives any Economic Incentive Payments or other similar benefits under the Economic Incentive Agreements, then Borrower shall immediately deliver such Economic Incentive Payments to Lender. Any Economic Incentive Payments received by Lender shall be applied in a manner consistent with the Loan Agreement or, if no provision is made therefor pursuant to the Loan Agreement, in such manner as Lender may designate including, without limitation, at Lender's determination, as a prepayment of the Debt or to establish a Reserve Fund under the Loan Agreement. Lender may require that any Incentive Provider provide direct assurances to Lender that any such Economic Incentive Payments shall be funded directly to Lender.

9. Proceedings. Notwithstanding anything herein to the contrary (a) Borrower hereby collaterally assigns to Lender any award made hereafter to Borrower in any court proceeding involving any of the Economic Incentives or the Incentive Providers under the Economic Incentive Agreements, in any bankruptcy, insolvency or reorganization proceeding in any state or federal court, and any and all payments made by said Incentive Providers in lieu of payment of the Economic Incentives; and (b) Borrower hereby appoints Lender as Borrower's irrevocable limited agent and attorney-in-fact to appear in any action and/or to collect any such award or payment; any such assignment and appointment to become operative upon the occurrence of an Event of Default and to remain in full force and effect so long as any such Event of Default continues. Any such amount received by Lender pursuant to the provisions of this Section 9 shall be applied in a manner consistent with the requirements of Section 8 hereinabove.

10. Remedies. Borrower, upon the occurrence of an Event of Default, hereby authorizes Lender, at its option, to collect as herein provided all or any Economic Incentives payable or to which Lender is entitled under the Economic Incentive Agreements; to fulfill the transactions contemplated by the Economic Incentive Agreements; to bring or defend any suits in connection with the possession of the Property, in Borrower's name or Lender's own name; and to perform such other acts in connection with the Economic Incentive Agreements as Lender, in its sole discretion, may deem proper. Borrower hereby constitutes and appoints Lender its true and lawful agent and attorney-in-fact, which appointment is hereby coupled with an interest and is therefore irrevocable, with full power of substitution, to, upon an Event of Default (i) ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts and entitlements constituting the Economic Incentives, which may be due or become due or payable or transferable under the Economic Incentive Agreements, (ii) execute any and all requests and notices or other demands for the payment or entitlement of all or any part of the Economic Incentives, (iii) endorse the name of the Borrower on all commercial paper or other instruments given in payment of all or any part of the Economic Incentives, and (iv) in the discretion of the Lender, file any claim or take any other action or proceeding, either in its own name or in the name of the Borrower or otherwise, which Borrower may deem necessary or appropriate to protect and preserve the rights, titles and interests of Lender hereunder or of Borrower under the Economic Incentive Agreements, and without limiting the foregoing, Lender shall have and is hereby given full power and authority to transfer the Economic Incentive Agreements into the name of the Borrower or its nominee and/or to receive or demand all or any part of the Economic Incentives without prior notice (except as may be otherwise expressly provided for in any of the Loan Documents) or further consent by Borrower. The foregoing remedies are not intended to be exclusive, it being the intent of Borrower and Lender that Lender enjoy all rights and

remedies available to it in law or in equity and whether specified in this Assignment or not, in order to seek its remedies pursuant to this Assignment.

11. Effect. The receipt by Lender of any Economic Incentives pursuant to this Assignment after the institution of foreclosure proceedings under the Security Instrument shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto.

12. **DUTY; INDEMNITY.** LENDER SHALL NOT BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION OR DUTY TO BE PERFORMED OR DISCHARGED BY BORROWER UNDER ANY OF THE ECONOMIC INCENTIVE AGREEMENTS; AND BORROWER HEREBY AGREES TO INDEMNIFY LENDER FOR, AND TO SAVE LENDER HARMLESS FROM, ANY AND ALL LIABILITY ARISING FROM ANY OF THE ECONOMIC INCENTIVE AGREEMENTS OR FROM THIS ASSIGNMENT. THIS ASSIGNMENT SHALL NOT PLACE RESPONSIBILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY, ECONOMIC INCENTIVE AGREEMENTS OR ECONOMIC INCENTIVES UPON LENDER, OR MAKE LENDER RESPONSIBLE OR LIABLE FOR ANY NEGLIGENCE IN THE MANAGEMENT, OPERATION, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY, ECONOMIC INCENTIVE AGREEMENTS OR ECONOMIC INCENTIVES RESULTING IN LOSS OR DAMAGE OR INJURY OR DEATH TO ANY PARTY; PROVIDED, HOWEVER, THE AFORESAID INDEMNITY AND SAVE HARMLESS OF BORROWER SHALL NOT APPLY TO ANY LIABILITY CAUSED BY LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OCCURRING WHILE LENDER HAS ACTUAL POSSESSION OF THE PROPERTY, ECONOMIC INCENTIVE AGREEMENTS OR ECONOMIC INCENTIVES UPON FORECLOSURE OR OTHERWISE.

13. No Waiver. The failure of Lender to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Lender shall have the full right, power and authority to enforce this Assignment, or any of the terms, covenants or conditions hereof, at any time or times that Lender shall deem fit.

14. Notices. All notices required or permitted to be given hereunder shall be deemed to have been duly given if given in accordance with the applicable provisions of the Loan Agreement.

15. Defeasance. The full performance of the Loan Documents and the duly recorded release or reconveyance of the Property from the lien of the Security Instrument shall render this Assignment of no further force or effect from the date of such release or reconveyance forward.

16. **GOVERNING LAW.** IT IS ACKNOWLEDGED AND AGREED THAT A SUBSTANTIAL PORTION OF THE NEGOTIATIONS WITH RESPECT TO THIS ASSIGNMENT AND THE TRANSACTION EVIDENCED HEREBY WERE UNDERTAKEN IN THE STATE OF CALIFORNIA. IT IS THE INTENTION OF BORROWER AND LENDER THAT THIS ASSIGNMENT BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO CHOICE OF LAWS OR CONFLICT OF LAWS RULES) AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF CALIFORNIA; PROVIDED, HOWEVER, IT IS ACKNOWLEDGED THAT SOLELY WITH RESPECT TO REMEDIAL MEASURES UNDER THIS ASSIGNMENT WHICH MUST NECESSARILY BE GOVERNED BY THE LAWS WHERE THE REAL PROPERTY DESCRIBED ON EXHIBIT A ATTACHED HERETO IS LOCATED THAT SUCH LOCAL STATE LAWS WHERE SUCH REAL PROPERTY IS LOCATED SHALL GOVERN SOLELY WITH RESPECT TO SUCH REMEDIAL MATTERS. IT IS FURTHER AGREED THAT APPROPRIATE VENUE AND ANY

**DISPUTE OCCURRING RELATIVE TO THIS ASSIGNMENT, WHETHER IN FEDERAL OR  
STATE COURT, SHALL BE IN LOS ANGELES COUNTY, CALIFORNIA.**

17. Binding Effect. This Assignment applies to and binds the parties hereto and their respective heirs, legal representatives, successors and assigns. Any provisions in any other agreement creating rights in Lender other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

**[NO FURTHER TEXT THIS PAGE]**

EXECUTED to be effective as of the date first written above.

**BORROWER:**

**COLDWATER DEVELOPMENT LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3 - 14, 2017, before me, Thomas Gallagher Notary Public  
(insert name and title of the officer)

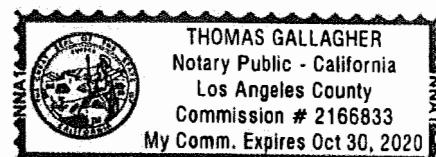
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



EXECUTED to be effective as of the date first written above.

**BORROWER:**

**LYDDA LUD, LLC,**  
a California limited liability company  
**BY AM FAMILY FUND, LLC A VIRGINIA**  
**LIMITED LIABILITY COMPANY**  
By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles)

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

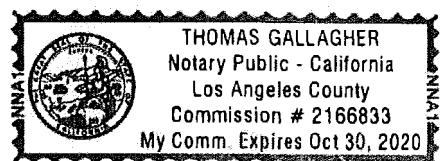
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**EXHIBIT A**

Land Description

PARCEL 1:

THAT PORTION OF LOT 1 OF COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT 7 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS; IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT ALONG SAID PROLONGATION AND NORTHERLY LINE NORTH 78° 17' 00" WEST 311.77 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 7; THENCE ALONG SAID PROLONGATION SOUTH 78° 17' 00" EAST 31.03 FEET TO A POINT DISTANT NORTH 78° 17' 00" WEST 150.74 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE SOUTH 51° 53' 58" WEST TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT 1 NORTH 85° 57' 00" WEST TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1 NORTH 00° 34' 40" EAST 213.54 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1 SOUTH 88° 22' 30" EAST 1277.69 FEET TO THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CHARLES B. DIAMOND, RECORDED ON JULY 24, 1961 AS INSTRUMENT NO. 1259, IN BOOK D-1296 PAGES 51 AND 52, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LAND TO DIAMOND, SOUTH 05° 06' 00" WEST 224.43 FEET TO THE TRUE POINT OF BEGINNING, PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-022 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556400, OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOT 2 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 85° 57' 00" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2 TO A POINT IN THAT CERTAIN COURSE RECITED AS SOUTH 51° 53' 58" WEST 96.80 FEET" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CERTAIN COURSE SOUTH 51° 53' 58" WEST TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST RECORDED ON FEBRUARY 6, 1962 AS INSTRUMENT NO. 186, IN BOOK T-2216 PAGE 834, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 57° 54' 35" WEST 143.29 FEET TO A POINT IN THAT CERTAIN COURSE RECITED AS "NORTH 55° 00' 00" WEST 100.00 FEET" IN THE DEED OF TRUST RECORDED ON APRIL 4, 1963 AS INSTRUMENT NO. 2537, IN BOOK T-2938 PAGE 145 OF OFFICIAL

EXHIBIT A

57513479

RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH  $55^{\circ} 00' 00''$  EAST 12.00 FEET FROM THE WESTERLY TERMINUS OF SAID LAST MENTIONED CERTAIN COURSE; THENCE NORTH  $55^{\circ} 00' 00''$  EAST 42.00 FEET; THENCE SOUTH  $35^{\circ} 00' 00''$  WEST 23.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET SAID CURVE BEING TANGENT AT ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES, FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTHERLY ALONG SAID CURVE TO A POINT ON THE SOUTHERLY LINE OF LOT 2 OF SAID COLDWATER CANYON TRACT; THENCE NORTH  $76^{\circ} 50' 30''$  WEST ALONG SAID SOUTHERLY LINE TO AN ANGLE POINT IN SAID SOUTHERLY LINE DISTANT SOUTH  $89^{\circ} 08' 15''$  EAST 672.10 FEET FROM THE SOUTHWEST CORNER OF SAID LAST MENTIONED LOT 2 OF THE COLDWATER CANYON TRACT; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH  $89^{\circ} 08' 15''$  WEST 672.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 NORTH  $00^{\circ} 34' 40''$  EAST 222.09 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-021 RECORDED NOVEMBER 3, 1988 AS INSTRUMENT NO. 88-1776821, OF OFFICIAL RECORDS.

PARCEL 3:

THAT PORTION OF LOT 3 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 3 SOUTH  $89^{\circ} 08' 15''$  EAST 672.10 FEET TO AN ANGLE IN SAID NORTHERLY LINE; THENCE SOUTH  $76^{\circ} 50' 30''$  EAST TO A POINT IN THAT CERTAIN CURVE RECITED AS A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET, SAID CURVE BEING TANGENT AS ITS SOUTHEASTERLY TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF SAID TRACT NO. 11859, IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGES 681 AND 682 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY SOUTHEASTERLY ALONG SAID CURVE TO THAT CERTAIN POINT DESCRIBED IN SAID CORPORATION GRANT DEED AS BEING AN ARC DISTANCE OF 221.11 FEET (FROM THE BEGINNING OF SAID CURVE IN SAID DEED); THENCE SOUTH  $41^{\circ} 00' 00''$  WEST 111.09 FEET; THENCE SOUTH  $66^{\circ} 48' 37''$  12.00 FEET; THENCE SOUTH  $23^{\circ} 11' 23''$  WEST 103.00 FEET; THENCE SOUTH  $71^{\circ} 15' 00''$  EAST 31.00 FEET; THENCE SOUTH  $15^{\circ} 45' 00''$  WEST 36.00 FEET; THENCE SOUTH  $71^{\circ} 15' 00''$  EAST 23.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 47.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $02^{\circ} 02' 22''$ , AN ARC DISTANCE OF 17.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 103.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $37^{\circ} 15' 57''$ ; AN ARC DISTANT OF 66.99 FEET;

EXHIBIT A

57513479

ALONG THE PROLONGATION OF A RADIAL LINE OF SAID LAST MENTIONED CURVE SOUTH 02° 31' 25" WEST 39.36 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID SOUTHERLY LINE NORTH 77° 35' 30" WEST 384.04 FEET, MORE OR LESS TO AN ANGLE POINT IN SAID SOUTHERLY LINE; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 88° 30' 30" WEST 716.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE WESTERLY LINE OF SAID LOT 3 NORTH 00° 34' 40" EAST 402.58 FEET TO THE POINT OF BEGINNING PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-019 RECORDED MAY 15, 1992 AS INSTRUMENT NO. 92-885381 OF OFFICIAL RECORDS.

PARCEL 4:

THAT PORTION OF LOT 4 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH 79° 33' 10" WEST 235.00 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN BOUNDARY LINE OF SAID LOT 4 SHOWN AS HAVING A BEARING AND DISTANCE OF SOUTH 79° 33' 10" EAST 1057.13 FEET; THENCE NORTHWESTERLY ON A DIRECT LINE TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4, DISTANT THEREON SOUTH 88° 30' 30" WEST 40.00 FEET FROM THE NORTHEASTERLY TERMINUS OF THAT CERTAIN NORTHERLY LINE SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 88° 30' 30" WEST 716.84 FEET. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-020 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556401 OF OFFICIAL RECORDS.

PARCEL 5:

THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND IN THE DISTRICT LAND ON JUNE 25, 1887.

PARCEL 6:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND LYING NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, DISTANT THEREON SOUTH 88° 42' 03" EAST 434.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE SOUTHWESTERLY IN A DIRECT LINE TO A POINT IN THE WESTERLY LINE OF SAID SOUTHWEST QUARTER; DISTANT THEREON SOUTHERLY 200.00 FEET FROM SAID NORTHWEST QUARTER SECTION CORNER.

PARCEL 7:

EXHIBIT A

57513479

THAT PORTION OF LOTS 5 AND 6 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY AND NORTHERLY BOUNDARY LINES OF TRACT NO. 20500, AS PER MAP RECORDED IN BOOK 580 PAGES 25 AND 26, OF MAPS, RECORDS OF SAID COUNTY, SAID WESTERLY AND NORTHERLY LINES OF SAID TRACT NO. 20500 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID TRACT NO. 20500; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT NO. 20500 NORTH  $02^{\circ} 44' 45''$  WEST 200.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 OF TRACT NO. 20500; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NO. 20500, NORTH  $86^{\circ} 27' 03''$  EAST 214.00 FEET TO AN ANGLE POINT IN THE BOUNDARY OF SAID TRACT NO. 20500, NORTH  $13^{\circ} 11' 03''$  EAST 292.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 OF SAID TRACT NO. 20500, BEING A POINT ON THE NORTHERLY LINE OF SAID LOT 5 OF THE COLDWATER CANYON TRACT.

EXCEPT THAT PORTION, IF ANY, OF SAID LOT 6 LYING WITHIN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1, RANGE 15 WEST, SAN BERNARDINO MERIDIAN.

EXHIBIT A

57513479

# EXHIBIT 14

**MEMBERSHIP INTEREST PLEDGE AGREEMENT**

THIS MEMBERSHIP INTEREST PLEDGE AGREEMENT (this "Agreement") is made and entered into as of March 17, 2017, by and between **AM FAMILY FUND LLC**, a Virginia limited liability company ("Pledgor"), and **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, "Lender").

**RECITALS**

The following recitals are a material part of this Agreement.

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between **COLDWATER DEVELOPMENT LLC**, a California limited liability company ("Coldwater Borrower"), and **LYDDA LUD, LLC**, a California limited liability company ("Lydda Borrower"), and Lender (as the same may be modified, amended or restated from time to time, the "Loan Agreement"), Lender is making a loan to Borrower in the maximum principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property"). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. Pledgor has executed a Guaranty, dated of even date herewith, in favor of Lender (as amended, restated, supplemented, ratified, or otherwise modified from time to time, the "Guaranty"), pursuant to which Pledgor has guarantied Borrower's obligations to Lender under the Loan Documents.

C. Pledgor beneficially owns one hundred percent (100%) of the issued and outstanding Equity Interests (as hereinafter defined) in Lydda Borrower and will derive substantial direct and indirect benefits from the Loan and the transactions contemplated by the Loan Agreement.

D. Lender has required, as security for making the Loan and the observance and performance of all the terms, covenants and provisions of the Loan Documents on the part of Borrower to be observed and performed, a pledge of, and security interest in, all Collateral (as hereinafter defined) associated therewith as evidenced by this Agreement.

E. It is a condition to Lender's agreement to make the Loan that Pledgor enter into this Agreement.

**AGREEMENT**

NOW, THEREFORE, to induce Lender to enter into the Loan Agreement and make the Loan, and in consideration of the mutual promises, covenants, representations, and warranties set forth in this Agreement and for other good and valuable consideration, the parties to this Agreement agree as follows:

1. **Pledge.** As security for the prompt payment and performance of the Secured Obligations (defined below) in full when due, whether at stated maturity, by acceleration or otherwise (including amounts that would become due but for the operation of the provisions of the United States Bankruptcy Code (11 U.S.C. Section 101, et seq.), as in effect from time to time, and any successor statute thereto ("Bankruptcy Code")), Pledgor by this Agreement pledges, grants, transfers, and assigns to Lender a security interest in all of Pledgor's right, title, and interest in and to the Collateral (defined below).

For the purposes of this Agreement, (a) “**Collateral**” means Pledgor’s interest in the Pledged Interests, the Future Rights, and the Proceeds, collectively; (b) “**Pledged Interests**” means (i) all Equity Interests owned by Pledgor, (ii) the certificates or instruments representing such Equity Interests, if any, (iii) all rights of Pledgor to vote or otherwise control Lydda Borrower, and (iv) all rights of Pledgor as a member of Lydda Borrower; (c) “**Equity Interests**” means all securities, shares, units, options, warrants, interests, participations, or other equivalents (regardless of how designated) of Lydda Borrower; (d) “**Future Rights**” means: (x) all Equity Interests (other than Pledged Interests) owned by Pledgor, and all securities convertible or exchangeable into, and all warrants, options, or other rights to purchase, Equity Interests owned by Pledgor; and (y) the certificates or instruments representing such Equity Interests, convertible or exchangeable securities, warrants, and other rights and all dividends, cash, options, warrants, rights, instruments, and other property or proceeds from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of such Equity Interests; (e) “**Proceeds**” means all proceeds (including proceeds of proceeds) of the Pledged Interests and Future Rights including all: (I) rights, benefits, distributions, premiums, profits, dividends, interest, cash, instruments, documents of title, accounts, contract rights, inventory, equipment, general intangibles, payment intangibles, deposit accounts, chattel paper, and other property from time to time received, receivable, or otherwise distributed in respect of or in exchange for, or as a replacement of or a substitution for, any of the Pledged Interests, Future Rights, or proceeds thereof (including any cash, Equity Interests, or other securities or instruments issued after any recapitalization, readjustment, reclassification, merger or consolidation with respect to Pledgor and any security entitlements, as defined in Section 8-102(a)(17) of the UCC, with respect thereto); (II) “proceeds,” as such term is defined in Section 9-102(a)(64) of the UCC; (III) proceeds of any insurance, indemnity, warranty, or guaranty (including guaranties of delivery) payable from time to time with respect to any of the Pledged Interests, Future Rights, or proceeds thereof; (IV) payments (in any form whatsoever) made or due and payable to Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Interests, Future Rights, or proceeds thereof; and (V) other amounts from time to time paid or payable under or in connection with any of the Pledged Interests, Future Rights, or proceeds thereof; and (f) “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of California; provided, however, that if by reason of mandatory provisions of law, any or all of the perfection or priority of Lender’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

2. **Secured Obligations.** The Collateral secures the due and prompt payment and performance of the following (collectively, the “**Secured Obligations**”): all liabilities, obligations, or undertakings owing by Borrower or Pledgor to Lender of any kind or description, including without limitation those arising out of or outstanding under, advanced or issued pursuant to, or evidenced by this Agreement, the Guaranty, the Loan Agreement, or the other Loan Documents, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code regardless of whether allowed or allowable in such proceeding) and any and all costs, fees (including attorneys fees), and expenses which Pledgor or Borrower is required to pay pursuant to any of the foregoing, by law, or otherwise.

3. **Delivery and Registration of Collateral.**

(a) Pledgor has delivered to Lender all certificates representing the Collateral accompanied by a duly executed instrument of transfer or assignment in blank, in form and substance satisfactory to Lender. All certificates or instruments representing or evidencing the Collateral at any time acquired by Pledgor shall be promptly delivered by Pledgor to Lender or Lender’s designee pursuant

to this Agreement at a location designated by Lender and shall be held by or on behalf of Lender pursuant to this Agreement, and shall be in suitable form for transfer by delivery, or shall be accompanied by a duly executed instrument of transfer or assignment in blank, in form and substance satisfactory to Lender.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at any time in its discretion and without notice to Pledgor, to transfer to or to register on the books of Lydda Borrower (or of any other Person maintaining records with respect to the Collateral) in the name of Lender or any of its nominee any or all of the Collateral. In addition, Lender shall have the right at any time to exchange certificates or instruments representing or evidencing Collateral for certificates or instruments of smaller or larger denominations.

(c) If, at any time and from time to time, any Collateral (including any certificate or instrument representing or evidencing any Collateral) is in the possession of a Person other than Lender or Pledgor (a "Holder"), then Pledgor shall immediately, at Lender's option, either cause such Collateral to be delivered into Lender's possession, or cause such Holder to enter into a control agreement, in form and substance satisfactory to Lender, and take all other steps deemed necessary by Lender to perfect the security interest of Lender in such Collateral, all pursuant to Sections 9-106 and 9-313 of the UCC or other applicable law governing the perfection of Lender's security interest in the Collateral in the possession of such Holder.

(d) Any and all Collateral (including dividends, interest, and other cash distributions) at any time received or held by Pledgor shall be so received or held in trust for Lender, shall be segregated from other funds and property of Pledgor and shall be forthwith delivered to Lender in the same form as so received or held, with any necessary endorsements.

(e) If at any time, and from time to time, any Collateral consists of an uncertificated security or a security in book entry form, then Pledgor shall (i) immediately cause such Collateral to be registered or entered, as the case may be, in the name of Lender, or otherwise cause Lender's security interest thereon to be perfected in accordance with applicable law, (ii) upon request by Lender, provide to Lender an opinion of counsel, in form and substance satisfactory to Lender, confirming such pledge and perfection thereof, and (iii) request Lydda Borrower to cause such Collateral to become certificated and in the event such Collateral becomes certificated, to deliver such Collateral to Lender in accordance with the provisions of Section 3(a). Pledgor agrees that the Organizational Documents of Lydda Borrower shall provide that such Collateral shall be treated as "securities" for purposes of the UCC, and (B) cause such Collateral to become certificated and delivered to Lender in accordance with the provisions of Section 3(a).

#### 4. Voting Rights and Dividends.

(a) So long as no Event of Default shall have occurred and be continuing, Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of the Loan Documents.

(b) Upon the occurrence of an Event of Default, Pledgor shall have no further voting rights or the right to receive and retain cash dividends or distributions with respect to the Collateral and Lender shall have, at Lender's option, the right but not the obligation to exercise all voting rights and all other company rights and receive and retain cash dividends or distributions with respect to the Collateral, including the right to vote the Collateral for or against any amendment of the articles of organization or operating agreement of Lydda Borrower, to vote the Collateral to replace all managers with replacement managers who shall have the right and power to terminate all of the officers of Lydda Borrower and elect or appoint new officers to serve at the direction of such managers and to call and attend meetings, vote,

give consents, receive and retain cash dividends or distributions, and in all other ways to have complete discretion to act in Pledgor's place and stead as to all of the Collateral; but Lender shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible to Pledgor for any failure to do so or delay in doing so. With respect to the actions, voting rights, and other rights and powers in connection with the Collateral available to Lender at its election upon the occurrence of an Event of Default, as described above in this Section 4(b), Pledgor irrevocably constitutes and appoints Lender as its proxy and attorney-in-fact with full power of substitution and acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The parties agree and acknowledge that Lender shall not be nor be deemed to be a fiduciary of Pledgor in any manner whatsoever and does not and shall not owe any duties, including any fiduciary duties, of any nature or kind to Pledgor at any time in connection with the Collateral, the Secured Obligations, the Loan Documents, or this Agreement. Pledgor acknowledges and agrees that the operating agreement of Lydda Borrower is hereby deemed to be amended to effectuate all of the provisions of this Agreement and to allow all of the powers granted or intended to be granted to Lender hereunder, including all of the powers granted to Lender under this Section 4(b).

5. Subordination. Pledgor subordinates all present and future amounts (whether in the form of dividends, distributions, indebtedness, or any other form) owing by Borrower to Pledgor to the obligations at any time owing by Borrower to Lender under the Note and the other Loan Documents. Pledgor assigns all such amounts to Lender, as security for this Agreement, the Note and the other Loan Documents. Pledgor agrees to make no claim for such amounts until all obligations of Borrower under the Note and the other Loan Documents have been fully and indefeasibly discharged. Pledgor further agrees not to assign all or any part of such amounts unless Lender is given prior notice and such assignment is expressly made subject to the terms of this Agreement. If Lender so requests, (a) all instruments evidencing such amounts shall be duly endorsed and delivered to Lender, (b) all security for such amounts shall be duly assigned and delivered to Lender, (c) such amounts shall be enforced, collected and held by Pledgor as trustee for Lender and shall be paid over to Lender on account of the Loan but without reducing or affecting in any manner the liability of Pledgor under the other provisions of this Agreement, and (d) Pledgor shall execute, file and record such documents and instruments and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce Lender's rights in and to such amounts and any security therefor. If Pledgor fails to take any such action, Lender, as attorney-in-fact for Pledgor, is hereby authorized to do so in the name of Pledgor. The foregoing power of attorney is coupled with an interest and cannot be revoked. Pledgor further agrees not to receive or accept any dividends or distributions of any kind from Lydda Borrower in respect of any equity interests in Lydda Borrower owned by Pledgor. If any such dividends or distributions are received by Pledgor in violation of the preceding sentence, Pledgor shall hold such distributions in trust for Lender and shall immediately turn such dividends or distributions over to Lender to be applied to the Loan.

6. Default; Events of Default.

(a) The occurrence of any of the following events shall constitute and is hereby defined to be an "**Event of Default**" hereunder:

(i) Pledgor fails to timely pay any monetary obligation under this Agreement in accordance with the terms hereof as and when such payment is due; or

(ii) Pledgor fails or neglects to timely perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement or Pledgor's Guaranty of even date herewith; or

(iii) an "Event of Default" under any other Loan Document shall have occurred.

(b) Upon the occurrence of any Event of Default (whether or not Lender has knowledge that such Event of Default exists), all Secured Obligations, shall, at the option of Lender and notwithstanding any time allowed in any Loan Document, immediately become due and payable without demand and without notice to Pledgor.

7. Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default and at any time thereafter, Lender may, at its option and without demand of performance or other demand or notice of any kind (except the notices specified below and such other notices as are expressly required under the UCC) to or upon Pledgor or any other Person (all of which are, to the extent permitted by law, hereby expressly waived), exercise any one or more of the rights, powers, and privileges set forth in this Agreement.

(b) Upon the occurrence and during the continuation of an Event of Default and at any time thereafter, Lender may, at its option and without demand of performance or other demand or notice of any kind (except the notices specified below and such other notices as are expressly required under the UCC) to or upon Pledgor or any other Person (all of which are, to the extent permitted by law, hereby expressly waived): (i) pursue any or all of its rights and remedies under any or all of the Loan Documents or at law or in equity in such order and manner as Lender may elect in its sole and absolute discretion; and (ii) realize upon the Collateral or any part thereof, and sell or otherwise dispose of and deliver the Collateral or any part thereof or interest therein, or agree to do so, in one or more parcels. Any disposition of the Collateral may be at public or private sale or sales, at any exchange, broker's board or at any of Lender's offices or elsewhere, at such prices and on such terms (including a requirement that any purchaser of all or any part of the Pledged Interests purchase the Equity Interests constituting the Pledged Interests for investment and without any intention to make a distribution thereof) as it may deem best, for cash or on credit, or for future delivery without assumption of any credit risk, with the right to Lender or any purchaser to purchase at any such sale the whole or any part of the Collateral free of any right or equity of redemption in Pledgor, which right or equity of redemption is hereby expressly waived and released. Notwithstanding any other provision in this Agreement to the contrary, Pledgor agrees that Lender may determine that a sale, public or private, of all or any portion of the Collateral is not in Lender's best interest, and Lender is hereby expressly authorized to retain all or any part of the Pledged Interests indefinitely until Lender deems that a sale would be in its best interest. Until such sale, Lender may elect to hold all or any part of the Pledged Interests and be treated as the beneficial owner thereof and shall be entitled to collect all income and proceeds therefrom and Pledgor shall cause Lydda Borrower to treat Lender in all respects as if Lender was a member of Lydda Borrower and with all the rights applicable to such status as to the Pledged Interests.

(A) The proceeds of any such disposition or other action by Lender may be applied, after Lender is in receipt of good funds, as follows: first, to the reasonable costs, expenses and attorneys' fees, and expenses incurred by Lender for collection and for acquisition, completion, protection, removal, storage, negotiation, valuation, sale, and delivery of the Pledged Interests; second, to any fees or expenses due Lender under the Loan Documents; third, to interest due upon any of the Secured Obligations; and fourth, to the principal of the Secured Obligations; or in such other manner as Lender may elect in its sole and absolute discretion.

(B) Lender need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale may take place, which notice Pledgor hereby deems and agrees to be commercially reasonable.

(C) Pledgor hereby waives to the fullest extent permitted by applicable law any right Pledgor may have to require Lender to marshal assets or sell the Collateral, or any other collateral, in any particular order of priority.

(D) In addition, Pledgor absolutely, unconditionally and irrevocably expressly waives for the benefit of Lender the following:

(i) any right to require Lender, as a condition of payment or performance by Pledgor, to (A) proceed against Borrower or any other Person, (B) proceed against or exhaust any security held by Lender or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person, or (D) pursue any other remedy in the power of Lender whatsoever;

(ii) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(iii) any defense based upon Lender's errors or omissions in the administration of the Secured Obligations;

(iv) (A) any principles or provisions of law, statutory, or otherwise, that are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of Pledgor's obligations under this Agreement, (B) the benefit of any statute of limitations affecting Pledgor's liability under this Agreement or the enforcement of this Agreement, and (C) promptness, diligence and any requirement that Lender collect or realize upon the Secured Obligations or any part thereof or protect, secure, perfect or insure any security interest or Lien or any property subject thereto;

(v) notices of every nature and kind, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Agreement, notices of default under any of the Loan Documents, any agreement or instrument related thereto, notices of the existence, creation, renewal, extension or modification of the Secured Obligations or any agreement related thereto, and notices of any extension of credit to Borrower;

(vi) all rights of subrogation, indemnification, contribution and reimbursement from Borrower or any guarantor and any benefit of, or right to participate in, any collateral or security now or hereinafter held by Lender in respect of the Secured Obligations; and

(vii) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate Pledgor or sureties, or that may conflict with the terms of this Agreement.

8. Securities Law Compliance.

(a) If Lender elects to exercise its right to sell or otherwise dispose of all or any part of the Pledged Interests, and if, in the opinion of counsel for Lender, it is necessary to have the Pledged Interests or that portion thereof to be sold registered under the provisions of the Securities Act of 1933, as amended (the "Securities Act"), Pledgor will diligently use Pledgor's best efforts to cause:

(i) Lydda Borrower, its members, managers, and officers, to take all action necessary to register the Pledged Interests or that portion thereof to be disposed of under the provisions of the Securities Act, at Pledgor's expense;

(ii) the registration statement relating thereto to become effective and remain so for not less than one year from the date of the first public offering of the Pledged Interests or that portion thereof so to be disposed of, and to make all amendments thereto and to the related prospectus which, in the opinion of Lender or its counsel, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto;

(iii) Lydda Borrower to comply with the provisions of the "Blue Sky" law of any jurisdiction which Lender shall designate; and

(iv) Lydda Borrower to make available to its security holders, as soon as practicable, an earnings statement covering a period of at least twelve months but not more than eighteen months, beginning with the first month after the effective date of any such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act.

(b) Notwithstanding the foregoing, Pledgor recognizes that Lender may be unable to effect a public sale of all or a part of the Pledged Interests or otherwise or may determine that a public sale is impractical, not desirable or not commercially reasonable and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obligated to agree, among other things, to acquire the Pledged Interests for its own account for investment and not with a view to the distribution or resale thereof. Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to Pledgor and Lender than those of public sales, and Pledgor agrees that Lender shall have no obligation to delay the sale of any Pledged Interests to permit Lydda Borrower to register it for public sale under the Securities Act and that any such private sale shall be deemed to have been made in a commercially reasonable manner.

9. Rights and Remedies Not Exclusive. Notwithstanding any provision in this Agreement or in any Loan Document to the contrary, the rights and remedies provided in this Agreement and in the other Loan Documents and in all other agreements, instruments and documents delivered pursuant to or in connection with the Loan Documents are cumulative and are in addition to and not exclusive of any rights or remedies provided by law or under the principles of equity, including the rights and remedies of a secured party under the UCC, and all such rights and remedies may be enforced partially, successively, alternatively, or concurrently, and any action by Lender to enforce any of its rights or remedies shall not stop or prevent Lender from pursuing any other right or remedy which it may have hereunder or by law.

10. Pledgor's Warranties and Representations. Pledgor represents and warrants that:

(a) Pledgor is a limited liability company duly organized and in good standing under the laws of the State of Virginia and possesses all requisite power and authority to carry out the transactions contemplated by this Agreement;

(b) Pledgor is the legal and beneficial owner of all the Collateral;

(c) the Equity Interests of the Pledged Interests constitute the applicable percentage of the issued and outstanding Equity Interests of Lydda Borrower as set forth on Schedule 1 attached hereto;

(d) other than as set forth on Schedule 1 attached hereto, it has not received any other certificates representing the Pledged Interests;

(e) all the Equity Interests of the Pledged Interests have been duly and validly issued, are fully paid and nonassessable, and are owned by Pledgor free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, or security interest in such Equity Interests or the proceeds thereof;

(f) no other pledge agreements, security agreements, or other liens have now attached or will in the future attach to the Pledged Interests other than the pledge and security interest created hereby;

(g) Pledgor has executed and delivered this Agreement and, as applicable, the other Loan Documents properly and they constitute the valid and legally binding obligations of the Pledgor and are fully enforceable against the Pledgor in accordance with their respective terms;

(h) the execution and delivery of this Agreement and the performance of its terms (1) will not result in any violation of any provision of the Organizational Documents of Borrower, or (2) violate or constitute a default under the terms of any agreement, indenture or other instrument, license, judgment, decree, order or Legal Requirement applicable to Borrower or Pledgor; and

(i) upon execution of this Agreement and the attachment and perfection of the Lien as provided in this Agreement through control or possession of the Collateral as contemplated in this Agreement, Lender shall have a valid first priority lien upon and perfected security interest in the Collateral and the proceeds thereof, subject to no prior security interest, lien, charge, encumbrance, or agreement purporting to grant to any third party a security interest in the property or assets of Pledgor that would include the Collateral.

Pledgor further represents and warrants to Lender that all the aforesaid representations and warranties shall continue in full force and effect so long as any of the Secured Obligations remain unpaid.

11. Additional Covenants of Pledgor.

(a) Pledgor hereby covenants that, until all Secured Obligations, including all principal and interest payable under the Note, have been indefeasibly paid in full, Pledgor will not:

(i) sell, transfer, convey or otherwise dispose of any of the Collateral or any interest therein, or create, incur or permit to exist any Lien whatsoever in or with respect to any of the Collateral or the proceeds thereof, other than that created hereby; or

(ii) consent to or approve the issuance of any additional Equity Interests in Lydda Borrower, or any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or non-occurrence of any event or condition into, or exchangeable for, any such Equity Interests, or any warrants, options, rights or other commitments entitling any person to purchase or otherwise acquire any such Equity Interests; or

(iii) consent to or approve or permit any amendment, restatement or substitution of the Organizational Documents of Lydda Borrower without the prior written consent of Lender; or

(iv) consent to or approve or permit Lydda Borrower to sell, dispose of, encumber or grant a Lien in all or any material portion of its property or assets; or

(v) without the prior written consent of Lender, cause or permit any Collateral to constitute a security governed by Article 8 of the UCC of the jurisdiction in which Lydda Borrower is organized unless Pledgor, if it has not already done so, complies with Section 3 with respect to such security.

(b) Pledgor warrants and will, at Pledgor's own expense, defend Lender's right, title, special property, and security interest in and to the Collateral against the claims of any person.

12. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing (including by facsimile) and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid) answer back acknowledged), addressed as follows:

If to Pledgor: AM Family Fund LLC  
630 Nimes Road  
Bel Air, California 90077  
Attention: Mohamed Hadid  
Email: hadidaspen@aol.com

with a copy to: Law Offices of Abdulaziz, Grossbart & Rudman  
6454 Coldwater Canyon Avenue  
North Hollywood, California 91606  
Telephone: (818) 760-2000  
Facsimile: (818) 760-3908  
Email: bdr@agrlaw.com

If to Lender: Romspen California Mortgage Limited Partnership  
162 Cumberland Street, Suite 300  
Toronto, Ontario M5R 3N5  
Attention: Joel Mickelson  
Blake Cassidy  
Telephone: (416) 928-4870  
Facsimile: (416) 966-1161  
Email: JoelMickelson@romspen.com  
BlakeCassidy@romspen.com

with a copy to:

Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201  
Attention: Clifton M. Dugas, II  
Telephone: (214) 661-5545  
Facsimile: (214) 397-0033  
cdugas@polsinelli.com

13. Further Documents. Pledgor shall at any time, and from time to time, upon the written request of Lender, execute and deliver such further documents and do such further acts and things as Lender may request to effect the purposes of this Agreement, including delivering to Lender upon the occurrence of an Event of Default irrevocable proxies with respect to the Pledged Interests in a form satisfactory to Lender. Until receipt thereof, this Agreement shall constitute Pledgor's irrevocable constitution and appointment of Lender as its proxy and attorney-in-fact with full power of substitution and acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable.

14. Return of Pledged Interests; Termination and Release of Liens. Upon Lender's receipt of payment in full of all Secured Obligations, including but not limited to all amounts due and owing under the Note and all additional costs and expenses of Lender under this Agreement, this Agreement shall terminate and Lender shall (i) deliver to Pledgor, at Pledgor's expense, such of the Collateral as shall not have been sold or otherwise applied pursuant to this Agreement and (ii) take all such action as may be required to release and terminate the security interests, Liens, transfers, grants of power, and assignments created, provided or effectuated in this Agreement.

15. Lender's Duties. Beyond the exercise of reasonable care to assure the safe custody of the Collateral while held hereunder, Lender shall have no duty or liability to preserve any rights pertaining thereto and shall be relieved of all responsibility for the Collateral upon surrendering it or tendering surrender of it to Pledgor. As stated above, Lender shall not be or be deemed to be a fiduciary of Pledgor in any manner whatsoever and does not owe and shall not owe any fiduciary duties of any nature or kind to Pledgor at any time in connection with the Collateral, the Secured Obligations, the Loan Documents, or this Agreement.

16. Specific Performance. Pledgor acknowledges that a breach of any of its covenants set forth in this Agreement may cause irreparable injury to Lender, that Lender will have no adequate remedy at law with respect to such breach, and that, as a consequence thereof, all of Pledgor's covenants set forth in this Agreement shall be specifically enforceable against Pledgor, and Pledgor hereby waives, to the extent such waiver is enforceable under law, and shall not assert, any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred.

17. No Waiver. No course of dealing between Pledgor and Lender, nor any failure to exercise, nor any delay in exercising any right, remedy, power, or privilege of Lender hereunder or under any other Loan Document shall operate as a waiver thereof nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude any other or the further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Prohibition of Indirect Action. Any act that Pledgor is prohibited from doing hereunder or under any other Loan Document shall not be done indirectly through an Affiliate of Pledgor or by any other indirect means.

19. Expenses. Pledgor agrees to pay promptly to Lender upon demand all expenses, costs, charges, fees and disbursements of any kind, type, nature, and description, including attorneys' fees, litigation expenses, and all court costs, incurred by Lender in connection with the underwriting, origination, making, documentation, administration, enforcement, or collection of the Loan Documents, including this Agreement, and the creation, perfection, administration, defense of, and enforcement of the assignments, pledges, and security interests granted herein, and all expenses incurred by Lender shall be a part of the Secured Obligations.

20. Severability. The provisions of this Agreement are severable, and if any clause or provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement in any jurisdiction.

21. Governing Law; Venue. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Pledgor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. PLEDGOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Pledgor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

22. Rules Of Construction. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents. Section and subsection headings in this Agreement are included in this Agreement for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. Article, section, subsection, exhibit, and schedule references are to this Agreement unless otherwise specified. All of the exhibits or schedules attached to this Agreement shall be deemed incorporated in this Agreement by reference. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that

such party has drafted any portion of this Agreement, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Agreement and the other Loan Documents.

23. Amendments. This Agreement may be amended only by a written instrument signed by all the parties hereto.

24. Conflict Among Provisions. If there is a conflict between or among the terms, covenants, conditions or provisions of this Agreement and the other Loan Documents, then any term, covenant, condition or provision that Lender may elect to enforce from time to time so as to enlarge the interest of Lender in its security for the payment and performance of the Secured Obligations, afford Lender the maximum financial benefits or security for the Secured Obligations, or provide Lender the maximum assurance of payment and performance of the Secured Obligations in full, shall control. PLEDGOR ACKNOWLEDGES AND AGREES THAT IT HAS BEEN PROVIDED WITH SUFFICIENT AND NECESSARY TIME AND OPPORTUNITY TO REVIEW THE TERMS OF THIS AGREEMENT AND EACH OF THE LOAN DOCUMENTS WITH ANY AND ALL COUNSEL IT DEEMS APPROPRIATE, AND THAT NO INFERENCE IN FAVOR OF, OR AGAINST, LENDER OR PLEDGOR SHALL BE DRAWN FROM THE FACT THAT ANY SUCH PARTY HAS DRAFTED ANY PORTION OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS.

25. Sole and Absolute Discretion of Lender. Whenever pursuant to this Agreement (a) Lender exercises any right given to it to consent, approve or disapprove, (b) any arrangement, document, item or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to consent, approve or disapprove, all decisions that arrangements, documents, items, or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided in this Agreement.

26. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal and legal representatives, executors, successors, transferees and assigns; provided, however, that Pledgor shall not be permitted to assign any of its obligations hereunder.

27. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

28. Waiver of Jury Trial. PLEDGOR 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 AGREEMENT OR ANY OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY PLEDGOR, 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 PLEDGOR.

*[Separate Signature Pages Follow]*

IN WITNESS WHEREOF, Pledgor and Lender have caused this Agreement to be duly executed and delivered by their officers thereunto duly authorized as of the date first written above.

**PLEDGOR:**

**AM FAMILY FUND,**  
a Virginia limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Sole Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles,

On 3-14, 2017, before me, Thomas Gallagher, Notary Public  
(insert name and title of the officer)

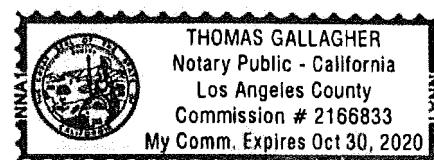
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**LENDER:**

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,  
an Ontario limited partnership**

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

LENDER SIGNATURE PAGE TO MEMBERSHIP INTEREST PLEDGE AGREEMENT

57570863

**SCHEDULE 1**

**Pledged Interests**

<u>Name of Issuer</u>	<u>Jurisdiction of Organization</u>	<u>Type of Interest</u>	<u>Number of Shares/Units (if applicable)</u>	<u>Certificate Numbers (if any)</u>	<u>Percentage of Outstanding Equity Interests in Lydda Borrower</u>
Lydda Lud, LLC	California	Membership Interest	N/A	N/A	100%

SCHEDULE 1 TO MEMBERSHIP INTEREST PLEDGE AGREEMENT

# EXHIBIT 15

**MEMBERSHIP INTEREST PLEDGE AGREEMENT**

THIS MEMBERSHIP INTEREST PLEDGE AGREEMENT (this "Agreement") is made and entered into as of March 17, 2017, by and between **MOHAMED HADID**, an individual ("Pledgor"), and **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership (together with its successors and assigns, "Lender").

**RECITALS**

The following recitals are a material part of this Agreement.

A. Pursuant to the terms of a Loan Agreement dated of even date herewith between **COLDWATER DEVELOPMENT LLC**, a California limited liability company ("Coldwater Borrower"), and **LYDDA LUD, LLC**, a California limited liability company ("Lydda Borrower"), and Lender (as the same may be modified, amended or restated from time to time, the "Loan Agreement"), Lender is making a loan to Borrower in the maximum principal amount of Twenty-Five Million and No/100ths Dollars (\$25,000,000.00) (the "Loan") for the purposes specified in the Loan Agreement, said purposes relating to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property"). Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Loan Agreement.

B. Pledgor has executed a Guaranty, dated of even date herewith, in favor of Lender (as amended, restated, supplemented, ratified, or otherwise modified from time to time, the "Guaranty"), pursuant to which Pledgor has guarantied Borrower's obligations to Lender under the Loan Documents.

C. Pledgor beneficially owns one hundred percent (100%) of the issued and outstanding Equity Interests (as hereinafter defined) in Coldwater Borrower and will derive substantial direct and indirect benefits from the Loan and the transactions contemplated by the Loan Agreement.

D. Lender has required, as security for making the Loan and the observance and performance of all the terms, covenants and provisions of the Loan Documents on the part of Borrower to be observed and performed, a pledge of, and security interest in, all Collateral (as hereinafter defined) associated therewith as evidenced by this Agreement.

E. It is a condition to Lender's agreement to make the Loan that Pledgor enter into this Agreement.

**AGREEMENT**

NOW, THEREFORE, to induce Lender to enter into the Loan Agreement and make the Loan, and in consideration of the mutual promises, covenants, representations, and warranties set forth in this Agreement and for other good and valuable consideration, the parties to this Agreement agree as follows:

1. **Pledge.** As security for the prompt payment and performance of the Secured Obligations (defined below) in full when due, whether at stated maturity, by acceleration or otherwise (including amounts that would become due but for the operation of the provisions of the United States Bankruptcy Code (11 U.S.C. Section 101, et seq.), as in effect from time to time, and any successor statute thereto ("Bankruptcy Code")), Pledgor by this Agreement pledges, grants, transfers, and assigns to Lender a security interest in all of Pledgor's right, title, and interest in and to the Collateral (defined below).

For the purposes of this Agreement, (a) “**Collateral**” means Pledgor’s interest in the Pledged Interests, the Future Rights, and the Proceeds, collectively; (b) “**Pledged Interests**” means (i) all Equity Interests owned by Pledgor, (ii) the certificates or instruments representing such Equity Interests, if any, (iii) all rights of Pledgor to vote or otherwise control Coldwater Borrower, and (iv) all rights of Pledgor as a member of Coldwater Borrower; (c) “**Equity Interests**” means all securities, shares, units, options, warrants, interests, participations, or other equivalents (regardless of how designated) of Coldwater Borrower; (d) “**Future Rights**” means: (x) all Equity Interests (other than Pledged Interests) owned by Pledgor, and all securities convertible or exchangeable into, and all warrants, options, or other rights to purchase, Equity Interests owned by Pledgor; and (y) the certificates or instruments representing such Equity Interests, convertible or exchangeable securities, warrants, and other rights and all dividends, cash, options, warrants, rights, instruments, and other property or proceeds from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of such Equity Interests; (e) “**Proceeds**” means all proceeds (including proceeds of proceeds) of the Pledged Interests and Future Rights including all: (I) rights, benefits, distributions, premiums, profits, dividends, interest, cash, instruments, documents of title, accounts, contract rights, inventory, equipment, general intangibles, payment intangibles, deposit accounts, chattel paper, and other property from time to time received, receivable, or otherwise distributed in respect of or in exchange for, or as a replacement of or a substitution for, any of the Pledged Interests, Future Rights, or proceeds thereof (including any cash, Equity Interests, or other securities or instruments issued after any recapitalization, readjustment, reclassification, merger or consolidation with respect to Pledgor and any security entitlements, as defined in Section 8-102(a)(17) of the UCC, with respect thereto); (II) “proceeds,” as such term is defined in Section 9-102(a)(64) of the UCC; (III) proceeds of any insurance, indemnity, warranty, or guaranty (including guaranties of delivery) payable from time to time with respect to any of the Pledged Interests, Future Rights, or proceeds thereof; (IV) payments (in any form whatsoever) made or due and payable to Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Interests, Future Rights, or proceeds thereof; and (V) other amounts from time to time paid or payable under or in connection with any of the Pledged Interests, Future Rights, or proceeds thereof; and (f) “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of California; provided, however, that if by reason of mandatory provisions of law, any or all of the perfection or priority of Lender’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

2. Secured Obligations. The Collateral secures the due and prompt payment and performance of the following (collectively, the “**Secured Obligations**”): all liabilities, obligations, or undertakings owing by Borrower or Pledgor to Lender of any kind or description, including without limitation those arising out of or outstanding under, advanced or issued pursuant to, or evidenced by this Agreement, the Guaranty, the Loan Agreement, or the other Loan Documents, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code regardless of whether allowed or allowable in such proceeding) and any and all costs, fees (including attorneys fees), and expenses which Pledgor or Borrower is required to pay pursuant to any of the foregoing, by law, or otherwise.

3. Delivery and Registration of Collateral.

(a) Pledgor has delivered to Lender all certificates representing the Collateral accompanied by a duly executed instrument of transfer or assignment in blank, in form and substance satisfactory to Lender. All certificates or instruments representing or evidencing the Collateral at any

time acquired by Pledgor shall be promptly delivered by Pledgor to Lender or Lender's designee pursuant to this Agreement at a location designated by Lender and shall be held by or on behalf of Lender pursuant to this Agreement, and shall be in suitable form for transfer by delivery, or shall be accompanied by a duly executed instrument of transfer or assignment in blank, in form and substance satisfactory to Lender.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at any time in its discretion and without notice to Pledgor, to transfer to or to register on the books of Coldwater Borrower (or of any other Person maintaining records with respect to the Collateral) in the name of Lender or any of its nominee any or all of the Collateral. In addition, Lender shall have the right at any time to exchange certificates or instruments representing or evidencing Collateral for certificates or instruments of smaller or larger denominations.

(c) If, at any time and from time to time, any Collateral (including any certificate or instrument representing or evidencing any Collateral) is in the possession of a Person other than Lender or Pledgor (a "Holder"), then Pledgor shall immediately, at Lender's option, either cause such Collateral to be delivered into Lender's possession, or cause such Holder to enter into a control agreement, in form and substance satisfactory to Lender, and take all other steps deemed necessary by Lender to perfect the security interest of Lender in such Collateral, all pursuant to Sections 9-106 and 9-313 of the UCC or other applicable law governing the perfection of Lender's security interest in the Collateral in the possession of such Holder.

(d) Any and all Collateral (including dividends, interest, and other cash distributions) at any time received or held by Pledgor shall be so received or held in trust for Lender, shall be segregated from other funds and property of Pledgor and shall be forthwith delivered to Lender in the same form as so received or held, with any necessary endorsements.

(e) If at any time, and from time to time, any Collateral consists of an uncertificated security or a security in book entry form, then Pledgor shall (i) immediately cause such Collateral to be registered or entered, as the case may be, in the name of Lender, or otherwise cause Lender's security interest thereon to be perfected in accordance with applicable law, (ii) upon request by Lender, provide to Lender an opinion of counsel, in form and substance satisfactory to Lender, confirming such pledge and perfection thereof, and (iii) request Coldwater Borrower to cause such Collateral to become certificated and in the event such Collateral becomes certificated, to deliver such Collateral to Lender in accordance with the provisions of Section 3(a). Pledgor agrees that the Organizational Documents of Coldwater Borrower shall provide that such Collateral shall be treated as "securities" for purposes of the UCC, and (B) cause such Collateral to become certificated and delivered to Lender in accordance with the provisions of Section 3(a).

#### 4. Voting Rights and Dividends.

(a) So long as no Event of Default shall have occurred and be continuing, Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of the Loan Documents.

(b) Upon the occurrence of an Event of Default, Pledgor shall have no further voting rights or the right to receive and retain cash dividends or distributions with respect to the Collateral and Lender shall have, at Lender's option, the right but not the obligation to exercise all voting rights and all other company rights and receive and retain cash dividends or distributions with respect to the Collateral, including the right to vote the Collateral for or against any amendment of the articles of organization or operating agreement of Coldwater Borrower, to vote the Collateral to replace all managers with replacement managers who shall have the right and power to terminate all of the officers of Coldwater

Borrower and elect or appoint new officers to serve at the direction of such managers and to call and attend meetings, vote, give consents, receive and retain cash dividends or distributions, and in all other ways to have complete discretion to act in Pledgor's place and stead as to all of the Collateral; but Lender shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible to Pledgor for any failure to do so or delay in doing so. With respect to the actions, voting rights, and other rights and powers in connection with the Collateral available to Lender at its election upon the occurrence of an Event of Default, as described above in this Section 4(b), Pledgor irrevocably constitutes and appoints Lender as its proxy and attorney-in-fact with full power of substitution and acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The parties agree and acknowledge that Lender shall not be nor be deemed to be a fiduciary of Pledgor in any manner whatsoever and does not and shall not owe any duties, including any fiduciary duties, of any nature or kind to Pledgor at any time in connection with the Collateral, the Secured Obligations, the Loan Documents, or this Agreement. Pledgor acknowledges and agrees that the operating agreement of Coldwater Borrower is hereby deemed to be amended to effectuate all of the provisions of this Agreement and to allow all of the powers granted or intended to be granted to Lender hereunder, including all of the powers granted to Lender under this Section 4(b).

5. Subordination. Pledgor subordinates all present and future amounts (whether in the form of dividends, distributions, indebtedness, or any other form) owing by Borrower to Pledgor to the obligations at any time owing by Borrower to Lender under the Note and the other Loan Documents. Pledgor assigns all such amounts to Lender, as security for this Agreement, the Note and the other Loan Documents. Pledgor agrees to make no claim for such amounts until all obligations of Borrower under the Note and the other Loan Documents have been fully and indefeasibly discharged. Pledgor further agrees not to assign all or any part of such amounts unless Lender is given prior notice and such assignment is expressly made subject to the terms of this Agreement. If Lender so requests, (a) all instruments evidencing such amounts shall be duly endorsed and delivered to Lender, (b) all security for such amounts shall be duly assigned and delivered to Lender, (c) such amounts shall be enforced, collected and held by Pledgor as trustee for Lender and shall be paid over to Lender on account of the Loan but without reducing or affecting in any manner the liability of Pledgor under the other provisions of this Agreement, and (d) Pledgor shall execute, file and record such documents and instruments and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce Lender's rights in and to such amounts and any security therefor. If Pledgor fails to take any such action, Lender, as attorney-in-fact for Pledgor, is hereby authorized to do so in the name of Pledgor. The foregoing power of attorney is coupled with an interest and cannot be revoked. Pledgor further agrees not to receive or accept any dividends or distributions of any kind from Coldwater Borrower in respect of any equity interests in Coldwater Borrower owned by Pledgor. If any such dividends or distributions are received by Pledgor in violation of the preceding sentence, Pledgor shall hold such distributions in trust for Lender and shall immediately turn such dividends or distributions over to Lender to be applied to the Loan.

6. Default; Events of Default.

(a) The occurrence of any of the following events shall constitute and is hereby defined to be an "**Event of Default**" hereunder:

(i) Pledgor fails to timely pay any monetary obligation under this Agreement in accordance with the terms hereof as and when such payment is due; or

(ii) Pledgor fails or neglects to timely perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement or Pledgor's Guaranty of even date herewith; or

(iii) an "Event of Default" under any other Loan Document shall have occurred.

(b) Upon the occurrence of any Event of Default (whether or not Lender has knowledge that such Event of Default exists), all Secured Obligations, shall, at the option of Lender and notwithstanding any time allowed in any Loan Document, immediately become due and payable without demand and without notice to Pledgor.

7. Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default and at any time thereafter, Lender may, at its option and without demand of performance or other demand or notice of any kind (except the notices specified below and such other notices as are expressly required under the UCC) to or upon Pledgor or any other Person (all of which are, to the extent permitted by law, hereby expressly waived), exercise any one or more of the rights, powers, and privileges set forth in this Agreement.

(b) Upon the occurrence and during the continuation of an Event of Default and at any time thereafter, Lender may, at its option and without demand of performance or other demand or notice of any kind (except the notices specified below and such other notices as are expressly required under the UCC) to or upon Pledgor or any other Person (all of which are, to the extent permitted by law, hereby expressly waived): (i) pursue any or all of its rights and remedies under any or all of the Loan Documents or at law or in equity in such order and manner as Lender may elect in its sole and absolute discretion; and (ii) realize upon the Collateral or any part thereof, and sell or otherwise dispose of and deliver the Collateral or any part thereof or interest therein, or agree to do so, in one or more parcels. Any disposition of the Collateral may be at public or private sale or sales, at any exchange, broker's board or at any of Lender's offices or elsewhere, at such prices and on such terms (including a requirement that any purchaser of all or any part of the Pledged Interests purchase the Equity Interests constituting the Pledged Interests for investment and without any intention to make a distribution thereof) as it may deem best, for cash or on credit, or for future delivery without assumption of any credit risk, with the right to Lender or any purchaser to purchase at any such sale the whole or any part of the Collateral free of any right or equity of redemption in Pledgor, which right or equity of redemption is hereby expressly waived and released. Notwithstanding any other provision in this Agreement to the contrary, Pledgor agrees that Lender may determine that a sale, public or private, of all or any portion of the Collateral is not in Lender's best interest, and Lender is hereby expressly authorized to retain all or any part of the Pledged Interests indefinitely until Lender deems that a sale would be in its best interest. Until such sale, Lender may elect to hold all or any part of the Pledged Interests and be treated as the beneficial owner thereof and shall be entitled to collect all income and proceeds therefrom and Pledgor shall cause Coldwater Borrower to treat Lender in all respects as if Lender was a member of Coldwater Borrower and with all the rights applicable to such status as to the Pledged Interests.

(A) The proceeds of any such disposition or other action by Lender may be applied, after Lender is in receipt of good funds, as follows: first, to the reasonable costs, expenses and attorneys' fees, and expenses incurred by Lender for collection and for acquisition, completion, protection, removal, storage, negotiation, valuation, sale, and delivery of the Pledged Interests; second, to any fees or expenses due Lender under the Loan Documents; third, to interest due upon any of the Secured Obligations; and fourth, to the principal of the Secured Obligations; or in such other manner as Lender may elect in its sole and absolute discretion.

(B) Lender need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale may take place, which notice Pledgor hereby deems and agrees to be commercially reasonable.

(C) Pledgor hereby waives to the fullest extent permitted by applicable law any right Pledgor may have to require Lender to marshal assets or sell the Collateral, or any other collateral, in any particular order of priority.

(D) In addition, Pledgor absolutely, unconditionally and irrevocably expressly waives for the benefit of Lender the following:

(i) any right to require Lender, as a condition of payment or performance by Pledgor, to (A) proceed against Borrower or any other Person, (B) proceed against or exhaust any security held by Lender or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person, or (D) pursue any other remedy in the power of Lender whatsoever;

(ii) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(iii) any defense based upon Lender's errors or omissions in the administration of the Secured Obligations;

(iv) (A) any principles or provisions of law, statutory, or otherwise, that are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of Pledgor's obligations under this Agreement, (B) the benefit of any statute of limitations affecting Pledgor's liability under this Agreement or the enforcement of this Agreement, and (C) promptness, diligence and any requirement that Lender collect or realize upon the Secured Obligations or any part thereof or protect, secure, perfect or insure any security interest or Lien or any property subject thereto;

(v) notices of every nature and kind, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Agreement, notices of default under any of the Loan Documents, any agreement or instrument related thereto, notices of the existence, creation, renewal, extension or modification of the Secured Obligations or any agreement related thereto, and notices of any extension of credit to Borrower;

(vi) all rights of subrogation, indemnification, contribution and reimbursement from Borrower or any guarantor and any benefit of, or right to participate in, any collateral or security now or hereinafter held by Lender in respect of the Secured Obligations; and

(vii) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate Pledgor or sureties, or that may conflict with the terms of this Agreement.

8. Securities Law Compliance.

(a) If Lender elects to exercise its right to sell or otherwise dispose of all or any part of the Pledged Interests, and if, in the opinion of counsel for Lender, it is necessary to have the Pledged Interests or that portion thereof to be sold registered under the provisions of the Securities Act of 1933, as amended (the "Securities Act"), Pledgor will diligently use Pledgor's best efforts to cause:

(i) Coldwater Borrower, its members, managers, and officers, to take all action necessary to register the Pledged Interests or that portion thereof to be disposed of under the provisions of the Securities Act, at Pledgor's expense;

(ii) the registration statement relating thereto to become effective and remain so for not less than one year from the date of the first public offering of the Pledged Interests or that portion thereof so to be disposed of, and to make all amendments thereto and to the related prospectus which, in the opinion of Lender or its counsel, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto;

(iii) Coldwater Borrower to comply with the provisions of the "Blue Sky" law of any jurisdiction which Lender shall designate; and

(iv) Coldwater Borrower to make available to its security holders, as soon as practicable, an earnings statement covering a period of at least twelve months but not more than eighteen months, beginning with the first month after the effective date of any such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act.

(b) Notwithstanding the foregoing, Pledgor recognizes that Lender may be unable to effect a public sale of all or a part of the Pledged Interests or otherwise or may determine that a public sale is impractical, not desirable or not commercially reasonable and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obligated to agree, among other things, to acquire the Pledged Interests for its own account for investment and not with a view to the distribution or resale thereof. Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to Pledgor and Lender than those of public sales, and Pledgor agrees that Lender shall have no obligation to delay the sale of any Pledged Interests to permit Coldwater Borrower to register it for public sale under the Securities Act and that any such private sale shall be deemed to have been made in a commercially reasonable manner.

9. Rights and Remedies Not Exclusive. Notwithstanding any provision in this Agreement or in any Loan Document to the contrary, the rights and remedies provided in this Agreement and in the other Loan Documents and in all other agreements, instruments and documents delivered pursuant to or in connection with the Loan Documents are cumulative and are in addition to and not exclusive of any rights or remedies provided by law or under the principles of equity, including the rights and remedies of a secured party under the UCC, and all such rights and remedies may be enforced partially, successively, alternatively, or concurrently, and any action by Lender to enforce any of its rights or remedies shall not stop or prevent Lender from pursuing any other right or remedy which it may have hereunder or by law.

10. Pledgor's Warranties and Representations. Pledgor represents and warrants that:

(a) Pledgor is an individual residing in the State of California and possesses all requisite power, capacity, and authority to carry out the transactions contemplated by this Agreement;

- (b) Pledgor is the legal and beneficial owner of all the Collateral;
- (c) the Equity Interests of the Pledged Interests constitute the applicable percentage of the issued and outstanding Equity Interests of Coldwater Borrower as set forth on Schedule 1 attached hereto;
- (d) other than as set forth on Schedule 1 attached hereto, it has not received any other certificates representing the Pledged Interests;
- (e) all the Equity Interests of the Pledged Interests have been duly and validly issued, are fully paid and nonassessable, and are owned by Pledgor free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, or security interest in such Equity Interests or the proceeds thereof;
- (f) no other pledge agreements, security agreements, or other liens have now attached or will in the future attach to the Pledged Interests other than the pledge and security interest created hereby;
- (g) Pledgor has executed and delivered this Agreement and, as applicable, the other Loan Documents properly and they constitute the valid and legally binding obligations of the Pledgor and are fully enforceable against the Pledgor in accordance with their respective terms;
- (h) the execution and delivery of this Agreement and the performance of its terms (1) will not result in any violation of any provision of the Organizational Documents of Borrower, or (2) violate or constitute a default under the terms of any agreement, indenture or other instrument, license, judgment, decree, order or Legal Requirement applicable to Borrower or Pledgor; and
  - (i) upon execution of this Agreement and the attachment and perfection of the Lien as provided in this Agreement through control or possession of the Collateral as contemplated in this Agreement, Lender shall have a valid first priority lien upon and perfected security interest in the Collateral and the proceeds thereof, subject to no prior security interest, lien, charge, encumbrance, or agreement purporting to grant to any third party a security interest in the property or assets of Pledgor that would include the Collateral.

Pledgor further represents and warrants to Lender that all the aforesaid representations and warranties shall continue in full force and effect so long as any of the Secured Obligations remain unpaid.

11. Additional Covenants of Pledgor.

- (a) Pledgor hereby covenants that, until all Secured Obligations, including all principal and interest payable under the Note, have been indefeasibly paid in full, Pledgor will not:
  - (i) sell, transfer, convey or otherwise dispose of any of the Collateral or any interest therein, or create, incur or permit to exist any Lien whatsoever in or with respect to any of the Collateral or the proceeds thereof, other than that created hereby; or
  - (ii) consent to or approve the issuance of any additional Equity Interests in Coldwater Borrower, or any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or non-occurrence of any event or condition into, or exchangeable for, any such Equity Interests, or any warrants, options, rights or other commitments entitling any person to purchase or otherwise acquire any such Equity Interests; or

(iii) consent to or approve or permit any amendment, restatement or substitution of the Organizational Documents of Coldwater Borrower without the prior written consent of Lender; or

(iv) consent to or approve or permit Coldwater Borrower to sell, dispose of, encumber or grant a Lien in all or any material portion of its property or assets; or

(v) without the prior written consent of Lender, cause or permit any Collateral to constitute a security governed by Article 8 of the UCC of the jurisdiction in which Coldwater Borrower is organized unless Pledgor, if it has not already done so, complies with Section 3 with respect to such security.

(b) Pledgor warrants and will, at Pledgor's own expense, defend Lender's right, title, special property, and security interest in and to the Collateral against the claims of any person.

12. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing (including by facsimile) and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid) answer back acknowledged), addressed as follows:

If to Pledgor: Mohamed Hadid  
630 Nimes Road  
Bel Air, California 90077  
Email: hadidaspen@aol.com

with a copy to: Law Offices of Abdulaziz, Grossbart & Rudman  
6454 Coldwater Canyon Avenue  
North Hollywood, California 91606  
Telephone: (818) 760-2000  
Facsimile: (818) 760-3908  
Email: bdr@agrlaw.com

If to Lender: Romspen California Mortgage Limited Partnership  
162 Cumberland Street, Suite 300  
Toronto, Ontario M5R 3N5  
Attention: Joel Mickelson  
Blake Cassidy  
Telephone: (416) 928-4870  
Facsimile: (416) 966-1161  
Email: JoelMickelson@romspen.com  
BlakeCassidy@romspen.com

with a copy to: Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, Texas 75201  
Attention: Clifton M. Dugas, II  
Telephone: (214) 661-5545  
Facsimile: (214) 397-0033  
cdugas@polsinelli.com

13. Further Documents. Pledgor shall at any time, and from time to time, upon the written request of Lender, execute and deliver such further documents and do such further acts and things as Lender may request to effect the purposes of this Agreement, including delivering to Lender upon the occurrence of an Event of Default irrevocable proxies with respect to the Pledged Interests in a form satisfactory to Lender. Until receipt thereof, this Agreement shall constitute Pledgor's irrevocable constitution and appointment of Lender as its proxy and attorney-in-fact with full power of substitution and acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable.

14. Return of Pledged Interests; Termination and Release of Liens. Upon Lender's receipt of payment in full of all Secured Obligations, including but not limited to all amounts due and owing under the Note and all additional costs and expenses of Lender under this Agreement, this Agreement shall terminate and Lender shall (i) deliver to Pledgor, at Pledgor's expense, such of the Collateral as shall not have been sold or otherwise applied pursuant to this Agreement and (ii) take all such action as may be required to release and terminate the security interests, Liens, transfers, grants of power, and assignments created, provided or effectuated in this Agreement.

15. Lender's Duties. Beyond the exercise of reasonable care to assure the safe custody of the Collateral while held hereunder, Lender shall have no duty or liability to preserve any rights pertaining thereto and shall be relieved of all responsibility for the Collateral upon surrendering it or tendering surrender of it to Pledgor. As stated above, Lender shall not be or be deemed to be a fiduciary of Pledgor in any manner whatsoever and does not owe and shall not owe any fiduciary duties of any nature or kind to Pledgor at any time in connection with the Collateral, the Secured Obligations, the Loan Documents, or this Agreement.

16. Specific Performance. Pledgor acknowledges that a breach of any of its covenants set forth in this Agreement may cause irreparable injury to Lender, that Lender will have no adequate remedy at law with respect to such breach, and that, as a consequence thereof, all of Pledgor's covenants set forth in this Agreement shall be specifically enforceable against Pledgor, and Pledgor hereby waives, to the extent such waiver is enforceable under law, and shall not assert, any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred.

17. No Waiver. No course of dealing between Pledgor and Lender, nor any failure to exercise, nor any delay in exercising any right, remedy, power, or privilege of Lender hereunder or under any other Loan Document shall operate as a waiver thereof nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude any other or the further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Prohibition of Indirect Action. Any act that Pledgor is prohibited from doing hereunder or under any other Loan Document shall not be done indirectly through an Affiliate of Pledgor or by any other indirect means.

19. Expenses. Pledgor agrees to pay promptly to Lender upon demand all expenses, costs, charges, fees and disbursements of any kind, type, nature, and description, including attorneys' fees, litigation expenses, and all court costs, incurred by Lender in connection with the underwriting, origination, making, documentation, administration, enforcement, or collection of the Loan Documents, including this Agreement, and the creation, perfection, administration, defense of, and enforcement of the assignments, pledges, and security interests granted herein, and all expenses incurred by Lender shall be a part of the Secured Obligations.

20. Severability. The provisions of this Agreement are severable, and if any clause or provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement in any jurisdiction.

21. Governing Law; Venue. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof ("Governing State"). Pledgor hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. PLEDGOR HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Pledgor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

22. Rules Of Construction. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents. Section and subsection headings in this Agreement are included in this Agreement for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting (and means, including without limitation), and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and other similar terms in this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. Article, section, subsection, exhibit, and schedule references are to this Agreement unless otherwise specified. All of the exhibits or schedules attached to this Agreement shall be deemed incorporated in this Agreement by reference. Any reference to any of the following documents includes any and all alterations, amendments, restatements, extensions, modifications, renewals, or supplements thereto or thereof, as applicable: this Agreement or any of the other Loan Documents. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement, each party having been represented by counsel of its choice in connection with the negotiation and preparation of this Agreement and the other Loan Documents.

23. Amendments. This Agreement may be amended only by a written instrument signed by all the parties hereto.

24. Conflict Among Provisions. If there is a conflict between or among the terms, covenants, conditions or provisions of this Agreement and the other Loan Documents, then any term, covenant, condition or provision that Lender may elect to enforce from time to time so as to enlarge the interest of Lender in its security for the payment and performance of the Secured Obligations, afford Lender the maximum financial benefits or security for the Secured Obligations, or provide Lender the maximum assurance of payment and performance of the of the Secured Obligations in full, shall control. PLEDGOR ACKNOWLEDGES AND AGREES THAT IT HAS BEEN PROVIDED WITH SUFFICIENT AND NECESSARY TIME AND OPPORTUNITY TO REVIEW THE TERMS OF THIS AGREEMENT AND EACH OF THE LOAN DOCUMENTS WITH ANY AND ALL COUNSEL IT DEEMS APPROPRIATE, AND THAT NO INFERENCE IN FAVOR OF, OR AGAINST, LENDER OR PLEDGOR SHALL BE DRAWN FROM THE FACT THAT ANY SUCH PARTY HAS DRAFTED ANY PORTION OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS.

25. Sole and Absolute Discretion of Lender. Whenever pursuant to this Agreement (a) Lender exercises any right given to it to consent, approve or disapprove, (b) any arrangement, document, item or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to consent, approve or disapprove, all decisions that arrangements, documents, items, or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided in this Agreement.

26. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal and legal representatives, executors, successors, transferees and assigns; provided, however, that Pledgor shall not be permitted to assign any of its obligations hereunder.

27. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party by facsimile or other electronic transmission (including a .pdf copy sent by e-mail) shall be deemed to constitute an original and fully effective signature of such party.

28. Waiver of Jury Trial. PLEDGOR 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 AGREEMENT OR ANY OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY PLEDGOR, 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 PLEDGOR.

*[Separate Signature Pages Follow]*

IN WITNESS WHEREOF, Pledgor and Lender have caused this Agreement to be duly executed and delivered by their officers thereunto duly authorized as of the date first written above.

**PLEDGOR:**

  
**MOHAMED HADID, an individual**

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

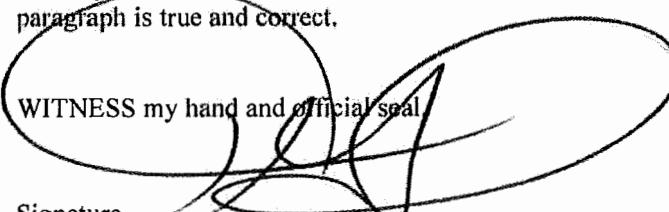
County of Los Angeles)

On 3-14, 2017, before me,

Thomas Gallagher, Notary Public  
(insert name and title of the officer)

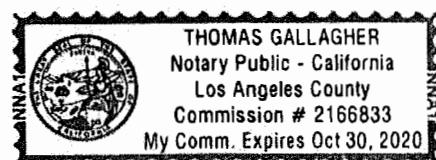
personally appeared Mohamed Hadid, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

  
WITNESS my hand and official seal

Signature \_\_\_\_\_

(Seal)



**LENDER:**

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP,**  
an Ontario limited partnership

By: Romspen Fund GP Inc., its general partner

By: Steven Mucha  
Name: STEVEN MUCHA  
Title: AUTHORIZED SIGNING OFFICER

LENDER SIGNATURE PAGE TO MEMBERSHIP INTEREST PLEDGE AGREEMENT

57513475

**SCHEDULE 1**

**Pledged Interests**

<u>Name of Issuer</u>	<u>Jurisdiction of Organization</u>	<u>Type of Interest</u>	<u>Number of Shares/Units (if applicable)</u>	<u>Certificate Numbers (if any)</u>	<u>Percentage of Outstanding Equity Interests in Coldwater Borrower</u>
Coldwater Development LLC	California	Membership Interest	N/A	N/A	100%

SCHEDULE 1 TO MEMBERSHIP INTEREST PLEDGE AGREEMENT

# EXHIBIT 16

## FORBEARANCE AGREEMENT

This Forbearance Agreement (this “Agreement”), effective as of May 1, 2019 (the “Effective Date”), is entered into by and between COLDWATER DEVELOPMENT LLC, a California limited liability company (“Coldwater Development”), and LYDDA LUD, LLC, a California limited liability company (“Lydda Lud”) (individually and collectively, jointly and severally, “Borrower”), 901 STRADA, LLC, a California limited liability company (“901 Strada”), MOHAMED HADID, an individual (“Guarantor”) and ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP, an Ontario limited partnership, as lender (“Lender”). Borrower, 901 Strada, and Guarantor are individually and collectively, jointly and severally, referred to herein as “Obligor(s)”.

### RECITALS:

A. Reference is made to that certain Loan Agreement dated March 17, 2017, by and between Borrower and Lender (the “Loan Agreement”), pursuant to which Lender agreed to make available to Borrower certain financial accommodations. All capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Loan Agreement.

B. Lender is the holder of that certain Promissory Note dated March 17, 2017 (the “Note”), in the original principal amount of \$25,000,000.00 (the “Loan”).

C. The Loan is guaranteed by Guarantor pursuant to the terms of that certain Guaranty, dated as of March 17, 2017 (the “Guaranty”).

D. The Loan is secured by, *inter alia*, certain real property, and improvements thereon, legally described on each Exhibit A (collectively, the “Property”) attached to those certain instruments set forth below.

- i. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Deed of Trust 1”), dated March 16, 2017, recorded on March 20, 2017, in the Los Angeles County, California Recorder’s Office at Document Number 20170310859, executed and delivered by Coldwater Development.
- ii. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Deed of Trust 2”), dated March 16, 2017, recorded on March 20, 2017, in the Los Angeles County, California Recorder’s Office at Document Number 20170310860, executed and delivered by Lydda Lud.
- iii. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Deed of Trust 3”), dated March 16, 2017, recorded on March 20, 2017, in the Los Angeles County, California Recorder’s Office at Document Number 20170310861, executed and delivered by 901 Strada.<sup>1</sup>

E. An Event of Default has occurred pursuant to Section 7.1(a)(i) of the Loan Agreement by reason of Borrower’s failure to pay the indebtedness owed under the Note and Loan Agreement in full upon the Loan’s May 1, 2019, Maturity Date (the “Maturity Default”). As of May 7, 2019, the total amount of unpaid principal, accrued interest at the Interest Rate and Default Rate, and late charges owing under the Loan is \$20,456,494.94 (the “Unpaid Loan Amount”). The Unpaid Loan Amount is exclusive of costs, fees, and other expenses, including attorneys’ fees, due and payable by Borrower and Guarantor under the Loan Agreement, Note or other Loan Documents. The Unpaid Loan Amount is due and payable to Lender without offset, deduction, or counterclaim.

F. The Maturity Default exists and remains uncured as of this date.

---

<sup>1</sup> Deed of Trust 1, Deed of Trust 2 and Deed of Trust 3 are collectively referred to herein as the “Deeds of Trust”.

G. Obligors acknowledge and agree that as a result of the Maturity Default, Lender is entitled to exercise all of its rights and remedies under the Loan Agreement and the Loan Documents, including the right to collect interest at the Default Rate and to foreclose on any collateral securing the Loan, including, without limitation, the Property under the Deeds of Trust.

H. Obligors have requested that Lender forbear temporarily, until May 1, 2020, from exercising certain of Lender's rights and remedies under the Loan Agreement and the Loan Documents, upon and subject to the terms, conditions, covenants and limitations contained in this Agreement.

I. Lender has agreed to forbear temporarily, until May 1, 2020, from exercising certain of Lender's rights and remedies under the Loan Agreement and the Loan Documents, upon and subject to the terms, conditions, covenants, consideration and limitations contained in this Agreement.

## **A G R E E M E N T:**

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Acknowledgement of Recitals.** Obligors hereby acknowledge and agree to the accuracy of all Recitals included in this Agreement.

2. **No Further Disbursements.** Obligors acknowledge that Lender has no further obligation under the Loan Agreement to make any disbursements of proceeds of the Loan.

3. **Acknowledgment of Specified Events of Default; Reservation of Rights.** Obligors hereby acknowledge and agree that (i) the Maturity Default has not been remedied or cured as of the Effective Date (hereinafter defined); (ii) Lender has not waived in any respect the Maturity Default or any other Event of Default that has occurred under the Loan Documents, or its rights, powers or remedies with respect thereto; and (iii) on and as of the Effective Date, the Obligations under the Loan Agreement and the Loan Documents are immediately due and payable and Lender has made demand upon Obligors for the payment in full of all such sums, and each of Borrower, 901 Strada and Guarantor hereby waives any and all further defense, notice, demand, notice of default, notice of intent to accelerate, notice of acceleration, notice of maturity, presentment, notice of dishonor or demand of any kind with respect to such Obligations. Nothing herein is intended to nor shall modify any of the provisions of the Loan Agreement or the other Loan Documents, waive any of Lender's rights, remedies, or powers against any Obligors or the collateral securing the Loan, or waive the Maturity Default or any other Event of Default, and Lender hereby reserves expressly all of its rights, remedies, and powers under the Loan Agreement and the other Loan Documents, at law, in equity, or otherwise. Further, any failure by Lender to exercise any right, privilege or remedy shall not directly or indirectly in any way whatsoever either: (i) impair, prejudice, or otherwise adversely affect Lender's right at any time to exercise any right, privilege, or remedy in connection with the Loan Agreement and the other Loan Documents, or (ii) constitute any course of dealing or other basis for altering any obligations of Obligors or any right, privilege, or remedy of Lender under the Loan Agreement and the other Loan Documents. Nothing in this Agreement shall be construed to be a consent by Lender to any prior, existing or future violations of the Loan Agreement or the other Loan Documents. All provisions of the Loan Agreement and the other Loan Documents remain in full force and effect, except as otherwise provided herein, and unless expressly amended in writing by Lender.

4. **Forbearance.** Subject to the terms and conditions set forth in this Agreement and Obligors' acknowledgments and agreements set forth above, and expressly conditioned upon the absence of any additional Events of Default under the Loan Documents, other than the Maturity Default and Events of Default related to unpaid Debt Service Payments prior to the Effective Date ("Payment Defaults"), and satisfaction and fulfillment of each of the conditions precedent set forth in Section 5 below, only during the Forbearance Period (defined below) Lender agrees (a) to forbear from demanding or collecting payment in full of the Unpaid Loan Amount, and (b) to forbear from exercising its rights and remedies under the Loan Agreement or the other Loan

Documents as a result of the Maturity Default. The forbearance outlined above shall exist in each instance for a period (the "Forbearance Period") beginning on the date of this Agreement and expiring on the earliest to occur of the following:

- (i) At 5:00 p.m. (Eastern Time), on May 1, 2020;
- (ii) Any occurrence of any additional Event of Default under the Loan Agreement or any of the Loan Documents (which shall be subject to the notice and cure periods, if any, provided thereunder), exclusive of the ongoing Maturity Default;
- (iii) Borrower, 901 Strada or Guarantor shall commence a voluntary proceeding, or an involuntary proceeding shall be commenced against Borrower, 901 Strada or Guarantor, seeking liquidation, reorganization, or other relief with respect to Obligors or their respective debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or a substantial part of its property; or
- (iv) any failure of Borrower, 901 Strada or Guarantor to comply with the terms and conditions of this Agreement, including without limitation, the agreements and obligations set forth in Section 6 below, provided that Lender (or any of its designees) shall provide one (1) Business Day's written notice and demand for cure (such notice and demand for cure to be sent and deemed received in accordance with the Loan Agreement) of Lender's election to terminate the Forbearance Period hereunder as a result of a failure of Obligors to comply with the terms and conditions of this Agreement; provided, further, no such notice and demand for cure shall be required if, in the good faith judgment of Lender: (1) action is required to be taken prior to the expiration of such one (1) Business Day period in the good faith judgment of Lender as senior secured lenders in order to preserve, protect or maintain the Property or the rights of Lender in and to the same; or (2) cure of the applicable event or circumstance is not possible through the payment of amounts in cash otherwise available to applicable Obligors.

5. **Conditions Precedent To Effectiveness.** The effectiveness of Lender's agreement to forbear, as set forth in Section 4 of this Agreement is subject to the satisfaction of the following conditions precedent:

- (a) Lender shall have received this Agreement, duly executed by Obligors, not later than May 31, 2019, at 5:00 p.m. (Eastern Time).
- (b) The representations and warranties contained herein and in the Loan Agreement shall be true and correct in all material respects on and as of the Effective Date, except to the extent such representations and warranties may relate to the Maturity Default.
- (c) No Event of Default under the Loan Agreement or any of the other Loan Documents shall have occurred and be continuing, other than the Maturity Default or the Payment Default, unless such Event of Default has been specifically waived in writing by Lender, as applicable under the Loan Agreement or any of the other Loan Documents.
- (d) As of the Effective Date, Borrower shall have paid to Lender all amounts owed under this Agreement in immediately available United States funds in accordance with wire instructions provided by Lender to Borrower.
- (e) As of the Effective Date, Borrower is obligated to pay to Lender a forbearance fee in the amount of \$380,000 ("Forbearance Fee"). The entire Forbearance Fee is earned as of the Effective Date, but the payment of the entire amount of the Forbearance Fee is deferred in accordance with Section 6(c).

6. **Additional Agreements.**

- (a) **Payment of Overdue Interest.** The Parties agree that Lender will re-allocate to the Interest Reserve Fund, from Loan amounts previously allocated to Hard Costs, Soft Costs or Working Capital, an amount sufficient to pay accrued and unpaid interest (at the Interest Rate) as at July 2, 2019, and shortly thereafter, Lender will make one or more advances from such increased Interest Reserve Fund to pay such

accrued and unpaid interest (“Interest Advance(s)”). If there occurs an Event of Default under any Loan Document or under this Agreement, in addition to Lender’s other rights, the accrued and unpaid interest referred to in the previous sentence will be re-calculated at the Default Rate, and Lender may make further re-allocations of the Loan, and may make an additional Interest Advance to pay any additional amounts due because of such recalculation. Borrower will pay Lender a fee equal to 1% multiplied by the amount of the Interest Advances at the time the Interest Advances are made.

(b) **Debt Service Payments.** Borrower shall pay Lender 50% of the interest accruing on the outstanding Loan balance at the Interest Rate on the Loan during May 2019 and June 2019. Any unpaid interest will accrue and will be paid as part of the Interest Advances in Section 6(a) above. Beginning in July 2019 (i.e. the August 1, 2019 Debt Service Payment date), Borrower shall pay all interest accruing on the Loan in accordance with the Loan Documents.

(c) **Forbearance Fee.** Borrower shall pay the entire balance of the Forbearance Fee on the earlier of (a) the date when full repayment of the Loan occurs, (b) the Maturity Date, or (c) the date on which the Loan has been accelerated following an Event of Default.

(d) **Easements.** Obligors shall immediately commence taking (and cause any affiliates to immediately commence taking), to Lender’s satisfaction, all steps necessary to document and record all easements required to provide for adequate emergency and fire department access from Royalton Drive to Cedarbrook Drive and vice versa. Failure to obtain such easements within 45 days of the Effective Date will constitute a default under this Agreement.

(e) **Permits.** Obligors shall immediately commence taking all steps necessary to obtain all permits and other required approvals from the city of Beverly Hills or other governmental authority necessary for the Project and the Development Process to proceed. Obligors estimate that such permits/approvals will be obtained in 9 – 15 months from the Effective Date. If Lender, acting reasonably, determines at any time that the Obligors will not obtain all necessary permits and approvals within the above-noted timeframe, or will not obtain such permits and approvals due to the imposition of terms or conditions to the granting of same, then such determination will constitute a failure under Section 4(iv).

(f) **Further Advances.** Lender agrees to make advances to the Borrower from the undisbursed Loan to enable Borrower to pay engineering fees and costs of no more than \$125,000, in respect of (i) primary civil engineering plans and ancillary civil engineering items relating to the Grading and Drainage Plan, LID and B-Permit for the Royalton Drive street extension (pursuant to the existing contract with LC Engineering Group dated November 8, 2018); and (ii) structural design of the elevated roadway and soil-nail walls in lieu of conventional retaining walls (pursuant to a new contract to be entered into with LC Engineering Group). If necessary, Lender will re-allocate a portion of the amount available for Soft Costs from the amount available for Hard Costs.

(g) **Property Taxes.** Not later than June 30, 2019, Obligors shall pay all delinquent property tax payments for the Property and provide Lender with evidence of payment.

(h) **Deed to Property.** Concurrently with Obligors’ execution of this Agreement, Borrower has executed and delivered to Lender signed Special Warranty Deeds in the forms attached hereto as **Exhibit A** and hereby made a part hereof by reference (the “Deeds”) and signed Assignments and Bills of Sale in the forms attached hereto as **Exhibit B** and hereby made a part hereof by reference (the “Assignments and Bills of Sale,” and, together with the Deeds, hereinafter collectively referred to as the “Conveyance Documents”), pursuant to which Borrower transfers, assigns, conveys and delivers to Lender or Lender’s designee (as instructed in writing by Lender in Lender’s sole discretion or, if so requested by Lender in writing, as prepared in blank with respect to the grantee/assignee/transferee), but subject to the terms of this Agreement, fee simple title to, and all of Borrower’s respective right, title and interest in, the Property and the other property described on Exhibit A to the Deeds of Trust, including all insurance and real estate tax and assessment appeal claims, if any, all of which shall be transferred, assigned, conveyed and delivered free and clear of all liens, claims and encumbrances except as otherwise expressly set forth in the Conveyance Documents and except as otherwise expressly described in this Agreement. In connection with any recording of the Deeds, Borrower

hereby grants Lender and Lender's designee the authority to amend and replace the cover and any first page of the Deeds in order to put the Deeds in recordable form, to correct any scrivener's errors, to name the transferee thereunder (which shall be Lender or Lender's designee, all at Lender's option) or to otherwise deal with any tax or recording payments or other like payments that may be required to be paid in connection with the recording of the Deeds.

(i) **Acceptance of the Conveyance Documents.** Neither Lender nor Lender's designee will be deemed to have accepted any of the Conveyance Documents and, accordingly, no title to any of the Property shall be deemed to have transferred, until the expiration of the Forbearance Period and, in addition, Lender gives written notice to Borrower of such acceptance (the "**Acceptance Notice**") and, with respect to the Deeds only, until such time as any of the Deeds are duly recorded. For all purposes, delivery of the Conveyance Documents shall be deemed to be irrevocable, notwithstanding that acceptance of the Conveyance Documents shall not occur until the expiration of the Forbearance Period and Lender gives the Acceptance Notice and does in fact provide the Acceptance Notice to Borrower and, with respect to the Deeds, until Lender records the Deeds. Lender is entitled to include on the Conveyance Documents any dates, names (including, without limitation, the name of any transferee or assignee) or other information required to complete the Conveyance Documents and otherwise give effect to the terms of this Agreement. Borrower agrees to promptly execute and deliver to any title insurance company such documents, certificates and affidavits (including an updated or revised Estoppel Affidavit) as such title insurance company may reasonably require to consummate the transactions contemplated under this Agreement or required to better enable such title insurance company to give Lender, Lender's designee or any of their respective successors or assigns more comprehensive title insurance coverage or to give any third party purchaser of the Property more comprehensive title insurance coverage.

The Parties agree that, notwithstanding the other terms and provisions of this Agreement, Lender shall have no obligation to accept and record the Deeds, and Lender shall have no obligation to accept the Assignments and Bill of Sales.

(j) **Absolute Conveyance.** Borrower acknowledges and agrees that if Lender, upon the expiration of the Forbearance Period, is entitled to give, and does indeed give Borrower, an Acceptance Notice and records any or all of the Deeds, then the transfer and conveyance to Lender or Lender's designee of the Property as contemplated by the terms of this Agreement shall be and constitute an absolute transfer and conveyance of all of Borrower's right, title and interest in and to the Property, and that such conveyance is not intended as security. If Borrower has any equitable or statutory rights of redemption in the Property, then Borrower hereby irrevocably and unconditionally waives all such rights.

(k) **Estoppel Affidavit.** Concurrently with Borrower's execution and delivery of this Agreement, Borrower has delivered to Lender the signed Deed in Lieu Estoppel Affidavits (the "**Estoppel Affidavits**") in the forms attached hereto as **Exhibit C** and hereby made a part hereof by reference, pursuant to which Borrower has made certain representations with respect to the execution and delivery of the Deeds and conveyance of the Property pursuant thereto.

(l) **Consent to Relief.** Without in any way affecting or limiting the rights and remedies of Lender under the Loan Agreement or the other Loan Documents, in the event of any re-occurrence of an Event of Default or any breach of the Conditions Precedent in **Section 5** of this Agreement or the Additional Agreements of this **Section 6**, then, to the extent that Lender establishes before a court of appropriate jurisdiction that any of the foregoing has occurred, Obligors consent to the appointment of a receiver for the benefit of Lender and to injunctive relief in order to enforce the terms of this Agreement and the Loan Agreement and to effect the remedies sought herein and under applicable law.

(m) **Rights and Remedies upon Expiration or Termination.** Upon the termination of the Forbearance Period, Lender shall be entitled to immediately exercise any and all rights and remedies available to Lender under the Loan Documents, at law, in equity or otherwise, which rights and remedies would include, without limitation, accepting the Conveyance Documents by giving the Acceptance Notice to Borrower and/or 901 Strada, as applicable, and recording the Deeds, institution of foreclosure proceedings against all property

securing the Obligations. In such event, Obligors shall be jointly and severally liable for all of Lender's collection expenses, including but not limited to Lender's reasonable attorney's fees and expenses. Subject to the terms and provisions of this Agreement, Lender reserves the right to accept and record the Deeds, accept the Assignments and Bills of Sale, exercise any of Lender's other rights and remedies under the Loan Documents, this Agreement or as may be provided by applicable law or in equity and do all or any of the foregoing in such manner and order as Lender may from time to time determine in its sole and absolute discretion.

(n) **No Merger.** Notwithstanding the consummation of the transaction contemplated under this Agreement or any other provision in this Agreement or the Conveyance Documents to the contrary, it is the intent of the Parties to this Agreement that if the Property is transferred to Lender or Lender's designee by means of the Conveyance Documents, such transfer of title to the Property will not in any manner extinguish, waive, release, diminish or affect any of the mortgages, liens or security interests currently held by Lender, and no such transfer of title shall result in a merger of any of Lender's liens into any ownership interest that shall be conveyed to Lender, or Lender's designee, as contemplated under this Agreement or any of the Conveyance Documents. The Loan Documents and the Obligations shall survive Borrower's and 901 Strada's delivery of this Agreement and the Conveyance Documents and any recording of the Deeds and, with respect to any issues of priority as between (i) intervening or inferior liens or security interests and encumbrances, if any, on or against the Property, and (ii) the liens and security interests against the Property benefiting Lender, all rights and remedies of Lender are expressly preserved hereby, and for purposes of limitations and any other applicable time bar defense, are expressly extended as evidenced by this Agreement. The priority of the liens and security interests against the Property benefiting Lender is intended to be and shall remain in full force and effect, and nothing herein or in any instrument or document executed or delivered in connection with the consummation of the transaction contemplated under this Agreement shall be construed to subordinate the priority of those liens or security interests to any other liens, security interests or encumbrances whatsoever. Further, it is the express intention of the Parties that Lender retain certain rights and remedies available to Lender with respect to the Property. Lender's rights and remedies include, but are not limited to, the right of Lender to foreclose the security instrument and any liens or security interests in any portion of the Property, by power of sale, judicial proceedings or otherwise, or to exercise any of Lender's other rights or remedies under the Loan Documents, at law or in equity. Obligors hereby waive all defenses and claims, both legal and equitable in nature, and all rights of setoff in any such action, and consents to the entry of judgment in any such action.

#### **7. Ratifications, Representations And Warranties.**

(a) The terms and provisions set forth in this Agreement shall supersede all inconsistent terms and provisions set forth in the Loan Agreement and, except as expressly set forth in this Agreement, the terms and provisions of the Loan Agreement and each of the Loan Documents are ratified and confirmed and shall continue in full force and effect. The parties hereto agree that the Loan Agreement shall continue to be legal, valid, binding and enforceable in accordance with its terms.

(b) Borrower and 901 Strada hereby represent and warrant to Lender as follows:

(i) Borrower and 901 Strada, respectively, are the sole owners of their respective fee simple interests in the Property free and clear of all liens and encumbrances other than as expressly set forth in the Conveyance Documents or as disclosed to Lender in a writing signed by Borrower and 901 Strada, and delivered to Lender prior to the execution of this Agreement;

(ii) except as disclosed to Lender in the Deeds or in a writing signed by Borrower and 901 Strada, and delivered to Lender prior to the execution of this Agreement, Borrower and 901 Strada do not have any actual knowledge of any unpaid charges incurred by or through Borrower or 901 Strada, any property manager of the Property engaged by Borrower, 901 Strada, or any of their respective agents for labor performed or materials furnished which might form the basis of a mechanic's lien against the Property;

(iii) except as disclosed to Lender in the Deeds or in a writing signed by Borrower and 901 Strada, and delivered to Lender prior to the execution of this Agreement, Borrower and 901 Strada do not have any actual knowledge of any unpaid operating expenses, utilities or any other expenses incurred by or

through Borrower, 901 Strada, any property manager of the Property engaged by Borrower or 901 Strada, or any of their respective agents in connection with the operation of the Property;

(iv) except as disclosed to Lender in the Deed or in a writing signed by Borrower and 901 Strada, and delivered to Lender prior to the execution of this Agreement, Borrower and 901 Strada do not have any actual knowledge of any off-record or undisclosed legal or equitable interests in the Property owned or claimed by any other person or entity;

(v) except as disclosed to Lender in the Deed or in a writing signed by Borrower and 901 Strada, and delivered to Lender prior to the execution of this Agreement, Borrower and 901 Strada do not have any actual knowledge of any claims (other than the claims of Lender), lawsuits, actions or other proceedings or administrative hearings (including, without limitation, proceedings for or involving condemnation, eminent domain, building code or zoning violations, real estate tax valuations, revaluations or reviews, environmental matters, personal injury or property damage) which are pending or threatened, whether involving a governmental entity or private party, which affect or may reasonably be expected to affect the Property or in which Lender or Lender's designee would be or become a party by reason of ownership of the Property

(vi) Each of Borrower, 901 Strada and Guarantor hereby represents and warrants that the execution, delivery and performance of this Agreement and any and all other agreements executed or delivered in connection herewith or therewith have been authorized by all requisite corporate action on the part of Borrower, 901 Strada and Guarantor, respectively, and will not violate the any governing documents of Borrower, 901 Strada and Guarantor, respectively.

(vii) Each of Borrower, 901 Strada and Guarantor hereby represents and warrants that the representations and warranties contained in this Agreement, the Loan Agreement and any other Loan Documents are true and correct in all material respects on and as of the Effective Date as though made on and as of such date;

(viii) Each of Borrower, 901 Strada and Guarantor hereby represents and warrants that no Event of Default under the Loan Agreement has occurred and is continuing, other than the Maturity Default, unless such Event of Default has been specifically waived in writing by Lender;

(ix) Each of Borrower, 901 Strada and Guarantor hereby represents and warrants that the consummation of the transactions contemplated hereby will not (i) violate any provision of the organizational documents or governing instruments of Borrower, 901 Strada or Guarantor, respectively, (ii) violate any judgment, order, ruling, injunction, decree or award of any court, administrative agency or governmental body against, or binding upon Borrower, 901 Strada or Guarantor, or (iii) constitute a violation by Borrower, 901 Strada or Guarantor of any law or regulation of any jurisdiction applicable to Borrower, 901 Strada or Guarantor;

(x) Each of Borrower, 901 Strada and Guarantor hereby represent and warrant that this Agreement was reviewed by Borrower, 901 Strada and Guarantor, who each acknowledge and agree that Borrower, 901 Strada and Guarantor (A) understands fully the terms of this Agreement and the consequences of the issuance hereof, (B) have been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement with, such attorneys and other persons as Borrower, 901 Strada and Guarantor may wish, and (C) have entered into this Agreement of their own free will and accord and without threat or duress; and

(xi) Each of Borrower, 901 Strada and Guarantor hereby represent and warrant that this Agreement and all information furnished to Lender are made and furnished in good faith, for value and valuable consideration; and this Agreement has not been made or induced by any fraud, duress or undue influence exercised by Lender, or any other person.

8. **Miscellaneous.**

(a) **Misrepresentation.** Obligors shall indemnify and hold Lender harmless from and against any losses, damages, costs and expenses (including attorneys' fees) incurred by Lender as a direct or indirect result of (i) breach of any representation or warranty contained in this Agreement, or (ii) any breach or default under any of the covenants or agreements contained in this Agreement.

(b) **Covenants and Agreements.** Obligors hereby agree and acknowledge that Obligors are well and truly indebted to Lender for the Obligations (without offset, counterclaim, or reduction) of Obligors pursuant to the terms of the Loan Agreement and the Loan Documents, and hereby agree to observe, comply with and perform all of the obligations, terms and conditions under or in connection with this Agreement, the Loan Agreement and the Loan Documents, including, without limitation, all Obligations.

(c) **Ratification of Liens and Security Interests.** Obligors hereby acknowledge and agree that the liens and security interests of the Loan Agreement and the Loan Documents are valid and subsisting liens and security interests and are superior to all liens and security interests other than those exceptions approved by Lender in writing and as otherwise permitted under the Loan Agreement and the Loan Documents.

(d) **No Waiver.** Obligors agree that nothing contained in this Agreement shall affect or impair the validity or priority of the liens and security interests under the Loan Agreement and the Loan Documents. Lender further reserves all of their rights and remedies under the Loan Agreement and the Loan Documents, except as expressly modified herein.

(e) **Survival of Representations and Warranties.** Except as provided otherwise in this Agreement, all representations and warranties made in the Loan Agreement and the other Loan Documents, including without limitation, any document furnished in connection with this Agreement, shall survive the execution and delivery of this Agreement, and no investigation by Lender or any subsequent event shall affect the representations and warranties or the right of Lender to rely upon them.

(f) **Expenses of Lender.** Obligors agree to pay on demand all costs and expenses incurred by Lender in connection with the preparation, negotiation and execution of this Agreement and any other agreements executed pursuant hereto, including without limitation, the reasonable costs and fees of Lender's legal counsel.

(g) **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement, and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

(h) **Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or email shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or email shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of this Agreement.

(j) **No Commitment.** Obligors agree that Lender has not made any commitment or other agreement regarding the Loan Agreement or the other Loan Documents, except as expressly set forth in this Agreement. Obligors warrant and represent that they will not rely on any commitment, further agreement to forbear or other agreement on the part of Lender unless such commitment or agreement is in writing (which excludes email communication) and signed by Lender.

(k) **Survival.** All representations, warranties, covenants and agreements of the parties made in this Agreement shall survive the execution and delivery hereof, until such time as all of the obligations of the parties hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

(l) **Time of Essence.** The parties to this Agreement have agreed specifically with regard to the times for performance set forth in this Agreement. Further, the parties to this Agreement acknowledge that the agreements with regard to the times for performance are material to this Agreement. Therefore, the parties agree and acknowledge that time is of the essence to this Agreement.

(m) **Law Governing.** THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN SUBSTANTIALLY NEGOTIATED AND MADE IN THE GOVERNING STATE AND SHALL BE INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE INTERNAL LAWS OF THE GOVERNING STATE APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED THEREIN, WITHOUT GIVING EFFECT TO THE CHOICE-OF-LAW RULES THEREOF OR ANY OTHER PRINCIPLE THAT COULD REQUIRE THE APPLICATION OF THE SUBSTANTIVE LAW OF ANY OTHER JURISDICTION.

(n) **Waiver; Modification.** NO PROVISION OF THIS AGREEMENT MAY BE WAIVED, CHANGED OR MODIFIED, OR THE DISCHARGE THEREOF ACKNOWLEDGED, ORALLY, BUT ONLY BY AN AGREEMENT IN WRITING (WHICH EXCLUDES EMAIL COMMUNICATIONS) SIGNED BY THE PARTY AGAINST WHOM THE ENFORCEMENT OF ANY WAIVER, CHANGE, MODIFICATION OR DISCHARGE IS SOUGHT. NO DELAY ON THE PART OF LENDER IN EXERCISING ANY RIGHT, POWER OR PRIVILEGE HEREUNDER, SHALL OPERATE AS A WAIVER THEREOF, NOR SHALL ANY WAIVER OF ANY RIGHT, POWER OR PRIVILEGE HEREUNDER OPERATE AS A WAIVER OF ANY OTHER RIGHT, POWER OR PRIVILEGE HEREUNDER, NOR SHALL ANY SINGLE OR PARTIAL EXERCISE OF ANY RIGHT, POWER OR PRIVILEGE HEREUNDER PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF, OR THE EXERCISE OF ANY OTHER RIGHT, POWER OR PRIVILEGE HEREUNDER. ALL RIGHTS AND REMEDIES HEREIN PROVIDED ARE CUMULATIVE AND ARE NOT EXCLUSIVE OF ANY RIGHTS OR REMEDIES WHICH THE PARTIES HERETO MAY OTHERWISE HAVE AT LAW OR IN EQUITY.

(o) **Final Agreement.** THIS AGREEMENT REPRESENTS THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE EFFECTIVE DATE. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(p) **Release.** EACH OF THE OBLIGORS HEREBY ACKNOWLEDGES THAT AS OF THE EFFECTIVE DATE, IT HAS NO DEFENSE, COUNTERCLAIM, OFFSET, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF ITS LIABILITY TO REPAY AND OTHERWISE FULLY PERFORM AND SATISFY IN FULL ANY AND ALL OBLIGATIONS UNDER THE NOTE, LOAN AGREEMENT AND/OR ANY OTHER LOAN DOCUMENTS, OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM LENDER OR ITS PARTNERS, AFFILIATES, PARTICIPANTS, AGENTS, ATTORNEYS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS, ASSIGNS, AND PREDECESSORS, AND EACH OBLIGOR HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES LENDER AND ITS PARTNERS, AFFILIATES, PARTICIPANTS, PREDECESSORS, ATTORNEYS, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, AND LIABILITIES WHATSOEVER, KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT, OR CONDITIONAL, AT LAW OR IN EQUITY, ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS AGREEMENT IS EXECUTED, IN EACH CASE WHICH BORROWER, 901 STRADA AND/OR GUARANTOR MAY NOW OR HEREAFTER HAVE AGAINST LENDER AND ITS PARTNERS, AFFILIATES, PARTICIPANTS, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, SUCCESSORS, ASSIGNS, AND PREDECESSORS, IF ANY, AND IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND ARISING FROM THE OBLIGATIONS, THE EXERCISE OF

ANY RIGHTS AND REMEDIES UNDER THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS, AND NEGOTIATION FOR AND EXECUTION OF THIS AGREEMENT. BORROWER, 901 STRADA AND GUARANTOR HEREBY COVENANT AND AGREE NEVER TO INSTITUTE ANY ACTION OR SUIT AT LAW OR IN EQUITY, NOR INSTITUTE, PROSECUTE, OR IN ANY WAY AID IN THE INSTITUTION OR PROSECUTION OF ANY CLAIM, ACTION OR CAUSE OF ACTION, RIGHTS TO RECOVER DEBTS OR DEMANDS OF ANY NATURE AGAINST LENDER OR ITS PARTNERS, AFFILIATES, PARTICIPANTS, AGENTS, ATTORNEYS, OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS, ASSIGNS, AND PREDECESSORS ARISING OUT OF OR RELATED TO LENDER'S ACTIONS, OMISSIONS, STATEMENTS, REQUESTS OR DEMANDS ORIGINATING ON OR PRIOR TO THE EFFECTIVE DATE IN ADMINISTERING, ENFORCING, MONITORING, COLLECTING OR ATTEMPTING TO COLLECT THE INDEBTEDNESS OF BORROWER, 901 STRADA OR GUARANTOR TO LENDER, WHICH INDEBTEDNESS WAS EVIDENCED BY THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(q) **Financial Accommodation Contract.** This Agreement is a contract for financial accommodations, as contemplated under 11 U.S.C. Section 365(c), and as such, may not be assumed by Borrower, 901 Strada or Guarantor from and after the filing of any bankruptcy petition.

(r) **Waiver of Automatic Stay.** Borrower, 901 Strada and Guarantor unconditionally acknowledge and agree that:

- (i) if any bankruptcy proceeding is commenced by or against any Obligor, "cause" for termination of the automatic stay exists and Lender shall be entitled, subject to the approval of a court of competent jurisdiction, to the immediate entry of an order granting Lender relief from the automatic stay imposed by Section 362 of the United States Bankruptcy Code (the "Code"). Each Obligor consents to the entry of such order, agrees that in no event will any Obligor object to or oppose Lender's motion seeking relief from the automatic stay, and further agrees that upon Lender's request from time to time Obligors shall promptly execute and file all documents and take all other actions Lender may deem necessary or appropriate to enable Lender to obtain stay relief and exercise all of its rights and remedies for collection and enforcement of the Loan;
- (ii) Obligors shall not seek or request any other party to seek a supplemental stay or any other relief, whether injunctive or otherwise, under Section 105 or any other provision of the Code, to stay, interdict, condition, reduce, or inhibit the ability of Lender to enforce any rights it has under any of the Loan Documents or otherwise with respect to the Collateral;
- (iii) Lender, as a material inducement to enter into this Agreement, has specifically bargained for the concessions set forth in this Section 8(r), and this Agreement may be deemed conclusive evidence as to such negotiated ongoing intention of Obligors and Lender and that it is intended to be the primary element in determining if cause exists for granting such concessions; and
- (iv) Each of Borrower, 901 Strada and Guarantor (a) is a sophisticated commercial party experienced in transactions similar to the transaction contemplated herein and is represented and advised by experienced legal counsel of its own choosing, which counsel is experienced in bankruptcy and creditor's rights law and transactions similar to the transaction contemplated herein, as determined in their sole discretion, (b) has been advised of, and discussed with such legal counsel and other advisors, alternatives to entering into this Agreement, including a petition for relief under any chapter of Title 11 of the Code, as amended, and has determined that the transactions described herein are more favorable to it than such alternatives, and (c) has been given good and valuable consideration for the waiver described in this Section 8(r), including Lender's agreement to forbear, except as set forth in this Agreement, from exercising its rights and remedies.

(s) **Agreement Binding on Each Obligor.** Borrower, 901 Strada and Guarantor each agree that this Agreement will be binding on Borrower, 901 Strada and Guarantor and their respective successors and assigns; provided, no obligation or right hereunder shall be assignable by Borrower, 901 Strada or Guarantor (whether voluntarily, involuntarily or by operation of law) without the prior written consent of Lender.

(t) **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER, 901 STRADA AND GUARANTOR HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT THEREOF.

IN WITNESS WHEREOF, Borrower, 901 Strada, Guarantor and Lender have caused this Agreement to be executed and delivered as of May 31, 2019.

LENDER:

ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP,  
an Ontario limited partnership

By: *RMLP California*  
Romspen Fund GP Inc.  
Its: General Partner

By: \_\_\_\_\_  
Name: *JOEL MICKELSON*  
Title: *Authorized Signatory*

BORROWER:

COLDWATER DEVELOPMENT LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

LYDDA LUD, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

901 STRADA, LLC:

901 STRADA, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager and Sole Member

GUARANTOR:

Mohamed Hadid, individually

**EXHIBIT A-1 TO FORBEARANCE AGREEMENT**

**Prepared By**

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

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**After Recording (with Tax Statements) to:**

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

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Space Above This Line for Recorder's Use

Title Order No. \_\_\_\_\_ Escrow No. \_\_\_\_\_ APN \_\_\_\_\_

**CALIFORNIA GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S) DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

- Computed on full value of property conveyed, or  
 - Computed on full value of items or encumbrances remaining at time of sale,  
 - Unincorporated area City of \_\_\_\_\_

STATE OF CALIFORNIA

\_\_\_\_\_ COUNTY

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of  
(\$ \_\_\_\_\_) in hand paid to Coldwater  
Development LLC, a California limited liability company, residing at  
\_\_\_\_\_, County of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_  
(hereinafter known as the "Grantor(s)") hereby grants to  
\_\_\_\_\_, a \_\_\_\_\_, residing at \_\_\_\_\_,  
County of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ as:

(An Unmarried Person / Joint Tenants / Tenants in Common / Community Property / Community Property with Right of Survivorship / etc.)

(hereinafter known as the "Grantee(s)") all the rights, title, interest, and claim against all  
persons whomsoever in the real property situated in Los Angeles County, California, as  
more particularly described in Exhibit A attached hereto ("Real Estate"),

**TOGETHER WITH** all the rights, members and appurtenances to the Real Estate in

anywise appertaining or belonging thereto.

**TO HAVE AND TO HOLD**, the tract or parcel of land above described together with all and singular the rights, privileges, tenements, appurtenances, and improvements unto the said Grantees, their heirs and assigns forever.

And said Grantors, for said Grantors, their heirs, successors, executors and administrators, covenants with Grantees, and with their heirs and assigns, that Grantors are lawfully seized in fee simple of the said Real Estate; that said Real Estate is free and clear from all Liens and Encumbrances, except as hereinabove set forth, and except for taxes due for the current and subsequent years, and except for any Restrictions pertaining to the Real Estate of record in the Probate Office of said County; and that Grantors will, and their heirs, executors and administrators shall, warrant and defend the same to said Grantees, and their heirs and assigns, forever against the lawful claims of all persons.

IN WITNESS WHEREOF, Grantor has executed and delivered this General Warranty Deed under seal as of the day and year first above written.

By

Grantor's Signature

Coldwater Development, LLC

Grantor's Name

11301 W. Olympic Bl. #537

Address

LA CA 90064

City, State & Zip

Grantor's Signature

Grantor's Name

Address

City, State & Zip

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**Real Estate Legal Description**  
**(cover page)**

**EXHIBIT A-2 TO FORBEARANCE AGREEMENT**

**Prepared By**

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

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**After Recording (with Tax Statements) to:**

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

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Space Above This Line for Recorder's Use

Title Order No. \_\_\_\_\_ Escrow No. \_\_\_\_\_ APN \_\_\_\_\_

**CALIFORNIA GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S) DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

- Computed on full value of property conveyed, or  
 - Computed on full value of items or encumbrances remaining at time of sale,  
 - Unincorporated area City of \_\_\_\_\_

STATE OF CALIFORNIA

\_\_\_\_\_ COUNTY

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of  
(\$ \_\_\_\_\_) in hand paid to Lydda Lud,  
LLC, a California limited liability company, residing at \_\_\_\_\_, County  
of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ (hereinafter  
known as the "Grantor(s)") hereby grants to \_\_\_\_\_, a  
\_\_\_\_\_, residing at \_\_\_\_\_, County of \_\_\_\_\_, City  
of \_\_\_\_\_, State of \_\_\_\_\_ as:

(An Unmarried Person / Joint Tenants / Tenants in Common / Community Property / Community Property with Right of Survivorship / etc.)

(hereinafter known as the "Grantee(s)") all the rights, title, interest, and claim against all  
persons whomsoever in the real property situated in Los Angeles County, California, as  
more particularly described in Exhibit A attached hereto ("Real Estate"),

**TOGETHER WITH** all the rights, members and appurtenances to the Real Estate in

anywise appertaining or belonging thereto.

**TO HAVE AND TO HOLD**, the tract or parcel of land above described together with all and singular the rights, privileges, tenements, appurtenances, and improvements unto the said Grantees, their heirs and assigns forever.

**And** said Grantors, for said Grantors, their heirs, successors, executors and administrators, covenants with Grantees, and with their heirs and assigns, that Grantors are lawfully seized in fee simple of the said Real Estate; that said Real Estate is free and clear from all Liens and Encumbrances, except as hereinabove set forth, and except for taxes due for the current and subsequent years, and except for any Restrictions pertaining to the Real Estate of record in the Probate Office of said County; and that Grantors will, and their heirs, executors and administrators shall, warrant and defend the same to said Grantees, and their heirs and assigns, forever against the lawful claims of all persons.

IN WITNESS WHEREOF, Grantor has executed and delivered this General Warranty Deed under seal as of the day and year first above written.

By:

Grantor's Signature

Lyddalud LLC

Grantor's Name

11301 W. Olympic Bl #537

Address

LA CA 90064

City, State & Zip

Grantor's Signature

Grantor's Name

Address

City, State & Zip

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Notary Public

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**Real Estate Legal Description**  
**(cover page)**

**EXHIBIT B-2 TO FORBEARANCE AGREEMENT**

**ASSIGNMENT AND BILL OF SALE**

STATE OF CALIFORNIA

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF LOS ANGELES

§

That LYDDA LUD, LLC, a California limited liability company ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by \_\_\_\_\_ a \_\_\_\_\_ ("Grantee") the receipt and sufficiency of which are hereby acknowledged and confessed, has SOLD, ASSIGNED, TRANSFERRED and DELIVERED and does by these presents SELL, ASSIGN, TRANSFER and DELIVER unto Grantee, all of Grantor's right, title and interest in and to the following described properties located on, and/or affixed to, and used in connection with, the buildings (the "Improvements") situated on that certain land (the "Real Property") in Los Angeles County, California, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, which Real Property has been conveyed by Grantor to Grantee by Special Warranty Deed of even date herewith:

(a) All fixtures, equipment, machinery, building materials, furniture, furnishings, and other personal property which is located on or in the Real Property or the Improvements (collectively, the "Personalty"). Grantor represents and warrants to Grantee that (1) the Personalty is free and clear of all security interests, liens, title retention agreements and other encumbrances, and (2) Grantor possess full right, power and authority to transfer and assign the Personalty to Grantee.

(b) All right, title and interest to any unpaid insurance claims or proceeds or awards for damages to the Real Property and/or the Improvements resulting from any casualty or any taking in eminent domain or by reason of change of grade of any street.

(c) Except the name of the Grantor or affiliated entities, all of the interest of Grantor in any intangible property now or hereafter owned by Grantor and used or designed for use in connection with the Real Property, the Improvements and/or the Personalty, and any contract or lease rights, supplies, licenses, permits, certificates of occupancy, agreements, utility contracts, unexpired claims, warranties, guaranties and sureties belonging to Grantor, or other rights relating to the ownership, development, construction, design, use and operation of the Real Property and/or the Improvements, in each case to the extent assignable.

The property described in subsections (b) and (c) above is hereinafter sometimes referred to as the "Intangible Property"). Notwithstanding the foregoing, the property assigned and transferred hereunder shall not include any cash, bank accounts, prepaid obligations, claims and causes of action, and rights to receive insurance or condemnation proceeds earned or retained prior to the date hereof.

TO HAVE AND TO HOLD the Grantor's rights, titles, and interests in and to the Personalty and the Intangible Property, unto the said Grantee, its successors and assigns, forever, without express or implied warranty. All warranties that might arise by common law, in equity or otherwise are excluded.

This assignment and transfer is made subject to those matters of record affecting the Property to the extent valid and enforceable.

EXECUTED on the date set forth in notary acknowledgment below, to be effective as of  
the 31 day of May, 2019.

Grantor:

LYDDA LUD, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: Mohamed Hadid  
Title: Manager

STATE OF CALIFORNIA                   §  
   §  
COUNTY OF LOS ANGELES               §

On \_\_\_\_\_, 2019, before me, the undersigned, personally appeared Mohamed Hadid, the Manager of Lydda Lud, LLC, a California limited liability company, and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

\_\_\_\_\_  
Notary Public, State of California  
My commission expires: \_\_\_\_\_

**EXHIBIT A TO ASSIGNMENT AND BILL OF SALE**

**LEGAL DESCRIPTION**

(cover page)

**EXHIBIT B-1 TO FORBEARANCE AGREEMENT**

**ASSIGNMENT AND BILL OF SALE**

STATE OF CALIFORNIA

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF LOS ANGELES

§

That COLDWATER DEVELOPMENT LLC, a California limited liability company ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by \_\_\_\_\_ a \_\_\_\_\_ ("Grantee") the receipt and sufficiency of which are hereby acknowledged and confessed, has SOLD, ASSIGNED, TRANSFERRED and DELIVERED and does by these presents SELL, ASSIGN, TRANSFER and DELIVER unto Grantee, all of Grantor's right, title and interest in and to the following described properties located on, and/or affixed to, and used in connection with, the buildings (the "Improvements") situated on that certain land (the "Real Property") in Los Angeles County, California, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, which Real Property has been conveyed by Grantor to Grantee by Special Warranty Deed of even date herewith:

(a) All fixtures, equipment, machinery, building materials, furniture, furnishings, and other personal property which is located on or in the Real Property or the Improvements (collectively, the "Personalty"). Grantor represents and warrants to Grantee that (1) the Personalty is free and clear of all security interests, liens, title retention agreements and other encumbrances, and (2) Grantor possess full right, power and authority to transfer and assign the Personalty to Grantee.

(b) All right, title and interest to any unpaid insurance claims or proceeds or awards for damages to the Real Property and/or the Improvements resulting from any casualty or any taking in eminent domain or by reason of change of grade of any street.

(c) Except the name of the Grantor or affiliated entities, all of the interest of Grantor in any intangible property now or hereafter owned by Grantor and used or designed for use in connection with the Real Property, the Improvements and/or the Personalty, and any contract or lease rights, supplies, licenses, permits, certificates of occupancy, agreements, utility contracts, unexpired claims, warranties, guaranties and sureties belonging to Grantor, or other rights relating to the ownership, development, construction, design, use and operation of the Real Property and/or the Improvements, in each case to the extent assignable.

The property described in subsections (b) and (c) above is hereinafter sometimes referred to as the "Intangible Property". Notwithstanding the foregoing, the property assigned and transferred hereunder shall not include any cash, bank accounts, prepaid obligations, claims and causes of action, and rights to receive insurance or condemnation proceeds earned or retained prior to the date hereof.

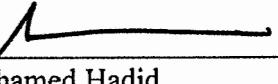
TO HAVE AND TO HOLD the Grantor's rights, titles, and interests in and to the Personalty and the Intangible Property, unto the said Grantee, its successors and assigns, forever, without express or implied warranty. All warranties that might arise by common law, in equity or otherwise are excluded.

This assignment and transfer is made subject to those matters of record affecting the Property to the extent valid and enforceable.

EXECUTED on the date set forth in notary acknowledgment below, to be effective as of  
the 31 day of May, 2019.

Grantor:

COLDWATER DEVELOPMENT LLC,  
a California limited liability company

By:   
Name: Mohamed Hadid  
Title: Manager and Sole Member

STATE OF CALIFORNIA                    §  
    §  
COUNTY OF LOS ANGELES                §

On \_\_\_\_\_, 2019, before me, the undersigned, personally appeared Mohamed Hadid, the Manager and Sole Member of Coldwater Development LLC, a California limited liability company, and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

\_\_\_\_\_  
Notary Public, State of California  
My commission expires: \_\_\_\_\_

**EXHIBIT A TO ASSIGNMENT AND BILL OF SALE**

**LEGAL DESCRIPTION**

**(cover page)**

Clifton Dugas  
Foley & Lardner LLP  
2021 McKinney Ave, Suite 1600  
Dallas, TX 75201

**ESTOPPEL AFFIDAVIT**  
**AND AGREEMENT REGARDING**  
**GRANT DEED IN LIEU OF FORECLOSURE**

Affidavit of Mohamed Hadid, Manager and Sole Member, of Coldwater Development LLC, Giving California Grant Deed in Lieu of Foreclosure:

State of California

County of Los Angeles

Mohamed Hadid, Manager and Sole Member, of Coldwater Development LLC, being first duly sworn, deposes and says: That Coldwater Development LLC is the identical party who made, executed, and delivered that certain California Grant Deed to Romspen California Mortgage Limited Partnership, dated the \_\_\_\_\_ day of May, 2019, conveying the following described property, to wit:

**See Exhibit A**

That the aforesaid deed is an absolute conveyance of the title to said premises to Romspen California Mortgage Limited Partnership (hereinafter referred to as "Lender") in effect as well as in form, and was not and is not now intended as a mortgage, trust conveyance, or security of any kind; that it was the intention of affiants as grantor in said deed to convey, and by said deed this affiants did convey to the grantees therein all Coldwater Development LLC's right, title, and interest absolutely in and to said premises; that possession of said premises has been surrendered to Lender, or will be surrendered on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in reasonably good repair and in a reasonably clean condition; that the premises has been secured and arrangements have been made for the turnover of the keys; and that the consideration of the aforesaid deed is the full cancellation of all notes, bonds, obligations, costs and charges secured by a certain deed to secure debt (in default) heretofore existing on the property therein and herein before described and executed by Coldwater Development LLC and in favor of Romspen California Mortgage Limited Partnership dated March 16, 2017, recorded on March 20, 2017, in the Los Angeles County, California Recorder's Office at Document Number 20170310859.

That the aforesaid deed in conveyance was made by this deponent as a result of Coldwater Development LLC's request that Lender accept such deed in extinguishment of its debt and was its free and voluntary acts; that at the time of the making of said deed, Coldwater Development LLC believed and still believes that the mortgage indebtedness above mentioned represented the fair market value of the property so deeded; that aforesaid deed was not given as a preference against any other creditors of Coldwater Development LLC; that at the time it was given there was no other person or persons, firms or corporations, other than Lender (or its nominee) interested, either directly or indirectly in the premises; that Coldwater Development LLC is solvent and has no other creditors whose rights would be prejudiced by such conveyance, and that Coldwater Development LLC is not obligated upon any debt whereby any lien has been created or exists against the premises described in said deed; and that Coldwater Development LLC is offering to execute the aforesaid deed to the grantees therein and in executing the same, were not acting under any duress, undue influence, misapprehension or misrepresentation by Lender (or its nominee) or that the agent or attorney or any other representative of Lender (or its nominee), and that it was the intention of Coldwater Development LLC as grantor in said deed to convey and by said deed Coldwater Development LLC

The aforesaid deed and conveyance made by Coldwater Development LLC is executed and delivered with the express understanding that its receipt by the grantee therein does not constitute legal delivery and shall be of no binding force and effect whatsoever until the same shall have been recorded in the deed records in the county in which the property is located. It is the intention of the parties, supported by the representations and warranties herein that the grantee in the aforesaid deed shall take unencumbered title; and therefore the vesting title shall not operate to effect such a merger of interests as to extinguish the mortgage lien if such extinguishment might serve to promote the priority of any subordinate interests which may be outstanding at the time of the recording of the aforesaid deed.

Coldwater Development LLC further warrants and represents that it owns no other property which secures a loan that is held, managed or otherwise serviced by or in behalf of Lender.

Coldwater Development LLC acknowledges and agrees that the Lender has heretofore revoked the license of Coldwater Development LLC to collect the rents, issues and profits from the Property and that the Lender is entitled to the collection of such rents, issues and profits as of the date of revocation.

This affidavit is made for the protection and benefit of Lender, its successors and assigns, and all other parties hereafter dealing with or who may acquire any interest in the property described in the aforesaid deed, and shall bind the respective heirs, executors, administrators and assigns of the undersigned.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Exhibit A to Easoppel Affidavit**

**Real Estate Legal Description**

**(cover page)**

Clifton Dugas  
Foley & Lardner LLP  
2021 McKinney Ave, Suite 1600  
Dallas, TX 75201

**ESTOPPEL AFFIDAVIT**  
**AND AGREEMENT REGARDING**  
**GRANT DEED IN LIEU OF FORECLOSURE**

Affidavit of Mohamed Hadid, Manager, of Lydda Lud, LLC, Giving California Grant Deed in Lieu of Foreclosure:

State of California

County of Los Angeles

Mohamed Hadid, Manager and Sole Member, of Lydda Lud LLC, being first duly sworn, deposes and says: That Lydda Lud LLC is the identical party who made, executed, and delivered that certain California Grant Deed to Romspen California Mortgage Limited Partnership, dated the \_\_\_\_\_ day of May, 2019, conveying the following described property, to wit:

**See Exhibit A**

That the aforesaid deed is an absolute conveyance of the title to said premises to Romspen California Mortgage Limited Partnership (hereinafter referred to as "Lender") in effect as well as in form, and was not and is not now intended as a mortgage, trust conveyance, or security of any kind; that it was the intention of affiants as grantor in said deed to convey, and by said deed this affiants did convey to the grantees therein all Lydda Lud LLC's right, title, and interest absolutely in and to said premises; that possession of said premises has been surrendered to Lender, or will be surrendered on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in reasonably good repair and in a reasonably clean condition; that the premises has been secured and arrangements have been made for the turnover of the keys; and that the consideration of the aforesaid deed is the full cancellation of all notes, bonds, obligations, costs and charges secured by a certain deed to secure debt (in default) heretofore existing on the property therein and herein before described and executed by Lydda Lud LLC and in favor of Romspen California Mortgage Limited Partnership dated March 16, 2017, recorded on March 20, 2017, in the Los Angeles County, California Recorder's Office at Document Number 20170310860.

That the aforesaid deed in conveyance was made by this deponent as a result of Lydda Lud LLC's request that Lender accept such deed in extinguishment of its debt and was its free and voluntary acts; that at the time of the making of said deed, Lydda Lud LLC believed and still believes that the mortgage indebtedness above mentioned represented the fair market value of the property so deeded; that aforesaid deed was not given as a preference against any other creditors of Lydda Lud LLC; that at the time it was given there was no other person or persons, firms or corporations, other than Lender (or its nominee) interested, either directly or indirectly in the premises; that Lydda Lud LLC is solvent and has no other creditors whose rights would be prejudiced by such conveyance, and that Lydda Lud LLC is not obligated upon any debt whereby any lien has been created or exists against the premises described in said deed; and that Lydda Lud LLC is offering to execute the aforesaid deed to the grantees therein and in executing the same, were not acting under any duress, undue influence, misapprehension or misrepresentation by Lender (or its nominee) or that the agent or attorney or any other representative of Lender (or its nominee), and that it was the intention of Lydda Lud LLC as grantor in said deed to convey and by said deed Lydda Lud LLC did convey to the grantees therein all Lydda Lud LLC's right, title and interest absolutely

The aforesaid deed and conveyance made by Lydda Lud LLC is executed and delivered with the express understanding that its receipt by the grantee therein does not constitute legal delivery and shall be of no binding force and effect whatsoever until the same shall have been recorded in the deed records in the county in which the property is located. It is the intention of the parties, supported by the representations and warranties herein that the grantee in the aforesaid deed shall take unencumbered title; and therefore the vesting title shall not operate to effect such a merger of interests as to extinguish the mortgage lien if such extinguishment might serve to promote the priority of any subordinate interests which may be outstanding at the time of the recording of the aforesaid deed.

Lydda Lud LLC further warrants and represents that it owns no other property which secures a loan that is held, managed or otherwise serviced by or in behalf of Lender.

Lydda Lud LLC acknowledges and agrees that the Lender has heretofore revoked the license of Lydda Lud LLC to collect the rents, issues and profits from the Property and that the Lender is entitled to the collection of such rents, issues and profits as of the date of revocation.

This affidavit is made for the protection and benefit of Lender, its successors and assigns, and all other parties hereafter dealing with or who may acquire any interest in the property described in the aforesaid deed, and shall bind the respective heirs, executors, administrators and assigns of the undersigned.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Real Estate Legal Description**

**(cover page)**

# EXHIBIT 17

▲ This page is part of your document - DO NOT DISCARD ▲



**20201095575**



Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

09/11/20 AT 08:00AM

FEES :	78.00
TAXES :	0.00
OTHER :	0.00
SB2 :	225.00
<hr/>	
PAID:	303.00



LEADSHEET



202009111080160

00018892860



011173555

SEQ:  
01

SECURE - 8:00AM



▲ THIS FORM IS NOT TO BE DUPLICATED ▲

E50288

E08\_200911\_7988888

**FOR REFERENCE ONLY: 20201095575**

CHICAGO TITLE COMPANY  
COMMERCIAL DIVISION

Exhibit Page 23901520

**RECORDING REQUESTED BY:**

**Chicago Title Company.**

**WHEN RECORDED MAIL TO:**

Foley & Lardner, LLP  
2021 McKinney Ave., Suite 1600  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**TITLE(S)**

**Assignment and Assumption of Deed of Trust and Other Loan  
Documents**

133983-X23

**ASSIGNMENT AND ASSUMPTION OF DEED OF TRUST AND OTHER LOAN DOCUMENTS**

Prepared by:

Foley & Lardner, LLP  
2021 McKinney Ave., Suite 1600  
Dallas, Texas 75201  
Attn: Clifton M. Dugas, II, Esq.

---

(Space above this line for Recorder's use)

**ASSIGNMENT AND ASSUMPTION OF DEED OF TRUST AND OTHER LOAN DOCUMENTS**

FOR VALUE RECEIVED, ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP, an Ontario limited partnership ("Assignor"), assigns, conveys, grants, sets over and transfers to **GIVE BACK, LLC**, a California limited liability company ("Assignee"): that certain deed of trust described on Exhibit A attached hereto and the other loan documents described on Exhibit A attached hereto (together with any amendments, renewals, extensions, or modifications thereto, the "Deed of Trust and Other Loan Documents");

TOGETHER WITH all of Assignor's right, title and interest, if any, in and to all notes and contracts described or referred to in the Deed of Trust and Other Loan Documents, all guarantees of the indebtedness secured by Deed of Trust and Other Loan Documents, all assumptions of the Deed of Trust and Other Loan Documents, the money due and to become due thereon with interest and all contract rights accrued or to accrue thereunder.

Assignee unconditionally assumes all liabilities and obligations of Assignor under the Deed of Trust arising on or after the date hereof.

This Assignment and Assumption of Deed of Trust and Other Loan Documents (this "Assignment and Assumption") will be binding on and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

This Assignment and Assumption is made without recourse to or any representation or warranty, express or implied, by Assignor.

[SIGNATURE PAGES FOLLOW.]

Dated as of the 10<sup>th</sup> day of September, 2020.

ASSIGNOR:

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP, an Ontario limited partnership**

By: RMLP California GP Inc.,  
an Ontario corporation, its general partner

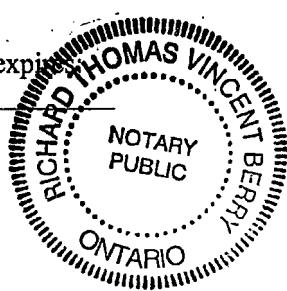
By: \_\_\_\_\_  
Name: Joel Mickelson  
Title: Authorized Signing Officer

PROVINCE OF ONTARIO )  
 )  
CITY OF TORONTO )

This instrument was acknowledged before me on the 8<sup>TH</sup> day of September, 2020, by Joel Mickelson AP, the Authorized Signing Officer of RMLP California GP Inc., an Ontario corporation and general partner of Romspen California Mortgage Limited Partnership, an Ontario limited partnership, on behalf of said limited partnership.

Notary Public, Province of Ontario  
Notary's name (printed): Vincent Berry

Notary's commission expires  
N/A



**ASSIGNEE:**

**GIVE BACK, LLC,**  
a California limited liability company

By: Ronald Richards  
Name: Ronald Richards  
Title: MANAGER

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

a notary public, personally appeared Howard Richard  
Name(s) of Signer(s)

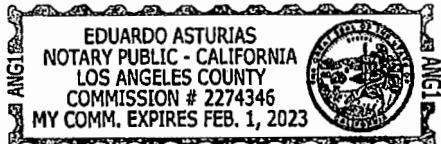
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**Signature**

Place Notary Seal Above



Signature of Notary Public

**EXHIBIT A**

All of the following documents are dated as of March 17, 2017, unless otherwise indicated:

1. Loan Agreement;
2. Promissory Note;
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Coldwater Development LLC, a California limited liability company, "Coldwater"), recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310859;
4. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Lydda Lud, LLC, a California limited liability company, "Lydda"), recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310860;
5. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (901 Strada, LLC, "Strada"), recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310861;
6. Assignment of Leases and Rents (Coldwater), recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310862;
7. Assignment of Leases and Rents (Lydda), recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310863;
8. Assignment of Agreements, Licenses, Permits and Contracts;
9. Guaranty;
10. Hazardous Materials Indemnity Agreement;
11. Certification of Documents;
12. Security Agreement (Coldwater);
13. Security Agreement (Lydda);
14. Security Agreement (Mohamed Hadid, an individual, "Guarantor");
15. Borrower's Certification (including organizational documents);
16. Pledge and Collateral Assignment of Economic Incentives, recorded March 20, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170310864;
17. Membership Interest Pledge Agreement (Am Family Fund LLC, a Virginia limited liability company, "Pledgor");
18. Membership Interest Pledge Agreement (Guarantor);
19. Acknowledgement and Consent (Coldwater);
20. Acknowledgement and Consent (Lydda);
21. Irrevocable Proxy Agreement (Pledgor);
22. Irrevocable Proxy Agreement (Guarantor);
23. Recycled Entity Certificate (Coldwater);
24. Recycled Entity Certificate (Lydda);
25. Reliance Certificate (Guarantor);
26. Completion Guaranty;;
27. Opinion Letter – Abdulaziz, Grossbart & Rudman

28. UCC's
  - a. California Secretary of State (Coldwater);
  - b. California Secretary of State (Lydda);
  - c. Los Angeles County, California (Coldwater), recorded March 21, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 201703116462;
  - d. Los Angeles County, California (Lydda), recorded March 21, 2017 in Official Records of the Recorder's Office, Los Angeles County, California, as Document 20170316463;
29. Loan Policy of Title Insurance;
30. Survey;
31. Zoning Letter; and
32. Forbearance Agreement.



# EXHIBIT 18

**ENDORSEMENT**

This endorsement is attached to and forms a part of that certain Promissory Note, dated March 17, 2017, executed by **COLDWATER DEVELOPMENT LLC**, a California limited liability company, and **LYDDA LUD, LLC**, a California limited liability company, in favor of **ROMSPEN CALIFORNIA MORTGAGE LIMITED PARTNERSHIP**, an Ontario limited partnership ("Lender"), as lender, in the maximum principal amount of \$25,000,000.00 (the "Note").

Lender hereby endorses the Note payable to the order of **GIVE BACK, LLC**, a California limited liability company ("Purchaser"), without any recourse to or representation or warranty, express or implied, by Lender.

Dated as of the 10<sup>th</sup> day of September, 2020.

**ROMSPEN CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP**, an Ontario limited partnership

By: RMLP California GP Inc.,  
an Ontario corporation, its general partner

By: \_\_\_\_\_  
Name: Joel Mickelson  
Title: Authorized Signing Authority

# EXHIBIT 19



Chicago Title Insurance Company

GUARANTEE NO.: CA-FBSC-IMP-7242405-1-20-00137713

## TRUSTEE'S SALE GUARANTEE

*Issued by*

Chicago Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

Chicago Title Insurance Company  
a corporation, herein called the Company

### GUARANTEES

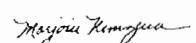
the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the liability amount stated in Schedule A sustained by the Assured by reason of any incorrectness in the assurances set forth in Paragraph 3 of Schedule A.

Countersigned:

By:   
Authorized Signature



By:   
President  
Attest:   
Secretary

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**Chicago Title Insurance Company**

**TRUSTEE'S SALE GUARANTEE**

**SCHEDULE A**

Order No.: 00137713-993-SD2-CFU / TS 4516-38(a)

Guarantee No.: CA-FBSC-IMP-7242405-1-20-00137713

Liability: \$1,950,899.00

Date of Guarantee: September 22, 2020 at 7:30 Am

Fee: \$750.00

1. Name of Assured:

Trustee:

**Chicago Title Company, a California corporation**

Beneficiary:

**Give Back, LLC, a California limited liability company**

2. The estate or interest in the Land that is the subject of this Guarantee is:

A FEE

3. Assurances:

According to the Public Records as of the Date of Guarantee,

a. Title to the estate or interest is vested in:

**Coldwater Development LLC, a California limited liability company**

b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

c. The Land referred to in this Guarantee is situated in the State of California, County of Los Angeles, and is described as follows:

**See Exhibit A attached hereto and made a part hereof.**

d. Relative to the Mortgage shown in Paragraph 19 of Schedule B:

i. For the purposes of *California Civil Code Section 2924b (b) and (d)*, the address of the trustor or mortgagor as shown in the Mortgage is:

Coldwater Development LLC  
630 Nimes Road  
Bel Air, CA 90077

Order No. 00137713-993-SD2-CFU

Guarantee No. CA FBSC-IMP-7242405-1-20-00137713

**SCHEDULE A**  
**(Continued)**

- ii. The names and addresses of all persons who have recorded requests for a copy of notice of default and for a copy of notice of sale as provided by California Civil Code §§ 2924b (a), (b) and (d) are:

NONE

- iii. The names and addresses of all additional persons who are entitled to receive a copy of notice of default and a copy of notice of sale as provided by California Civil Code §§ 2924b (c)(1), (2) and (3) are:

Coldwater Development LLC  
630 Nimes Road  
Bel Air, CA 90077

Coldwater Development LLC  
11301 W Olympic Blvd #537  
Los Angeles, CA 90064

Maria Proana C/O Thomas Mabie ESQ  
445 S Figueroa St, #2700  
Los Angeles, CA 90071

Lincoln Resorts, An Arizona Joint Venture Partnership  
C/O the Guerrini Law Firm  
750 E Green St #200  
Padasena, CA 91101

Los Angeles County Tax Collector  
225 North Hill St., Rm 122  
Los Angeles, CA 90012

Yolanda Hadid  
C/O Meyer Olson, Lowy & Meyers, LLP  
10100 Santa Monica Blvd., #1425  
Los Angeles, CA 90067

Steven Baradack  
C/O Keathley & Keathley LLP  
2030 Main St., Ste. 1040  
Irvine, CA 92614

The Claims Center LLC  
C/O Prober & Raphael  
20750 Ventura Blvd., #100  
Woodland Hills, CA 91364

Department of Industrial Relations  
Division of Workers Compensation  
UEF-Collection Unit  
PO Box 429397

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE A**  
**(Continued)**

San Francisco, CA 94142

Juan Carlos Gonzalez  
5455 Wilshire Blvd, Ste. 1250  
Los Angeles, CA 90036

(Schedule B, Item 32)

Peter K. Levine Esq.  
5455 Wilshire Blvd, Ste. 1250  
Los Angeles, CA 90036

(Schedule B, Item 32)

Juan Carlos Gonzalez  
C/O Peter K. Levine  
5455 Wilshire Blvd, Ste. 1250  
Los Angeles, CA 90036

(Schedule B, Item 33)

Internal Revenue Service  
300 N. Los Angeles St., Stop 5021  
Los Angeles, CA 90012

(Schedule B, Item 37)

Advisory Consolidated Receipts  
7940 Kentucky Drive, Stop 2850F  
Florence, KY 41042

(Schedule B, Item 37)

State of California  
Franchise Tax Board  
Special Procedures Section  
PO Box 2952  
Sacramento, CA 95812

(Schedule B, Item 38)

- iv. The names and addresses of all associations defined in California Civil Code § 4080 or 6528 that have recorded a request for notice that are entitled to receive a copy of any trustee's deed upon sale as provided by California Civil Code § 2924b(f) are:

NONE

- v. The names and addresses of all state taxing agencies that are entitled to receive a copy of notice of sale as provided by California Civil Code § 2924b(c)(3) are:

State of California  
Franchise Tax Board  
Special Procedures Section  
PO Box 2952  
Sacramento, CA 95812

(Schedule B, Item 38)

- vi. The address of the Internal Revenue Service to which a copy of notice of sale is to be mailed as provided by California Civil Code § 2924b(c)(4) is:

Internal Revenue Service  
300 N. Los Angeles St., Stop 5021

(Schedule B, Item 37)

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE A**  
**(Continued)**

Los Angeles, CA 90012

Advisory Consolidated Receipts  
7940 Kentucky Drive, Stop 2850F  
Florence, KY 41042

(Schedule B, Item 37)

- vii. The name of each city in which the Land is located is:

Los Angeles,

If not in a city, each judicial district in which the Land is located is:

- viii. The name of a newspaper of general circulation for the publication of a notice of sale as required by *California Civil Code § 2924f(b)(1)* is:

- ix. According to the records of the County Assessor's Office, the property address is:

Vacant Land  
Los Angeles, CA

4. Courtesy Mailings: No assurances as set forth in Paragraph 3 of Schedule A are provided in connection with the following information and the Company assumes no liability for any inaccuracies in or omissions from the information provided below:

NONE

Order No 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

## EXHIBIT A

### LEGAL DESCRIPTION

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

#### PARCEL 1: (APN: 4387-021-019 PORTION)

THAT PORTION OF LOT 1, OF COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18, PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEGINNING AT A POINT IN THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT 7 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255, PAGES 22 AND 23 OF MAPS; IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT ALONG SAID PROLONGATION AND NORTHERLY LINE NORTH 78° 17' 00" WEST 311.77 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 7; THENCE ALONG SAID PROLONGATION SOUTH 78° 17' 00" EAST 31.03 FEET TO A POINT DISTANT NORTH 78° 17' 00" WEST 150.74 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE SOUTH 51° 53' 58" WEST TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT 1 NORTH 85° 57' 00" WEST TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1 NORTH 00° 34' 40" EAST 213.54 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1 SOUTH 88° 22' 30" EAST 1277.69 FEET TO THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CHARLES B. DIAMOND, RECORDED ON JULY 24, 1961 AS INSTRUMENT NO. 1259, IN BOOK D-1296, PAGE 51 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LAND TO DIAMOND, SOUTH 05° 06' 00" WEST 224.43 FEET TO THE TRUE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-022 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556400 OF OFFICIAL RECORDS.

#### PARCEL 2: (APN: 4387-021-019 PORTION)

THAT PORTION OF LOT 2 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18, PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 85° 57' 00" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2 TO A POINT IN THAT CERTAIN COURSE RECITED AS "SOUTH 51° 53' 58" WEST 96.80 FEET" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434 PAGE 681 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CERTAIN COURSE SOUTH 51° 53' 58" WEST TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST RECORDED ON FEBRUARY 06, 1962 AS INSTRUMENT NO. 186, IN BOOK T-2216, PAGE 834 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 57° 54' 35" WEST 143.29 FEET TO A POINT IN THAT CERTAIN COURSE RECITED AS "NORTH 55° 00' 00" WEST 100.00 FEET" IN THE DEED OF TRUST RECORDED ON APRIL 04, 1963 AS INSTRUMENT NO. 2537, IN BOOK T-2938, PAGE 145 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING DISTANT SOUTH 55° 00' 00" EAST 12.00 FEET FROM THE WESTERLY TERMINUS OF SAID LAST MENTIONED CERTAIN COURSE; THENCE NORTH 55° 00' 00" EAST 42.00 FEET; THENCE SOUTH 35° 00' 00" WEST 23.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET SAID CURVE BEING TANGENT AT ITS SOUTHEASTERLY

Order No. 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

**EXHIBIT A  
(Continued)**

TERMINUS WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES, FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF TRACT NO. 11859, AS PER MAP RECORDED IN BOOK 255, PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTHERLY ALONG SAID CURVE TO A POINT ON THE SOUTHERLY LINE OF LOT 2 OF SAID COLDWATER CANYON TRACT; THENCE NORTH 76° 50' 30" WEST ALONG SAID SOUTHERLY LINE TO AN ANGLE POINT IN SAID SOUTHERLY LINE DISTANT SOUTH 89° 08' 15" EAST 672.10 FEET FROM THE SOUTHWEST CORNER OF SAID LAST MENTIONED LOT 2 OF THE COLDWATER CANYON TRACT; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89° 08' 15" WEST 672.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE WESTERLY LINE OF SAID LOT 2 NORTH 00° 34' 40" EAST 222.09 FEET TO THE POINT OF BEGINNING. PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-021 RECORDED NOVEMBER 03, 1988 AS INSTRUMENT NO. 88-1776821 OF OFFICIAL RECORDS.

**PARCEL 3: (APN: 4387-021-019 PORTION)**

THAT PORTION OF LOT 3 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18, PAGES 22 AND 23 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 3 SOUTH 89° 08' 15" EAST 672.10 FEET TO AN ANGLE IN SAID NORTHERLY LINE; THENCE SOUTH 76° 50' 30" EAST TO A POINT IN THAT CERTAIN CURVE RECITED AS "A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 146.00 FEET, SAID CURVE BEING TANGENT AS ITS SOUTHEASTERLY TERMINUS, WITH A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 1.00 FOOT, MEASURED AT RIGHT ANGLES FROM THE NORTHWESTERLY PROLONGATION OF THE TANGENT PORTION OF THE NORTHEASTERLY LINE OF LOT 2 OF SAID TRACT NO. 11859" IN THE CORPORATION GRANT DEED RECORDED ON APRIL 15, 1964 AS INSTRUMENT NO. 2263, IN BOOK D-2434, PAGE 681 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY SOUTHEASTERLY ALONG SAID CURVE TO THAT CERTAIN POINT DESCRIBED IN SAID CORPORATION GRANT DEED AS BEING "AN ARC DISTANCE OF 221.11 FEET" (FROM THE BEGINNING OF SAID CURVE IN SAID DEED); THENCE SOUTH 41° 00' 00" WEST 111.09 FEET; THENCE SOUTH 66° 48' 37" 12.00 FEET; THENCE SOUTH 23° 11' 23" WEST 103.00 FEET; THENCE SOUTH 71° 15' 00" EAST 31.00 FEET; THENCE SOUTH 15° 45' 00" WEST 36.00 FEET; THENCE SOUTH 71° 15' 00" EAST 23.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 47.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02° 02' 22", AN ARC DISTANCE OF 17.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 103.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 37° 15' 57", AN ARC DISTANT OF 66.99 FEET, ALONG THE PROLONGATION OF A RADIAL LINE OF SAID LAST MENTIONED CURVE SOUTH 02° 31' 25" WEST 39.36 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID LOT 3 OF SAID COLDWATER CANYON TRACT; THENCE ALONG SAID SOUTHERLY LINE NORTH 77° 35' 30" WEST 384.04 FEET, MORE OR LESS, TO AN ANGLE POINT IN SAID SOUTHERLY LINE; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 88° 30' 30" WEST 716.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE ALONG THE WESTERLY LINE OF SAID LOT 3 NORTH 00° 34' 40" EAST 402.58 FEET TO THE POINT OF BEGINNING, PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-019 RECORDED MAY 15, 1992 AS INSTRUMENT NO. 92-885381 OF OFFICIAL RECORDS.

**PARCEL 4: (APN: 4387-021-018)**

7242405 CLTA Guarantee Form No. 22 (06-05-14)  
Trustee's Sale Guarantee

Page 7

© California Land Title Association. All rights reserved.

The use of this Form is restricted to CLTA subscribers in good standing as of the date of use. All other uses are prohibited. Reprinted under license or express permission from the California Land Title Association.

Order No. 00137713-993 SD2-CF-U

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**EXHIBIT A**  
**(Continued)**

THAT PORTION OF LOT 4 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18, PAGES 22 AND 23 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH 79° 33' 10" WEST 235.00 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN BOUNDARY LINE OF SAID LOT 4 SHOWN AS HAVING A BEARING AND DISTANCE OF SOUTH 79° 33' 10" EAST 1057.13 FEET; THENCE NORTHWESTERLY ON A DIRECT LINE TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4, DISTANT THEREON SOUTH 88° 30' 30" WEST 40.00 FEET FROM THE NORTHEASTERLY TERMINUS OF THAT CERTAIN NORTHERLY LINE SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 88° 30' 30" WEST 716.84 FEET, PURSUANT TO CERTIFICATE OF COMPLIANCE LA NO. 88-020 RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 88-556401 OF OFFICIAL RECORDS.

Order No 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

**Chicago Title Insurance Company**

**SCHEDULE B**

- A. Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-021-018
Fiscal Year:	2020-2021
1st Installment:	\$8,581.98, unpaid (Delinquent after December 10)
Penalty:	\$858.19
2nd Installment:	\$8,581.98, unpaid (Delinquent after April 10)
Penalty and Cost:	\$868.19
Homeowners Exemption:	\$0.00
Code Area:	00067

Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-021-019
Fiscal Year:	2020-2021
1st Installment:	\$34,575.55, unpaid (Delinquent after December 10)
Penalty:	\$3,457.55
2nd Installment:	\$34,575.55, unpaid (Delinquent after April 10)
Penalty and Cost:	\$3,457.55
Homeowners Exemption:	\$0.00
Code Area:	00067

- B. Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: 4387-021-018, 4387-021-019

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount:	\$41,204.03, by October 31, 2020
Amount:	\$41,698.05, by November 30, 2020

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: , 4387-021-019

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount:	\$164,382.85, by October 31, 2020
Amount:	\$166,356.33, by November 30, 2020

Order No 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

## SCHEDULE B (Continued)

- C An assessment by the improvement district shown below:

Series: AD #1  
District: Los Angeles  
For: MRCA · Brush Fire Clear'G Dist #1  
Bond issued: 8/6/2003

Said assessment is collected with the county/city property taxes.

- D The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.

- E The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No: 1  
For: Mountains Recreation and Conservation Authority Community Facilities District No. 1 (Open Space Protection and Fire Prevention)  
Disclosed by: Notice of Special Tax Lien  
Recording Date: January 23, 2013  
Recording No.: 20130110802 of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City of Los Angeles, County of Los Angeles. The tax may not be prepaid.

Amended Notice of Special Tax Lien recorded August 02, 2013 as Instrument No. 20131141558 of Official Records.

- F. A Notice

Entitled: Notice of Amended Assessment  
For: Mountains Recreation and Conservation Authority  
Santa Monica Mountains Open Space Preservation  
Assessment District No. 1, Los Angeles  
Executed by: The Mountains Recreation and Conservation Authority  
Recording Date: February 06, 2013  
Recording No.: 20130190227 of Official Records

Reference is hereby made to said document for full particulars.

The Company requires a current demand from the taxing agency regarding the payment of this lien prior to closing.

Order No 00137713-993 SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

## SCHEDULE B (Continued)

- G. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No: 2016-1  
For: Mountains Recreation and Conservation Authority  
Community Facilities District No. 2016-1 (Fire Prevention, Wildlife Corridor and  
Open Space Protection)  
Disclosed by: Notice of Special Tax Lien  
Recording Date: January 13, 2017  
Recording No.: 20170055098 of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City of Los Angeles, County of Los Angeles. The tax may not be prepaid.

1. Water rights, claims or title to water, whether or not disclosed by the public records.
2. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Conduits  
Recording No: Book 5648, Page 8 of Deeds  
Affects: A portion of said land as more particularly described in said document

Reference is hereby made to said document for full particulars.

Affects: Parcel 1

3. An unrecorded easement and right of way for fire prevention and control, as granted under an Agreement executed by the Title Insurance and Trust Company, as depositary and trustee under its Trust No. 7298 Series III to the Los Angeles City Fire Department under dated of July 23, 1935, under the terms therein set out as disclosed by the Deed from Mortgage Guarantee Company to James Francis Cagney, recorded January 23, 1936 in Book 13855, Page 315 of Official Records.

Affects: A portion of Parcel 1

4. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Grading and drainage  
Recording Date: April 15, 1964  
Recording No: 2263 of Official Records  
Affects: A portion of said land as more particularly described in said document

Reference is hereby made to said document for full particulars.

Affects: Parcel 1

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

## SCHEDULE B (Continued)

5. A document entitled "Grant and Waiver and Certificate of Compliance to the Subdivision Law Requirements" recorded April 22, 1988 as Instrument No. 88-556400 of Official Records.

Affects: Parcel 1

6. A document entitled "Grant and Waiver and Certificate of Compliance to the Subdivision Law Requirements" recorded April 22, 1988 as Instrument No. 88-556401 of Official Records

Affects: Parcel 4

7. A Notice

Entitled: Request for Certificate of Compliance

Executed by: Department of City Planning

Recording Date: November 03, 1988

Recording No: 88-1776821 of Official Records

Reference is hereby made to said document for full particulars.

Affects: Parcel 2

8. A document entitled "Grant and Waiver and Certificate of Compliance to the Subdivision Law Requirements" recorded May 15, 1992 as Instrument No. 92-885381 of Official Records.

Affects: Parcel 3

9. An instrument entitled "Covenant and Agreement Regarding Plot Plan"

Executed by: Uri Harkham

In favor of: The City of Los Angeles

Recording Date: June 18, 1992

Recording No: 92-1113816 of Official Records

Reference is hereby made to said document for full particulars.

This covenant and agreement provides that it shall be binding upon any future owners, encumbrancers, their successors or assigns, and shall continue in effect until the advisory agency approves termination.

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

## SCHEDULE B (Continued)

10. An instrument entitled "Covenant and Agreement Regarding Ingress and Egress"

Executed by: Uri Harkham  
In favor of: The City of Los Angeles  
Recording Date: June 18, 1992  
Recording No: 92-1113817 of Official Records

Reference is hereby made to said document for full particulars.

This covenant and agreement provides that it shall be binding upon any future owners, encumbrancers, their successors or assigns, and shall continue in effect until the advisory agency approves termination.

Affects: Parcel 3

11. An instrument entitled "Covenant and Agreement"

Executed by: Uri Harkham  
In favor of: The City of Los Angeles  
Recording Date: August 25, 1992  
Recording No: 92-1590693 of Official Records

Reference is hereby made to said document for full particulars.

This covenant and agreement provides that it shall be binding upon any future owners, encumbrancers, their successors or assigns, and shall continue in effect until the advisory agency approves termination.

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Public street trees, street lighting, sidewalk and public utilities  
Recording Date: August 25, 1992  
Recording No: 92-1590694 of Official Records  
Affects: A portion of said land as more particularly described in said document

Reference is hereby made to said document for full particulars.

13. An irrevocable offer to dedicate an easement over a portion of said Land for

Purpose(s): Public street, road or highway  
Recording Date: August 25, 1992  
Recording No: 92-1590695 of Official Records  
Affects: A portion of said land as more particularly described in said document

Reference is hereby made to said document for full particulars.

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE B  
(Continued)**

14. An instrument entitled "Covenant and Agreement"

Executed by: Stan Herman  
In favor of: The City of Los Angeles  
Recording Date: November 18, 1992  
Recording No: 92-2147878 of Official Records

Reference is hereby made to said document for full particulars.

This covenant and agreement provides that it shall be binding upon any future owners, encumbrancers, their successors or assigns, and shall continue in effect until the advisory agency approves termination.

15. A Notice

Entitled: Notice that Fire Hazards on Property are a Public Nuisance and that Abatement has been or will be done by the City and Property Assessed  
Executed by: City of Los Angeles Board of Public Works Bureau of Engineering Development Services Division  
Recording Date: January 18, 1996  
Recording No: 96-92463 of Official Records

Reference is hereby made to said document for full particulars.

16. An instrument entitled "Master Covenant and Agreement Regarding On-Site BMP Maintenance"

Executed by: Hubert A. Guez  
In favor of: The City of Los Angeles  
Recording Date: May 12, 2004  
Recording No: 04-1206449 of Official Records

Reference is hereby made to said document for full particulars.

This covenant and agreement provides that it shall be binding upon any future owners, encumbrancers, their successors or assigns, and shall continue in effect until the advisory agency approves termination.

17. A Notice of Substandard property as disclosed by a document

Recording Date: June 04, 2015  
Recording No: 20150657268 of Official Records

Reference is hereby made to said document for full particulars.

Affects: Parcel 2

Order No 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE B  
(Continued)**

18. A Notice of Substandard property as disclosed by a document

Recording Date: June 04, 2015  
Recording No: 20150657270 of Official Records

Reference is hereby made to said document for full particulars.

Affects: Parcel 3

19. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$25,000,000.00  
Dated: March 16, 2017  
Trustor/Grantor: Coldwater Development LLC, a California limited liability company  
Trustee: Equity Title Company, a California corporation  
Beneficiary: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: 20170310859 of Official Records

An agreement to modify the terms and provisions of said deed of trust as therein provided

Recording Date: July 03, 2017  
Recording No: 20170739771 of Official Records

An assignment of the beneficial interest under said deed of trust which names:

Assignee: Give Back, LLC, a California limited liability company  
Recording Date: September 11, 2020  
Recording No: 20201095575 of Official Records

A substitution of trustee under said deed of trust which names, as the substituted trustee, the following

Trustee: Chicago Title Company, a California corporation  
Recording Date: September 22, 2020  
Recording No: 20201152670 of Official Records

A notice of default under the terms of said trust deed

Executed by: Give Back, LLC, a California limited liability company  
Recording Date: September 22, 2020  
Recording No: 20201152671 of Official Records

20. An assignment of all the moneys due, or to become due as rental, as additional security for the obligations secured by deed of trust shown as item no. 19

Assigned to: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: 20170310862 of Official Records

Order No 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

## SCHEDULE B (Continued)

Matters contained in that certain document

Entitled: Assignment and Assumption of Deed of Trust and Other Loan Documents  
Executed by: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
and Give Back LLC, a California limited liability company  
Recording Date: September 11, 2020  
Recording No: 20201095575 of Official Records

Reference is hereby made to said document for full particulars.

21. Matters contained in that certain document

Entitled: Pledge and Collateral Assignment of Economic Incentives  
Dated: March 16, 2017  
Executed by: Coldwater Development LLC, a California limited liability company, and LYDDA  
LUD, LLC, a California limited liability company  
Recording Date: March 20, 2017  
Recording No: 20170310864 of Official Records

Reference is hereby made to said document for full particulars.

Affects: The herein described Land and other land.

Matters contained in that certain document

Entitled: Assignment and Assumption of Deed of Trust and Other Loan Documents  
Executed by: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
and Give Back LLC, a California limited liability company  
Recording Date: September 11, 2020  
Recording No: 20201095575 of Official Records

Reference is hereby made to said document for full particulars.

22. A financing statement as follows:

Debtor: Coldwater Development LLC  
Secured Party: Romspen California Mortgage Limited Partnership  
Recording Date: March 21, 2017  
Recording No: 20170316462 of Official Records

A change to the above financing statement was filed

Nature of Change: Assignment  
Recording Date: September 11, 2020  
Recording No: 20201095576 of Official Records

Order No 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20 00137713

**SCHEDULE B**  
**(Continued)**

23. An abstract of judgment for the amount shown below and any other amounts due:

Amount: \$85,462.53  
Debtor: Mohamed Hadid  
Creditor: Maria Proano  
Date entered: 06/23/2010  
County: Los Angeles  
Court: Superior  
Case No.: BC387194  
Recording Date: July 09, 2010  
Recording No: 20100938118 of Official Records

24. An abstract of judgment for the amount shown below and any other amounts due:

Amount: \$20,950,595.58  
Debtor: Hadid Southwest Resort Associated Limited Partnership, a District of Colombia limited partnership  
Creditor: Lincoln Resorts, an Arizona joint venture partnership  
Date entered: 12/10/2010  
County: Los Angeles  
Court: Superior  
Case No.: SS020250  
Recording Date: April 06, 2012  
Recording No: 20120524570 of Official Records

25. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and any other amounts due.

County: Los Angeles  
Fiscal Year: 2011  
Taxpayer: Hadid, Mohamed  
County Identification Number: 12130-00277  
Amount: \$1436.35  
Recording Date: May 10, 2012  
Recording No: 20120700016 of Official Records

26. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and any other amounts due.

County: Los Angeles  
Fiscal Year: 2011  
Taxpayer: Hadid, Mohamed  
County Identification Number: 12130-00278  
Amount: \$220.11  
Recording Date: May 10, 2012  
Recording No: 20120700017 of Official Records

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE B  
(Continued)**

27. An abstract of judgment for the amount shown below and any other amounts due:

Amount:	\$3,600,000.00
Debtor:	Mohamed Hadid
Creditor:	Yolanda Hadid
Date entered:	May 16, 2008
County:	Santa Barbara
Court:	Superior
Case No.:	1130645
Recording Date:	June 05, 2012
Recording No.:	20120835479 of Official Records

28. An abstract of judgment for the amount shown below and any other amounts due:

Amount:	\$63,715.00
Debtor:	Mohamed Hadid
Creditor:	Steven Bardack
Date entered:	3/22/13
County:	Los Angeles
Court:	Superior
Case No.:	SC101085
Recording Date:	May 22, 2013
Recording No.:	20130771454 of Official Records

29. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and any other amounts due.

County:	Los Angeles
Fiscal Year:	2013
Taxpayer:	Hadid, Mohamed dba Hadid Gallery
County Identification Number:	13309-14777
Amount:	\$116.51
Recording Date:	November 19, 2013
Recording No.:	20131642123 of Official Records

30. An abstract of judgment for the amount shown below and any other amounts due:

Amount:	\$74,714.87
Debtor:	Mohamed Hadid
Creditor:	The Claims Center, LLC, a Minnesota limited liability company
Date entered:	December 3, 2014
County:	Los Angeles
Court:	Superior
Case No.:	SC122721
Recording Date:	April 28, 2015
Recording No.:	20150479313 of Official Records

Order No 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE B  
(Continued)**

31. A lien for the amount shown below and any other amounts due,

Amount: \$36,879.00  
Claimant: Director of Industrial Relations, State of California  
Recording Date: June 02, 2016  
Recording No: 20160633727 of Official Records

32. An abstract of judgment for the amount shown below and any other amounts due:

Amount: \$273,630.39  
Debtor: Mohamed Hadid  
Creditor: Juan Carlos Gonzalez  
Date entered: July 11, 2016  
County: Los Angeles  
Court: Superior  
Case No.: BC 543757  
Recording Date: September 12, 2016  
Recording No: 20161094874 of Official Records

33. An abstract of judgment for the amount shown below and any other amounts due:

Amount: \$576,267.34  
Debtor: Mohamed Hadid  
Creditor: Juan Carlos Gonzalez  
Date entered: July 11, 2016  
County: Los Angeles  
Court: Superior  
Case No.: BC 543757  
Recording Date: January 24, 2017  
Recording No: 20170098077 of Official Records

34. Matters contained in that certain document

Entitled: Judgment After Remand from the Court of Appeal  
Recording Date: June 26, 2018  
Recording No: 20180636242 of Official Records

Reference is hereby made to said document for full particulars.

35. A lien for the amount shown below and any other amounts due,

Claimant: Director of Industrial Relations, State of California  
Nature of Claim: payment of compensation  
Recording Date: January 07, 2019  
Recording No: 20190014936 of Official Records

Order No. 00137713-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137713

**SCHEDULE B  
(Continued)**

36. A lien for the amount shown below and any other amounts due,

Claimant: Director of Industrial Relations, State of California  
Nature of Claim: payment of compensation  
Recording Date: January 07, 2019  
Recording No: 20190014940 of Official Records

37. A tax lien for the amount shown and any other amounts due, in favor of the United States of America, assessed by the District Director of Internal Revenue.

Federal Serial No.: 395959519  
Taxpayer: Mohamed A Hadid  
Amount: \$3461919.57  
Recording Date: December 16, 2019  
Recording No: 20191398582 of Official Records

38. A state tax lien for the amount shown and any other amounts due,

State Identification No: 20063644015  
Filed by: Franchise Tax Board of the State of California  
Taxpayer: Mohamed Hadid  
Amount: \$339,068.07  
Recording Date: March 04, 2020  
Recording No: 20200254926 of Official Records

39. A lien for the amount shown below and any other amounts due,

Claimant: Director of Industrial Relations, State of California  
Nature of Claim: payment of compensation  
Recording Date: August 24, 2020  
Recording No: 20200988211 of Official Records

40. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

41. Any easements not disclosed by the public records as to matters affecting title to real property, whether or not said easements are visible and apparent.

42. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

Order No 00137713-993-SD2-CFU

Guarantee No CA FBSC IMP 7242405-1-20-00137713

## Chicago Title Insurance Company

### EXCLUSIONS FROM COVERAGE

1. Except to the extent of the assurances set forth in Paragraph 3 of Schedule A, the Company assumes no liability for loss or damage by reason of any law, ordinance, governmental regulation or any other police power adopted or promulgated by any federal or state government authority purporting to regulate nonjudicial foreclosures or any related duties, whether or not disclosed by the Public Records at the Date of Guarantee.
2. Notwithstanding any assurances set forth in Paragraph 3 of Schedule A, the Company assumes no liability for loss or damage by reason of the following:
  - a. Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land expressly described in the description set forth in Schedule A of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such Land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
  - b. Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; (2) that result in no loss to the Assured; or (3) that do not result either in the invalidity of any nonjudicial proceeding to foreclose the lien of the Mortgage or the failure of any such nonjudicial foreclosure proceeding to divest a lien, estate or interest subordinate or subject to the lien of the Mortgage.
  - c. Defects, liens, encumbrances, adverse claims or other matters against the title, not shown by the Public Records.
  - d. The identity of any party shown or referred to in Schedule A.
  - e. The validity, legal effect or priority of any matter shown or referred to in this Guarantee.
  - f. Any law, ordinance, governmental regulation or any other police power adopted or promulgated by any county, city, or any other local government authority purporting to regulate nonjudicial foreclosures or any related duties, whether or not disclosed by the Public Records at the Date of Guarantee.
  - g. (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
  - h. (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

Order No 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

## Chicago Title Insurance Company

### INFORMATIONAL NOTES

No assurances as set forth in Paragraph 3 of Schedule A are provided in connection with the following information and the Company assumes no liability for any inaccuracies in or omissions from the information. This information is not intended to be comprehensive and does not necessarily include all laws and regulations that might affect the contemplated foreclosure.

1. Attention is called to Article I commencing with California Civil Code Sections 2920 et. seq., of Chapter 2, Title 14, Part 4, Division 3, that govern the actions of mortgagees, beneficiaries, mortgage servicers, trustees, and their agents with respect to non-judicial foreclosures.
2. Attention is called to the Servicemembers Civil Relief Act (*Appendix 50 USC §§501 et seq.*), the Military Reservist Relief Act of 1991 (*California Military and Veterans Code §§ 800 et seq.*), and Military and Veterans Code § 408, that contain restrictions against the sale of land under a deed of trust or mortgage if the owner is entitled to the benefits of those laws.
3. Attention is called to the Federal Tax Lien Act of 1966 (26 USC §§ 6321 et seq.), that, among other things, provides for the giving of written notice of sale in a specified manner to the Secretary of Treasury or his or her delegate as a requirement for the discharge or divestment of a Federal Tax Lien in a nonjudicial sale, and establishes with respect to that lien a right in the United States to redeem the property within a period of 120 days from the date of the sale.
4. Attention is called to *California Government Code § 16187*, that, among other things, provides for the giving of written notice of sale in a specified manner to the Controller of the State of California necessary for the discharge or divestment in a nonjudicial sale of a Notice of Lien for Postponed Property Taxes recorded in the public records subsequent to the recording of a notice of default.

Order No. 00137713-993-SD2-CFU

Guarantee No CA-FBSC-IMP-7242405-1-20-00137713

## TRUSTEE'S SALE GUARANTEE CONDITIONS

### 1. Definition of Terms.

The following terms when used in the Guarantee mean:

- a. "the "Assured": (i) the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company, (ii) the duly substituted trustee of the Mortgage and (iii) the owner of the indebtedness or other obligation secured by the Mortgage.
- b. "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- c. "Mortgage": the mortgage, deed of trust, trust deed, or other security instrument set forth in Paragraph 3.d. of Schedule A.

d. "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

e. "Date of Guarantee": the Date of Guarantee set forth in Schedule A

### 2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claims of title or interest that are contrary to the assurances set forth in Paragraph 3 of Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### 4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

a. The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4.b. or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Paragraph 3 of Schedule A or to prevent or reduce loss or damage to the Assured including, but not limited to, repeating the trustee's sale proceeding. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

b. If the Company elects to exercise its options as stated in Paragraph 4.a. the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by the Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

c. Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

d. In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the

Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Paragraph 3 of Schedule A. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### 5. Proof of Loss or Damage.

a. In addition to and after the notices required under Section 2 of these Conditions have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to the Assured under the Guarantee shall terminate.

b. The Company may reasonably require the Assured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Guarantee, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee as to that claim.

### 6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

a. To Pay or Tender Payment of the Amount of Guarantee or to Purchase the Indebtedness

i. To pay or tender payment of the full amount of this Guarantee together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the indebtedness secured by the Mortgage for the amount owing thereon, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company so purchases such indebtedness, the owner thereof shall transfer, assign, and convey to the Company the indebtedness and the Mortgage, together with any collateral security.

Order No. 00137713-993-SD2-CFU

Guarantee No CA FBSC-IMP-7242405-1-20-00137713

Upon the exercise by the Company of either of the options provided for in Paragraphs 6.a.i or 6.a.ii, all liability and obligations of the Company to the Assured under this Guarantee, other than to make the payment required in those paragraphs, shall terminate, including any duty to continue any and all litigation initiated by Company pursuant to Paragraph 4.

b. To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured

i. To pay or otherwise settle with other parties for or in the name of an Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Assured the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in Paragraphs 6.b.i or 6.b.ii, the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by Company pursuant to Paragraph 4.

#### 7. Limitation of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured who has suffered loss or damage by reason of reliance upon the assurances set forth in Paragraph 3 of Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage and Conditions of this Guarantee.

a. The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

i. the amount of liability stated in Schedule A;  
ii. the amount of the unpaid principal indebtedness secured by the Mortgage as limited or as reduced under Paragraph 8 of these Conditions at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or  
iii. the difference between the value of the estate or interest set forth in Schedule A and the value of the estate or interest subject to any defect, lien, encumbrance or other matter assured against by this Guarantee.

b. If the Company or the Assured under the direction of the Company at the Company's expense establishes the title, or removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

c. In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

d. The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

#### 8. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

#### 9. Payment of Loss.

a. No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantor has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

b. When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions the loss or damage shall be payable within thirty (30) days thereafter.

#### 10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

#### 11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability in Schedule A is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability in Schedule A is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

#### 12. Liability Limited to This Guarantee; Guarantee Entire Contract.

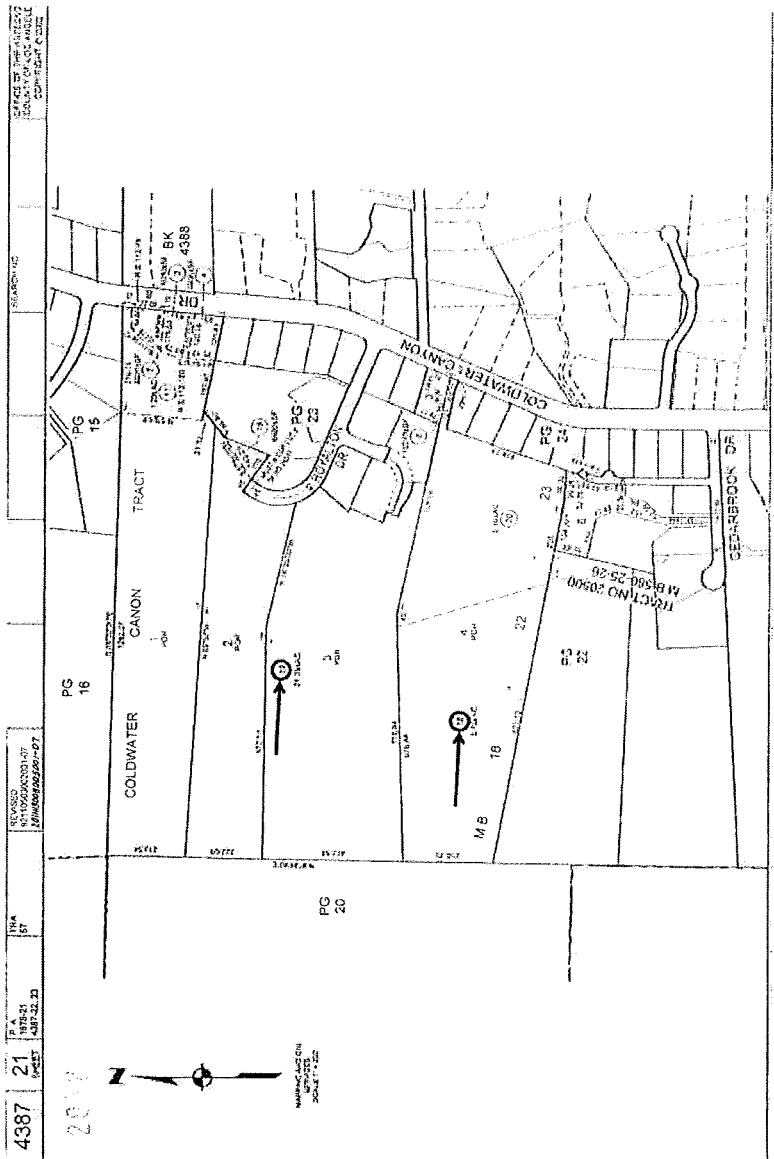
a. This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

b. Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

c. No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

#### 13. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at Chicago Title Insurance Company, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023.



This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown therein.

Order: 137713  
Doc: CALOSA:MASS 4387-00021

Page 1 of 1

Requested By: steve.driko, Printed: 9/25/2020 11:34 AM

**ENDORSEMENT**  
**Attached to Policy No. CA-FBSC-IMP-7242405-1-20-00137713**  
**Issued By**  
**Chicago Title Insurance Company**

1. The following policies are issued in conjunction with one another:

POLICY NUMBER:	STATE:	AMOUNT OF INSURANCE:
CA-FBSC-IMP-7242405-1-20-00137713	CA	\$19,050,899.00
CA-FBSC-IMP-7242405-1-20-00137714	CA	\$19,050,899.00
CA-FBSC-IMP-7242405-1-20-00137715	CA	\$19,050,899.00

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.
3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under these policies is \$ .
4. Section 7(a)(i) of the Conditions of this policy is amended to read:

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) to pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness.
  - (i) to pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy together with any cost, attorneys' fees, and costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
  - (i) the Aggregate Amount of Insurance,
  - (ii) the Indebtedness,

72E749 ALTA 12-06 Aggregation (4-2-13)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

Page 1



Order No. 00137713-993-SD2-CFU

Policy No CA-FBSC-IMP-7242405-1-20-00137713

- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
  - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as the date it is settled and paid.

6. Section 10 of the Conditions of this policy is amended to read:

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment.
- (b) However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.
- (c) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

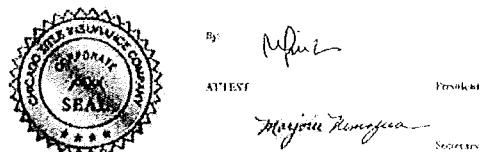
Dated: September 22, 2020

**Chicago Title Insurance Company**

Countersigned:

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

Authorized Signature



72E749 ALTA 12-06 Aggregation (4-2-13)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

Page 2



# EXHIBIT 20



Chicago Title Insurance Company

GUARANTEE NO.: CA-FBSC-IMP-7242405-1-20-00137714

## TRUSTEE'S SALE GUARANTEE

*Issued by*

**Chicago Title Insurance Company**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

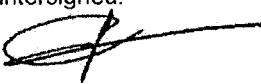
**Chicago Title Insurance Company**  
a corporation, herein called the Company

### GUARANTEES

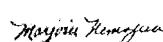
the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the liability amount stated in Schedule A sustained by the Assured by reason of any incorrectness in the assurances set forth in Paragraph 3 of Schedule A.

Countersigned:

By:   
Authorized Signature



By:   
President  
ATTEST:   
Secretary

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**Chicago Title Insurance Company**  
**TRUSTEE'S SALE GUARANTEE**  
**SCHEDULE A**

Order No.: 00137714-993-SD2-CFU / TS 4516-38(b)

**Guarantee No.: CA-FBSC-IMP-7242405-1-20-00137714**      **Liability: \$19,050,899.00**

Date of Guarantee: **September 22, 2020 at 7:30 AM** Fee: **\$9,592.00**

**1. Name of Assured:**

Trustee:

**Chicago Title Company, a California corporation**

Beneficiary:

**Give Back, LLC, a California limited liability company**

2. The estate or interest in the Land that is the subject of this Guarantee is:

A FEE

### 3. Assurances:

According to the Public Records as of the Date of Guarantee,

a. Title to the estate or interest is vested in:

Lydda Lud, LLC, a California limited liability company

b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

c. The Land referred to in this Guarantee is situated in the State of California, County of Los Angeles, and is described as follows:

See Exhibit A attached hereto and made a part hereof.

d. Relative to the Mortgage shown in Paragraph 3 of Schedule B:

i. For the purposes of *California Civil Code Section 2924b (b) and (d)*, the address of the trustor or mortgagor as shown in the Mortgage is:

Lydda Lud, LLC  
630 Nimes Road  
Bel Air, CA 90077

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE A  
(Continued)**

- ii. The names and addresses of all persons who have recorded requests for a copy of notice of default and for a copy of notice of sale as provided by California Civil Code §§ 2924b (a), (b) and (d) are:

NONE

- iii. The names and addresses of all additional persons who are entitled to receive a copy of notice of default and a copy of notice of sale as provided by California Civil Code §§ 2924b (c)(1), (2) and (3) are:

Lydda Lud, LLC  
630 Nimes Road  
Bel Air, CA 90077

Lydda Lud, LLC  
11301 W Olympic Blvd #537  
Los Angeles, CA 90064 (Taxes)

Department of Industrial Relations  
Division of Workers Compensation  
UEF-Collection Unit  
PO Box 429397  
San Francisco, CA 94142 (Schedule B, Items 7, 8, 11)

Internal Revenue Service  
300 N. Los Angeles St., Stop 5021  
Los Angeles, CA 90012 (Schedule B, Item 9)

Advisory Consolidated Receipts  
7940 Kentucky Drive, Stop 2850F  
Florence, KY 41042 (Schedule B, Item 9)

State of California  
Franchise Tax Board  
Special Procedures Section  
PO Box 2952  
Sacramento, CA 95812 (Schedule B, Item 10)

- iv. The names and addresses of all associations defined in California Civil Code § 4080 or 6528 that have recorded a request for notice that are entitled to receive a copy of any trustee's deed upon sale as provided by California Civil Code § 2924b (f) are:

NONE

- v. The names and addresses of all state taxing agencies that are entitled to receive a copy of notice of sale as provided by California Civil Code § 2924b (c)(3) are:

State of California  
Franchise Tax Board (Schedule B, Item 10)

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE A  
(Continued)**

Special Procedures Section  
PO Box 2952  
Sacramento, CA 95812

- vi The address of the Internal Revenue Service to which a copy of notice of sale is to be mailed as provided by *California Civil Code § 2924b (c)(4)* is:

Internal Revenue Service  
300 N. Los Angeles St., Stop 5021  
Los Angeles, CA 90012

(Schedule B, Item 9)

Advisory Consolidated Receipts  
7940 Kentucky Drive, Stop 2850F  
Florence, KY 41042

(Schedule B, Item 9)

- vii. The name of each city in which the Land is located is:

Los Angeles

If not in a city, each judicial district in which the Land is located is:

- viii. The name of a newspaper of general circulation for the publication of a notice of sale as required by *California Civil Code § 2924f (b)(1)* is:

Los Angeles Times  
202 West 1<sup>st</sup> Street  
Los Angeles, CA 90012

- ix. According to the records of the County Assessor's Office, the property address is:

Vacant Land  
Los Angeles, CA

4. Courtesy Mailings: No assurances as set forth in Paragraph 3 of Schedule A are provided in connection with the following information and the Company assumes no liability for any inaccuracies in or omissions from the information provided below:

NONE

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

## EXHIBIT A

### LEGAL DESCRIPTION

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

PARCEL 5: APN: 4387-020-001

THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND IN THE DISTRICT LAND ON JUNE 25, 1887.

PARCEL 6: APN: 4387-020-009

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND LYING NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, DISTANT THEREON SOUTH 88° 42' 03" EAST 434.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE SOUTHWESTERLY IN A DIRECT LINE TO A POINT IN THE WESTERLY LINE OF SAID SOUTHWEST QUARTER; DISTANT THEREON SOUTHERLY 200.00 FEET FROM SAID NORTHWEST QUARTER SECTION CORNER.

PARCEL 7: APN: 4387-022-001 AND 4387-022-002

THAT PORTION OF LOTS 5 AND 6 OF THE COLDWATER CANYON TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18 PAGES 22 AND 23, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY AND NORTHERLY BOUNDARY LINES OF TRACT NO. 20500, AS PER MAP RECORDED IN BOOK 580 PAGES 25 AND 26, OF MAPS, RECORDS OF SAID COUNTY, SAID WESTERLY AND NORTHERLY LINES OF SAID TRACT NO. 20500 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID TRACT NO. 20500; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT NO. 20500 NORTH 02° 44' 45" WEST 200.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 OF TRACT NO. 20500; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NO. 20500, NORTH 86° 27' 03" EAST 214.00 FEET TO AN ANGLE POINT IN THE BOUNDARY OF SAID TRACT NO. 20500, NORTH 13° 11' 03" EAST 292.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 OF SAID TRACT NO. 20500, BEING A POINT ON THE NORTHERLY LINE OF SAID LOT 5 OF THE COLDWATER CANYON TRACT.

EXCEPT THAT PORTION, IF ANY, OF SAID LOT 6 LYING WITHIN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1, RANGE 15 WEST, SAN BERNARDINO MERIDIAN.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**Chicago Title Insurance Company**

**SCHEDULE B**

- A. Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-020-001
Fiscal Year:	2020-2021
1st Installment:	\$4,840.89, unpaid (Delinquent after December 10)
Penalty:	\$484.08
2nd Installment:	\$4,840.87, unpaid (Delinquent after April 10)
Penalty and Cost:	\$494.08
Homeowners Exemption:	\$0.00
Code Area:	00067

Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-020-009
Fiscal Year:	2020-2021
1st Installment:	\$4,058.13, unpaid (Delinquent after December 10)
Penalty:	\$405.81
2nd Installment:	\$4,058.13, unpaid (Delinquent after April 10)
Penalty and Cost:	\$415.81
Homeowners Exemption:	\$0.00
Code Area:	00067

Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-022-001
Fiscal Year:	2020-2021
1st Installment:	\$2,223.21, unpaid (Delinquent after December 10)
Penalty:	\$222.32
2nd Installment:	\$2,223.20, unpaid (Delinquent after April 10)
Penalty and Cost:	\$232.32
Homeowners Exemption:	\$0.00
Code Area:	00067

Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	4387-022-002
Fiscal Year:	2020-2021
1st Installment:	\$981.55, unpaid (Delinquent after December 10)
Penalty:	\$98.15
2nd Installment:	\$981.53, unpaid (Delinquent after April 10)
Penalty and Cost:	\$108.15
Homeowners Exemption:	\$0.00
Code Area:	00067

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE B  
(Continued)**

B. Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: 4387-020-001

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount: \$23,295.18, by October 31, 2020  
Amount: \$23,574.29, by November 30, 2020

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: 4387-020-009

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount: \$19,527.93, by October 31, 2020  
Amount: \$19,761.82, by November 30, 2020

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: 4387-022-001

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount: \$10,726.84, by October 31, 2020  
Amount: \$10,855.12, by November 30, 2020

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2018-2019.

APN No.: 4387-022-002

Amounts to redeem for the above-stated fiscal year (and subsequent years if any) are:

Amount: \$4,256.96, by October 31, 2020  
Amount: \$4,307.59, by November 30, 2020

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE B  
(Continued)**

- C. An assessment by the improvement district shown below:

Assessment  
(or Bond) No.: not shown  
Series: AD # 1  
District: County of Los Angeles  
For: MRCA-Brush fire clearing District # 1  
Bond issued: August 6, 2003  
Original Amount: \$not shown

- D. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
5. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, citizenship, immigration status, primary language, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No: in Book 5718, Page 92 of Deeds

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

6. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, citizenship, immigration status, primary language, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No: in Book 3416, Page 164 of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE B  
(Continued)**

7. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$25,000,000.00  
Dated: March 16, 2017  
Trustor/Grantor: Lydda Lud, LLC, a California limited liability company  
Trustee: Equity Title Company, a California corporation  
Beneficiary: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: as Instrument No. 20170310860, Official Records

An agreement to modify the terms and provisions of said deed of trust as therein provided

Recording Date: July 3, 2017  
Recording No: as Instrument No. 20170739772, Official Records

A substitution of trustee under said deed of trust which names, as the substituted trustee, the following

Trustee: Chicago Title Company, a California corporation  
Recording Date: September 22, 2020  
Recording No: as Instrument No. 202001152640, Official Records

A notice of default under the terms of said trust deed

Executed by: Give Back, LLC, a California limited liability company  
Recording Date: September 22, 2020  
Recording No: as Instrument No. 20201152641, Official Records

8. An assignment of all the moneys due, or to become due as rental, as additional security for the obligations secured by deed of trust shown as item no. 33

Assigned to: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: as Instrument No. 20170310863 of Official Records

9. Matters contained in that certain document

Entitled: Pledge and Collateral Assignment of Economic Incentives  
Dated: March 16, 2017  
Executed by: Coldwater Development LLC, a California limited liability company, Lydda Lud, LLC, a California limited liability company, and Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: as Instrument No. 20170310864 of Official Records

Reference is hereby made to said document for full particulars.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE B  
(Continued)**

10. A financing statement as follows:

Debtor: Lydda Lud, LLC  
Secured Party: Romspen California Mortgage Limited Partnership  
Recording Date: March 21, 2017  
Recording No: as Instrument No. 20170316463 of Official Records

A change to the above financing statement was filed

Nature of Change: Assignment to Give Back LLC  
Recording Date: September 11, 2020  
Recording No: as Instrument No. 20201095577, Official Records

11. Matters contained in that certain document

Entitled: Certificate of Lien  
Dated: December 20, 2018  
Executed by: Department of Industrial Relations  
Recording Date: January 7, 2019  
Recording No: as Instrument No. 20190014936 of Official Records

Reference is hereby made to said document for full particulars.

12. Matters contained in that certain document

Entitled: Certificate of Lien  
Dated: December 20, 2018  
Executed by: Department of Industrial Relations  
Recording Date: January 7, 2019  
Recording No: as Instrument No. 20190014940 of Official Records

Reference is hereby made to said document for full particulars.

13. A tax lien for the amount shown and any other amounts due, in favor of the United States of America, assessed by the District Director of Internal Revenue.

Federal Serial No.: 395959519  
Taxpayer: Mohamed A. Hadid  
Amount: \$3,461,919.57  
Recording Date: December 16, 2019  
Recording No: as Instrument No. 2019-1398582, of Official Records

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**SCHEDULE B**  
**(Continued)**

14. A state tax lien for the amount shown and any other amounts due,

State Identification No: 20063644015  
Filed by: State of California  
Taxpayer: Mohamed Hadid  
Amount: \$339,068.07  
Recording Date: March 4, 2020  
Recording No: as Instrument No. 2020-254926, of Official Records

15. A lien for the amount shown below and any other amounts due,

Amount: \$Not Shown  
Claimant: Department of Industrial Relations State of California  
Nature of Claim: Workers' Compensation  
Recording Date: August 24, 2020  
Recording No: as Instrument No. 20200988211, Official Records

16. Water rights, claims or title to water, whether or not disclosed by the public records.

17. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

18. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

**Chicago Title Insurance Company**  
**EXCLUSIONS FROM COVERAGE**

1. Except to the extent of the assurances set forth in Paragraph 3 of Schedule A, the Company assumes no liability for loss or damage by reason of any law, ordinance, governmental regulation or any other police power adopted or promulgated by any federal or state government authority purporting to regulate nonjudicial foreclosures or any related duties, whether or not disclosed by the Public Records at the Date of Guarantee.
2. Notwithstanding any assurances set forth in Paragraph 3 of Schedule A, the Company assumes no liability for loss or damage by reason of the following:
  - a. Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land expressly described in the description set forth in Schedule A of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such Land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
  - b. Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; (2) that result in no loss to the Assured; or (3) that do not result either in the invalidity of any nonjudicial proceeding to foreclose the lien of the Mortgage or the failure of any such nonjudicial foreclosure proceeding to divest a lien, estate or interest subordinate or subject to the lien of the Mortgage.
  - c. Defects, liens, encumbrances, adverse claims or other matters against the title, not shown by the Public Records.
  - d. The identity of any party shown or referred to in Schedule A.
  - e. The validity, legal effect or priority of any matter shown or referred to in this Guarantee.
  - f. Any law, ordinance, governmental regulation or any other police power adopted or promulgated by any county, city, or any other local government authority purporting to regulate nonjudicial foreclosures or any related duties, whether or not disclosed by the Public Records at the Date of Guarantee.
  - g. (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
  - h. (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

## Chicago Title Insurance Company

### INFORMATIONAL NOTES

No assurances as set forth in Paragraph 3 of Schedule A are provided in connection with the following information and the Company assumes no liability for any inaccuracies in or omissions from the information. This information is not intended to be comprehensive and does not necessarily include all laws and regulations that might affect the contemplated foreclosure.

1. Attention is called to Article I commencing with California Civil Code Sections 2920 et. seq., of Chapter 2, Title 14, Part 4, Division 3, that govern the actions of mortgagees, beneficiaries, mortgage servicers, trustees, and their agents with respect to non-judicial foreclosures.
2. Attention is called to the Servicemembers Civil Relief Act (*Appendix 50 USC §§501 et seq.*), the Military Reservist Relief Act of 1991 (*California Military and Veterans Code §§ 800 et seq.*), and Military and Veterans Code § 408, that contain restrictions against the sale of land under a deed of trust or mortgage if the owner is entitled to the benefits of those laws.
3. Attention is called to the Federal Tax Lien Act of 1966 (26 USC §§ 6321 et seq.), that, among other things, provides for the giving of written notice of sale in a specified manner to the Secretary of Treasury or his or her delegate as a requirement for the discharge or divestment of a Federal Tax Lien in a nonjudicial sale, and establishes with respect to that lien a right in the United States to redeem the property within a period of 120 days from the date of the sale.
4. Attention is called to *California Government Code § 16187*, that, among other things, provides for the giving of written notice of sale in a specified manner to the Controller of the State of California necessary for the discharge or divestment in a nonjudicial sale of a Notice of Lien for Postponed Property Taxes recorded in the public records subsequent to the recording of a notice of default.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-O0137714

## TRUSTEE'S SALE GUARANTEE CONDITIONS

### 1. Definition of Terms.

The following terms when used in the Guarantee mean:

a. the "Assured": (i) the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company, (ii) the duly substituted trustee of the Mortgage and (iii) the owner of the indebtedness or other obligation secured by the Mortgage.

b. "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.

c. "Mortgage": the mortgage, deed of trust, trust deed, or other security instrument set forth in Paragraph 3.d. of Schedule A.

d. "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

e. "Date of Guarantee": the Date of Guarantee set forth in Schedule A

### 2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claims of title or interest that are contrary to the assurances set forth in Paragraph 3 of Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### 4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

a. The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4.b. or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Paragraph 3 of Schedule A or to prevent or reduce loss or damage to the Assured including, but not limited to, repeating the trustee's sale proceeding. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

b. If the Company elects to exercise its options as stated in Paragraph 4.a. the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by the Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

c. Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

d. In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding,

Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Paragraph 3 of Schedule A. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### 5. Proof of Loss or Damage.

a. In addition to and after the notices required under Section 2 of these Conditions have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to the Assured under the Guarantee shall terminate.

b. The Company may reasonably require the Assured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Guarantee, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee as to that claim.

### 6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

a. To Pay or Tender Payment of the Amount of Guarantee or to Purchase the Indebtedness.

i. To pay or tender payment of the full amount of this Guarantee together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

ii. To purchase the indebtedness secured by the Mortgage for the amount owing thereon, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company so purchases such indebtedness, the owner thereof shall transfer, assign, and convey to the Company the indebtedness and the Mortgage, together with any collateral security.

Order No. 00137714-993-SD2-CFU

Guarantee No. CA-FBSC-IMP-7242405-1-20-00137714

Upon the exercise by the Company of either of the options provided for in Paragraphs 6.a.i. or 6.a.ii., all liability and obligations of the Company to the Assured under this Guarantee, other than to make the payment required in those paragraphs, shall terminate, including any duty to continue any and all litigation initiated by Company pursuant to Paragraph 4.

b. To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured.

i. To pay or otherwise settle with other parties for or in the name of an Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

ii. To pay or otherwise settle with the Assured the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in Paragraphs 6. b.i. or 6.b.ii., the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by Company pursuant to Paragraph 4.

#### 7. Limitation of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured who has suffered loss or damage by reason of reliance upon the assurances set forth in Paragraph 3 of Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage and Conditions of this Guarantee.

a. The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

i. the amount of liability stated in Schedule A;  
ii. the amount of the unpaid principal indebtedness secured by the Mortgage as limited or as reduced under Paragraph 8 of these Conditions at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

iii. the difference between the value of the estate or interest set forth in Schedule A and the value of the estate or interest subject to any defect, lien, encumbrance or other matter assured against by this Guarantee..

b. If the Company or the Assured under the direction of the Company at the Company's expense establishes the title, or removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

c. In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

d. The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

#### 8. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

#### 9. Payment of Loss.

a. No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

b. When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions the loss or damage shall be payable within thirty (30) days thereafter.

#### 10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

#### 11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability in Schedule A is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability in Schedule A is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

#### 12. Liability Limited to This Guarantee; Guarantee Entire Contract.

a. This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

b. Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

c. No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

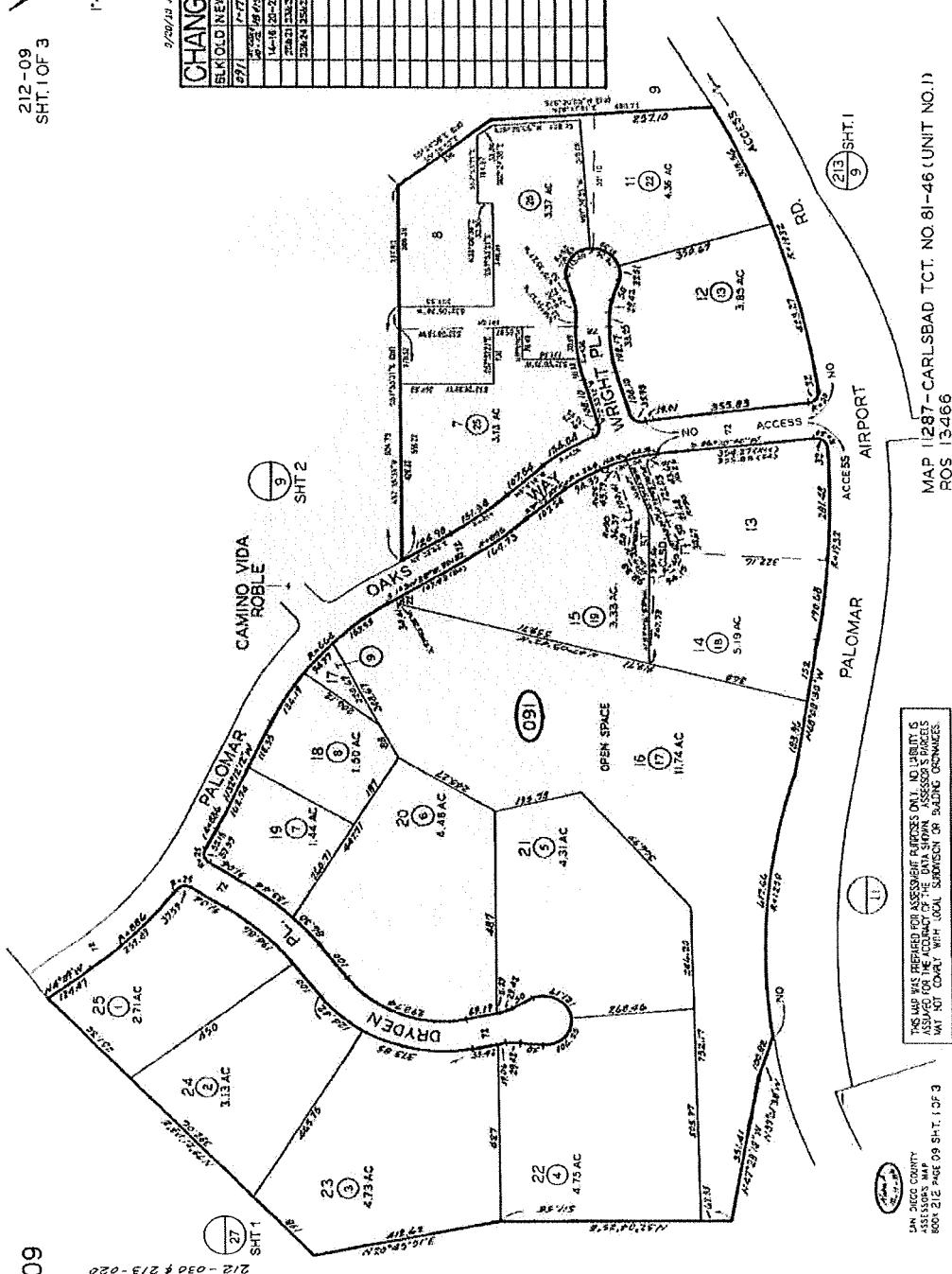
#### 13. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at Chicago Title Insurance Company, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023.

SHT. 1 OF 3  
212-09

200

CHANCES



This map/pat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon

Order: 138249  
Doc: 212-9 MAP ASSESSOR

Page 1 of 3

Requested By: Michael Moore , Printed: 10/12/2020 3:27 PM

Order No. 00137714-993-SD2-CFU

Policy No. CA-FBSC-IMP-7242405-1-20-00137714

**ENDORSEMENT**  
**Attached to Policy No. CA-FBSC-IMP-7242405-1-20-00137714**  
**Issued By**  
**Chicago Title Insurance Company**

1. The following policies are issued in conjunction with one another:

POLICY NUMBER:	STATE:	AMOUNT OF INSURANCE:
<b>CA-FBSC-IMP-7242405-1-20-00137713</b>	CA	\$19,050,899.00
<b>CA-FBSC-IMP-7242405-1-20-00137714</b>	CA	\$19,050,899.00
<b>CA-FBSC-IMP-7242405-1-20-00137715</b>	CA	\$19,050,899.00

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.
3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under these policies is \$ .
4. Section 7(a)(i) of the Conditions of this policy is amended to read:

7. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) to pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness.
  - (i) to pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy together with any cost, attorneys' fees, and costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

8. **DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
  - (i) the Aggregate Amount of Insurance,
  - (ii) the Indebtedness,

72E749 ALTA 12-06 Aggregation (4-2-13)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

Page 1



Order No. 00137714-993-SD2-CFU

Policy No. CA-FBSC-IMP-7242405-1-20-00137714

- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
  - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as the date it is settled and paid.

6. Section 10 of the Conditions of this policy is amended to read:

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment.
- (b) However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.
- (c) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: September 22, 2020

**Chicago Title Insurance Company**

Countersigned:

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

Authorized Signature



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

Marilyn Kung  
Secretary

President

72E749 ALTA 12-06 Aggregation (4-2-13)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

Page 2

AMERICAN  
LAND TITLE  
ASSOCIATION



# EXHIBIT 21

*6 Residential Lots  
Situs Pending, Beverly Hills*

*Page 30*

### **Conclusion – Subject Site**

The subject parcels are larger-than-typical, irregular-shaped, hilly, parcels that will be graded from the hilltop down. Each parcel will have a level pad area of approximately 2.0 acres, and all lots will be at staggered elevations (35' staggers) to allow each parcel to have a 360° unobstructed view (city, valley, and ocean), all oriented to Century City, the Pacific Ocean, and Downtown Los Angeles.

The parcels will be part of a gated project with main ingress and egress via Royalton Drive and Cedarbrook Drive.

The parcels are zoned Residential Estate, Height District 1, Hillside, (RE40-1-H) a classification which permits construction of a single-family residential estate, parks, playgrounds, community centers, truck gardening, accessory living quarters, and home occupations. (Pertinent portions of the zoning code are included in Addendum C.)

Development standards require a minimum site size of 40,000 square feet and a minimum site width of 80'. The minimum front setback is 20% of the site depth, with a maximum requirement of 25'. The minimum side setback is 10', with an additional foot for each story over the second. The minimum rear setback is 25% of the site depth, with a maximum requirement of 25'. Maximum building height in the Hillside zone is 45 feet. The maximum floor-area-ratio (FAR) is 3:1.

The parking requirement is two covered parking spaces per dwelling unit.

# EXHIBIT 22

**MARKET VALUE DETERMINATION  
PROSPECTIVE 3 HOMESITE PROJECT  
ROYALTON DRIVE HILLSIDE- 66.79 ACRES  
COLDWATER CANYON AREA, LOS ANGELES**

**BUSS-SHELGER ASSOCIATES**  
**Real Estate Consultants**

February 22, 2021

970 W. 190th Street, Suite 350  
Torrance, California 90502  
Telephone: (213) 388-7272  
(213) 270-1220  
Facsimile: (213) 254-9032  
Email : bussshelger@pacbell.net

Ronald Richards & Associates, A.P.C.  
Post Office Box 11480  
Beverly Hills, California 90213

Attention: Mr. Ronald Richards  
Attorney-at-Law

Reference: As Is Market Value Determination  
Prospective Three Homesite Project  
Royalton Drive Hillside – 66.79 Acres  
Coldwater Canyon Area, Los Angeles

Our File No. 5614-21

Gentlemen:

Pursuant to your request, the subject real estate asset has been personally inspected and appraised in its current condition. Initial construction commenced on the revised 3 homesite proposed residential project; however, it has stopped due to the bankruptcy action in-place. A prospective tract map had not been recorded nor is it now necessary for three entitled homesites. As of February 4, 2021, the date of inspection, the following opinion of "as is" market value has been formed.

**TWENTY FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS**  
**(\$24,500,000)**

Following will be a narrative appraisal report containing factual data and analyses that form the basis for the opinion expressed herein, prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) as published by the Appraisal Foundation as well as the California Code of Civil Procedure.

Respectfully submitted,  
**BUSS-SHELGER ASSOCIATES**

*Ronald L. Buss*

Ronald L. Buss, MAI

*Nolan Knight*

Nolan Knight

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....	II
GENERAL INFORMATION .....	1
INTRODUCTION .....	1
PURPOSE OF APPRAISAL .....	2
DATE OF VALUE .....	2
USE OF APPRAISAL .....	2
PROPERTY INTEREST APPRAISED.....	2
PROPERTY OWNERSHIP.....	2
SCOPE OF APPRAISAL .....	3
DEFINITIONS OF VALUE.....	3
COMPETENCY .....	4
EXPOSURE TIME .....	4
LOCATION .....	5
SUBJECT LAND ASSEMBLAGE .....	6
PLAT MAP .....	6
LAND FEATURES .....	6
ASSESSED VALUES .....	9
HIGHEST AND BEST USE .....	9
ANALYSIS NO. 1 – LAND RESIDUAL .....	10
HOMESITE PRICING .....	10
MARKET INFORMATION.....	10
LAND SALES MAP.....	11
HOMESITE PRICING .....	12
DEVELOPING COSTS.....	12
VALUE DETERMINATION.....	13
ANALYSIS NO. 2 – COMPARATIVE STUDY .....	14
ACREAGE PRICING.....	14
MARKET INFORMATION.....	14
VALUE DETERMINATION.....	15
CORRELATION.....	16
VALUATION .....	16
LIMITING CONDITIONS .....	17
CERTIFICATION.....	18
ADDENDA OF SUPPORTING DATA .....	19
PROFESSIONAL QUALIFICATIONS .....	1



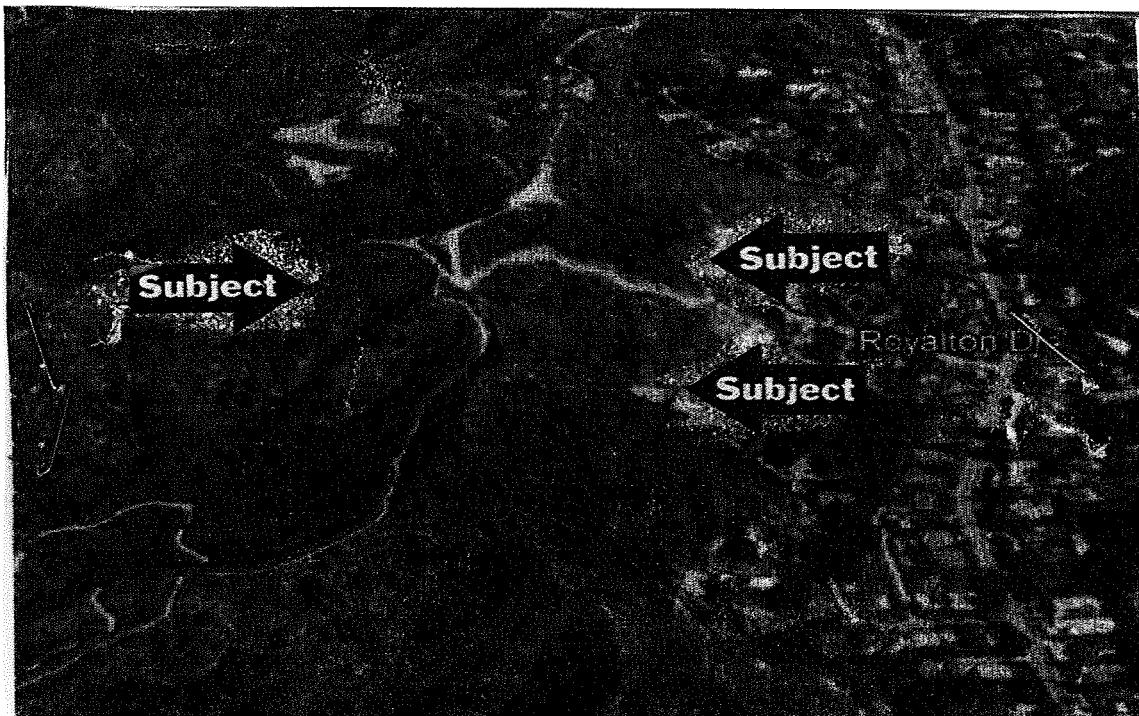
BUSS-SHELGER ASSOCIATES

**GENERAL INFORMATION**

**INTRODUCTION**

The subject holding aggregates 66.79 acres encompassing the rolling hillside terrain westerly of Coldwater Canyon Drive, within a portion of the City of Los Angeles with a Beverly Hills postal address. Due to a single point of access at the westerly terminus of Royalton Drive, three large residences are allowed, a lack of easement ingress and egress off Cedarbrook Drive prevented the original six-lot development from moving forward.

Physically Lydda Lud, LLP has effectively two large parcels, each to be improved with a residence; Coldwater Development, LLS has a third assemblage accessed directly off Royalton Drive. All three feature homesites will accommodate a dwelling unit plus accessory facilities. Initial construction had commenced on this latter parcel including entry gate, preliminary roadway grading plus landscaping. Crossing the upper north-south ridgeline is the Hastain Fire Road, a defined public trail easement that must be preserved. A distant aerial overview of the entire holding is set forth below, the three homesites are outlined in detail within this narrative report. All of the 67± acres are encumbered by the Deed of Trust in default.



BUSS-SHELGER ASSOCIATES

PURPOSE OF APPRAISAL

The purpose of this appraisal is to determine the fee simple fair market value of the underlying 67± acre holding recognizing it has the legal right to be improved with three residences.

DATE OF VALUE

The opinions and matters expressed in this report are stated as of February 4, 2021, the last date of personal inspection.

USE OF APPRAISAL

This appraisal was prepared at the request of legal counsel for the purpose of assisting the bankruptcy court in understanding the as is value of the real estate asset within the current marketplace.

PROPERTY INTEREST APPRAISED

The interest under appraisal is the fee simple estate which is defined as: "ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power and taxation"; the entire holding is valued in an "as is" condition.

PROPERTY OWNERSHIP

As pointed out in the Introduction, the aggregate holding is comprised of two ownerships, both of which are encumbered by a common Deed of Trust. A Preliminary Title Report may be found Under Exhibit A in the Addenda of this report, the document references three Certificates of Compliance that have been approved. The Los Angeles County Assessor's identification is cited below, the two ownerships compass the following Assessor parcels.

Property Ownership	Los Angeles County Assessor's References
Coldwater Development, LLC	4387-021-018 & 019
Lydda Lud, LLC	4387-020-001 & 009
Lydda Lud, LLC	4387-022-001 & 002

BUSS-SHELGER ASSOCIATES

SCOPE OF APPRAISAL

The entire holding is situated westerly of Coldwater Canyon Road with the only street frontage being at the end terminus of Royalton Drive where an entry gate presently exists. The three homesites are proposed to be positioned at scattered locations with two potentially on the ridge top with vistas across the valley floor. Excess land potentially exists within the project boundaries extending westerly. The overall real estate asset will be evaluated utilizing the two approaches as highlighted below.

Analysis No. 1 is a land residual study in which large homesite values are projected for the estate parcels from which the cost of development is deducted from the aggregate market value. A discount will be applied to the residual value to account for the project uncertainties as well as bulk nature of evaluating a three-homesite project with partial improvements in-place.

Analysis No. 2 involves a comparative land study recognizing price levels for other hillside parcels uncovered from the surrounding competitive marketplace. The data program will recognize both parcel size as well as the benefits of having a large parcel to develop with multiple homesites, capital cost expended to-date will also be recognized.

DEFINITIONS OF VALUE

**Market Value (Appraisal Institute)**

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming that the price is not affected by undue stimulus."

- (a) Buyer and seller are typically motivated;
- (b) Both parties are well informed or well advised, and acting in what they consider their own best interests;
- (c) A reasonable time is allowed for exposure in the open market;
- (d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

BUSS-SHELGER ASSOCIATES

**“As Is” Value (Appraisal Institute)**

“The value of the property in its present condition and under market conditions prevalent on the date of appraisal. No hypothetical conditions, assumptions, or qualification concerning the physical or legal aspects of the property are to be observed.”

**Fee Simple Estate (Appraisal Institute)**

“Absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the government powers of taxation, eminent domain, police power, and escheat.”

**Market Value (California Civil Code)**

“The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.”

**COMPETENCY**

The undersigned appraiser is competent to complete this appraisal and prepare this report in accordance with the competency provision a stated within the Uniform Standards of Professional Appraisal Practice (USPAP). A copy of the appraiser qualifications may be found under Exhibit B in the Addenda of this report

**EXPOSURE TIME**

Exposure time is defined as: “The estimated length of time the property being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market.” A review of the sales data included in the value analysis section indicates a wide variance in marketing time; it is estimated that a period of nine to twelve months would be reasonable for the subject assemblage at a price consistent with the value determined herein, this assumes the real estate holding is professionally marketed.

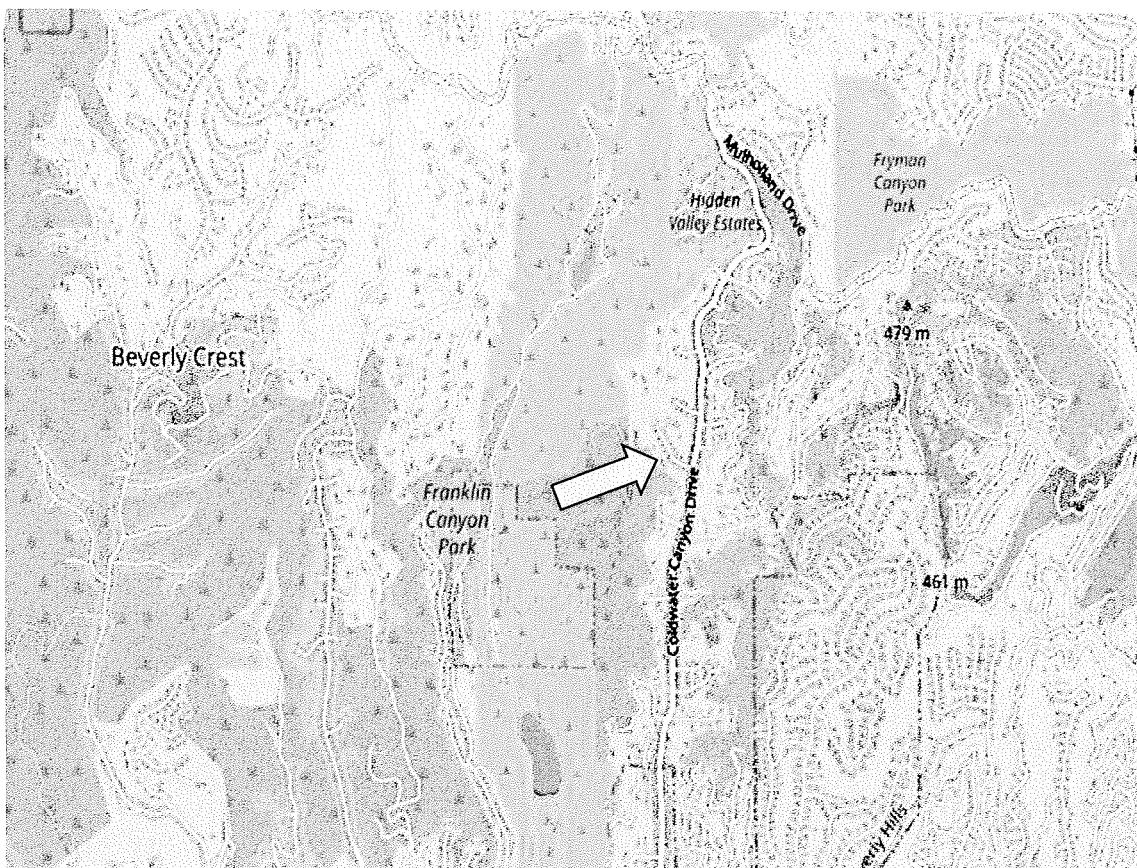
BUSS-SHELGER ASSOCIATES

LOCATION

**Background**

The property under consideration is located westerly of Coldwater Canyon Drive positioned at the westerly terminus of Royalton Drive. Situated on the southerly down sloping hillside lands of the Santa Monica Mountains, the holding lies south of Mulholland Drive, roughly four miles north of Sunset Boulevard. The site is within the boundaries of the City of Los Angles, but has a Beverly Hills postal address. Your attention is directed to the Location Map below which identifies the situs in relation to the Santa Monica Mountains Recreation area, otherwise identified as Franklin Canyon Park,

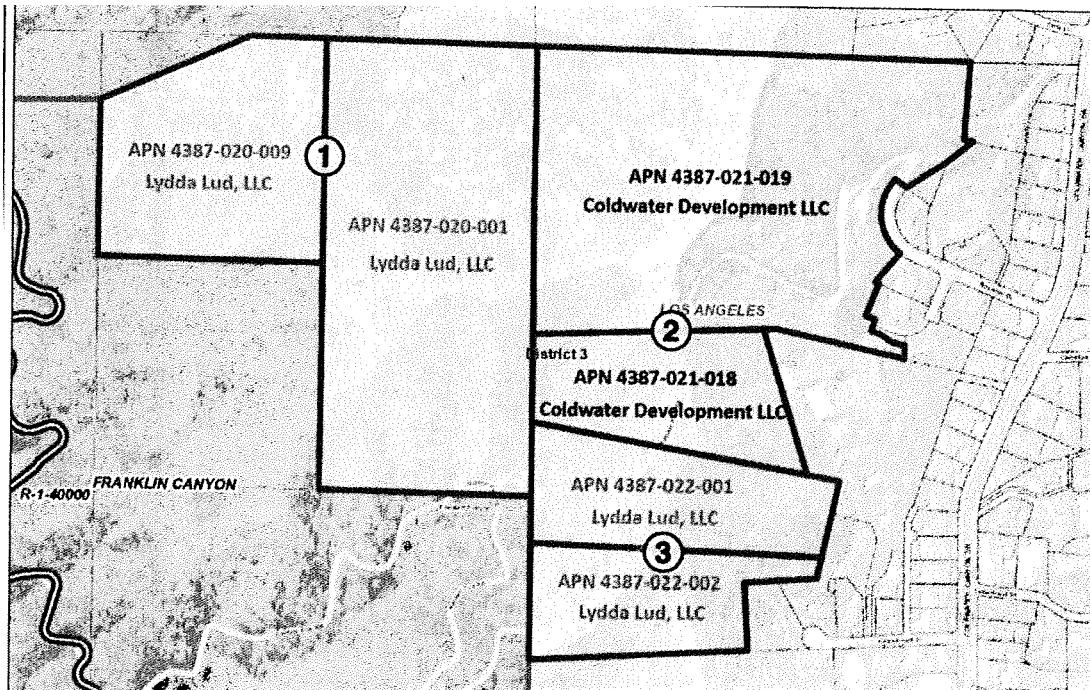
**Location Map – Subject location is yellow arrow**



BUSS-SHELGER ASSOCIATES

**SUBJECT LAND ASSEMBLAGE**

**PLAT MAP**



**LAND FEATURES**

**Location**

The above Plat Map defines the boundaries of the entire assemblage as well as the three internal parcels designated as future large homesites. While positioned west of Coldwater Canyon Drive, the only direct access is off the terminus of Royalton Drive.

**Land Areas**

Pursuant to the Parcel Profile Reports provided, the three subject homesites contain the following land areas.

Homesite	Assessor's Reference	Land Area
No. 1	4387-020-001/009	29.00 Acres
No. 2	4387-021-018/019	26.95 Acres
No. 3	4387-022-001/002	<u>10.84</u> Acres
Total .....		66.79 Acres

BUSS-SHELGER ASSOCIATES

**Topography**

The subject land climbs abruptly from the easterly boundary to a ridge top plateau, rolling hillside terrain prevails in a westerly direction toward Franklin Canyon Park.

**Zoning**

RE40-1-H. This zoning overlays all of the subject land in which RE references Residential Estate Zoning, the 40 zone requires a minimum homesite to process 40,000 square feet, the 1 allows one additional foot of building height above two-stories for additional side yard footage; the H designation is for Hillside Areas.

**Utilities**

All the customary utilities and service are underground and in-place at the terminus of Royalton Drive.

**Earthquake Hazard**

The State of California enacted the Alquist-Priolo Special Studies Act in 1972; its purpose was to delineate all active earthquake faults in California and to prohibit development of structures for human occupancy cross the trace of an active fault. Subject lands are not located atop the nearby active Hollywood Fault Zone.

**Soils/Geology**

A soils and geotechnical report was not reviewed, no visible evidence of landslides or unusual erosion were witnessed upon inspection.

**Easements**

The Preliminary Title Report specifies easements that exist for power lines and related utilities, none are impairments to the ownership. Property is a subject to the Hastain Trail Road easement which is evident in the aerial photograph provided.

**Mineral Resources**

This appraisal does not address the potential presence, ownership or value of locatable minerals (previous metals, etc.), leasable minerals (oil, gas, etc.) or saleable minerals (sand, gravel, etc.). All the customary utilities and service are underground and in-place for each of the subject lots.

**Habitat**

The preponderance of the non-pad acreage is covered with both coastal sage and native grasses.

**Streets**

Royalton Drive is a 45-foot wide residential street that is paved with curbs and gutters in-place.

BUSS-SHELGER ASSOCIATES

**Entitlements**

Initially proposed for a six-homesite tract, the lack of a second access point off Cedarbrook Drive resulted in the project being denied. The Preliminary Title Report did acknowledge that three Certificates of Compliance had been approved (April 1988/April 1988/May 1992), the current business plan to develop and market the homesites with some land set aside for the public.

**Improvements**

Initial design, engineering and on-site grading and landscaping had commenced on Homesite No. 2, the entry gate has been constructed and shown below. While construction has been halted due to the bankruptcy filing, the initial capital outlay was reported at \$9,700,000; another projected \$11,000,000 in direct cost will be required to create the three homesites.

**Gated Entry**



BUSS-SHELGER ASSOCIATES

ASSESSED VALUES

**Background**

Under Proposition 13, present tax laws in the State of California limit real property taxation to 1% of base year market value, plus existing and subsequent voter approved bond indebtedness and a maximum allowance inflationary factor of 2% per year. Summarized below are the 2020 assessed values by homesite index as set forth by the Los Angeles County Assessor's office.

**Assessed Values**

Homesite No. 1	--	\$1,412,986
Homesite No. 2	-	7,028,842
Homesite No. 3	-	<u>470,987</u>
Total Property	--	\$8,912,815

HIGHEST AND BEST USE

**Definition**

"The reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and results in the highest value."

The proposed three large homesite project is Legally Permissible and Physically Possible by virtue of the Certificates of Compliance in effect as well as the extent of similar terrain nearby improved with large homesites. Excluding the underlying land debt obligation, the project is otherwise Economically Feasible as will be shown by the following land residual analysis. Without a second point of ingress and egress, the three homesite usage is the Maximally Productive usage of the 67± acres.

BUSS-SHELGER ASSOCIATES

**ANALYSIS NO. 1 – LAND RESIDUAL**

**HOMESITE PRICING**

A search has been undertaken in the competitive marketplace for homesite acquisitions occurring in the northerly portion of Beverly Hills extending northerly north to Mulholland Drive, within the City of Los Angeles but having a Beverly Hills postal address. The more intensively high end residential areas of Beverly Hills, closer to Sunset Boulevard were also investigated; however, these sub-districts appeal to a higher end occupant identifying with the elevated Beverly Hills market.

Set forth below is a chronological summary of the data assembled, segregated by timeline. The acquisitions occurring prior to the pandemic are summarized, followed by the purchases after the corona virus being evident in March of 2020. Following the Sales Summary below is a Land Summary is a Land Sales Map showing the status of each data point listed.

**MARKET INFORMATION**

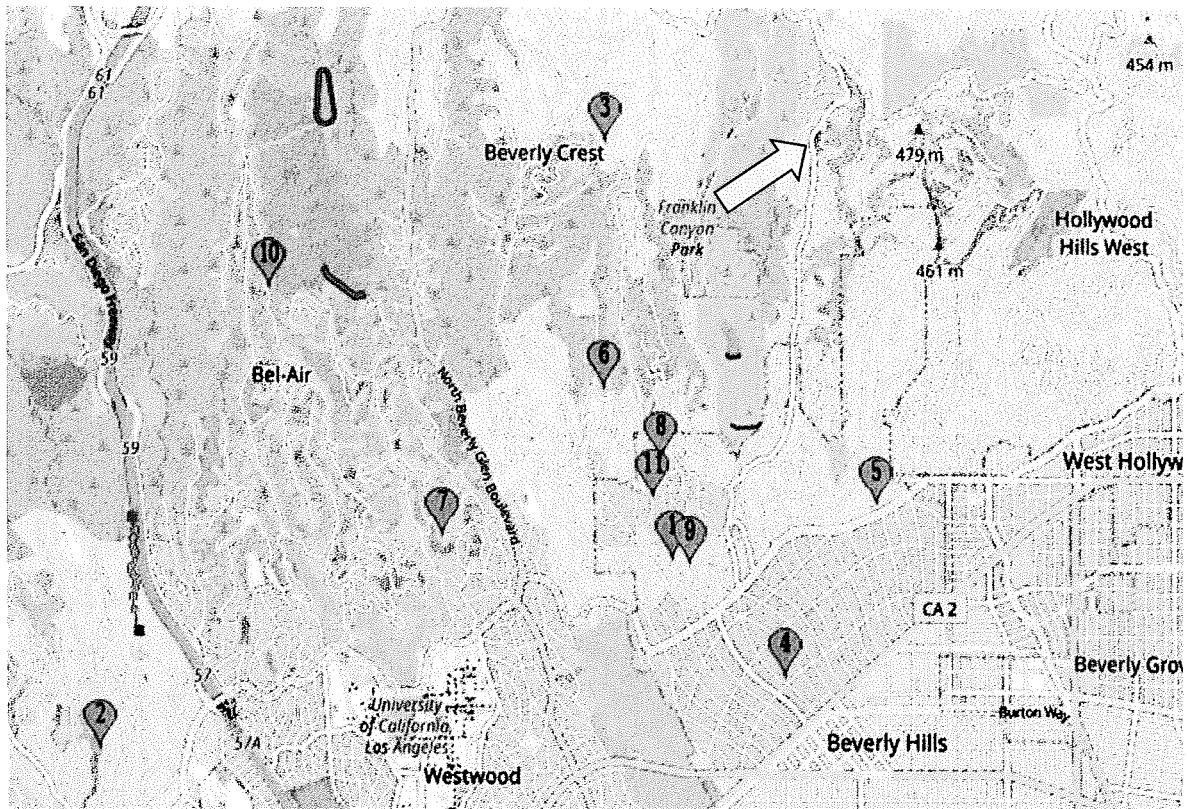
**Sales Summary**

Data Index	Beverly Hills Property Address	Lot Area Marketing	Transfer Price
Sale Date			
<b>PURCHASES PRIOR TO CORONA VIRUS:</b>			
No. 1 3/18	1031 Cove Way	0.51 Ac. 2 Mos.	\$7,100,000
No. 2 7/18	592 North Tigertail Road	2.84 Ac. 22 Mos.	\$17,750,000
No. 3 8/18	9694 Antelope Road	4.01 Ac. 13 Mos.	\$14,000,000
No. 4 8/18	615 North Canon Drive	0.73 Ac. 3 Mos.	\$11,534,500
No. 5 11/18	410 Doheny Road	0.54 Ac. 4 Mos.	\$10,500,000
No. 6 4/19	9921 Shangri LA Drive	0.42 Ac. 2 Mos.	\$4,000,000

BUSS-SHELGER ASSOCIATES

Data Index Sale Date	Beverly Hills Property Address	Lot Area Marketing	Transfer Price
No. 7 11/19	783 Bel Air Road	1.41 Ac. 3 Mos.	\$12,000,000
No. 8 12/19	1360 Summitridge Place	2.80 Ac. 8 Mos.	\$15,000,000
No. 9 3/20	1003 Eldon Way	0.73Ac. 1 Mo.	\$13,825,000
<b>Average Sale Price.....</b>			<b>\$11,745,500</b>
TRANSACTIONS POST CORONA VIRUS			
No. 10 12/20	1952 Stradella Road	1.34 Ac. 3 Mos.	\$2,500,000
No. 11 1/21	9776 Peavina Drive	1.38 Ac. 9 Mos.	\$1,380,000
<b>Average Sale Price.....</b>			<b>\$1,940,000</b>

LAND SALES MAP



BUSS-SHELGER ASSOCIATES

HOMESITE PRICING

The corona virus impact on the marketplace for homesites is significant in terms of number of transfers and more importantly, price levels. The nine purchases pre-corona virus reflected a range from \$4,000,000 to \$17,750,000 with an average homesite price of roughly \$11,750,000. It is noted the price input on marketing time as the two higher end acquisitions (Sale Nos. 2 and 3) required more than a year to complete a transaction, the lower priced sites requiring only one to four months. It is noted however that both high price parcels involved more land as will the subject larger lots.

A complete turnaround in the competitive market followed the corona virus breakout in that only two purchases have occurred, both at very low prices averaging \$1,940,000, roughly 16.5% of the average price paid prior to April of 2020. Assuming that the market recovers to normal pre-corona virus status, an average price of \$15,000,000 per large homesite has been adopted for the three subject parcels. This assumes the interior private roadway is in-place plus utilities extended to each site with a pad roughly graded.

3 Homesites @ \$15,000,000 each..... \$45,000,000

DEVELOPING COSTS

Setting aside the present bankruptcy issue, there has been capital expended for development cost to-date, nevertheless there are future expenditures which will be incurred. Direct development costs are projected at \$18,900,000 per the appraisal provided, a 10% contingency allowance has been set aside as well as financing obligations. A developer profit incentive has not been included; however, a 2.5% marketing expense for the three homesites has been adopted recognizing three individual buyers and their respective real estate agencies.

BUSS-SHELGER ASSOCIATES

Cost Category	Amount
Remaining Development Costs	\$11,000,000
Contingency/Financing (10%)	2,650,000
Marketing Expense (2.5%)	1,125,000
REMAINING PROJECT COST.....	\$14,775,000

VALUE DETERMINATION

The evaluation requires ascertaining the current value of the subject 66.79 acres in an "as is" condition. A number of investment oriented factors will influence a prospective buyer's decision making.

- Final recorded map conditions for the three homesite tract now envisioned.
- Development requirements regarding the preservation of the Hastain Fire Road
- Development details regarding improvement cost including cut and fill, buttress slop requirements, etc.
- Soils report, particularly related to mesa top stability and on-site residence construction requirements.

Typically a bulk lot discount of 20% prevails in the industry, in-part including a profit incentive, in-part recognizing the unknown factors listed above, and in-part allowing for the acquisition of three homesites and the inherent risks of a redesigned project in an unproven economy. The following residual property value emerges from the summary below.

Retail Value – 3 Homesites .....	\$45,000,000
Less Development/Financing Cost.....	<u>14,775,000</u>
Residual "As Is" Land Value .....	\$30,225,000

Bulk Value:

\$30,225,000 x 80% (20% Discount) .....	\$24,180,000
Rounded,	\$24,175,000

BUSS-SHELGER ASSOCIATES

**ANALYSIS NO. 2 – COMPARATIVE STUDY**

**ACREAGE PRICING**

A search was undertaken of the entire southerly sloping mountainous range from Mulholland Drive south to Sunset Boulevard and from the 405 Freeway east to the Hollywood Hills. Using five acres as a minimum and focused on hillside terrain, no transactions have occurred in the past three years. There have been a number of listings, but no concluded transactions, but nevertheless reflective of the upper end of the marketplace. Accordingly the properties uncovered are listed below by size with the asking prices shown, none of which are as large as the subject. A Market Data Map can be found following the summary below for visual orientation of each data point in relation to the holding under evaluation.

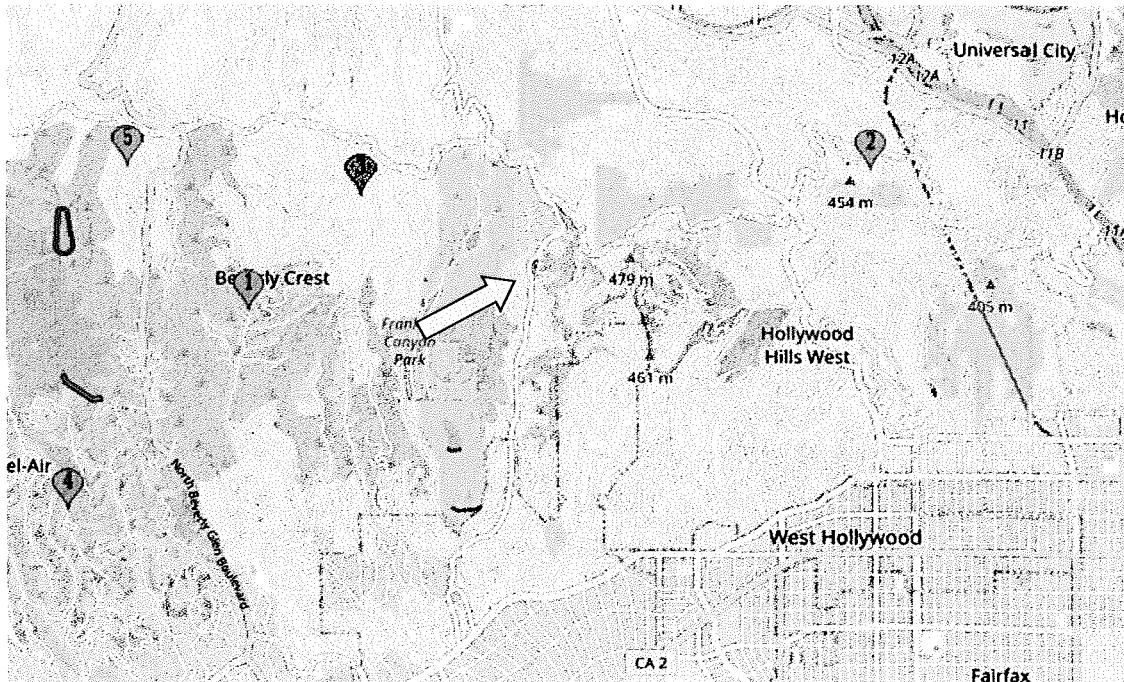
**MARKET INFORMATION**

**Data Summary**

Data No. Listing	Property Address/Location	Land Area Zoning	Asking Price Price/Acre
<b>Subject</b> ---	<b>E'ly Terminus Royalton Drive, Coldwater Canyon</b>	<b>66.79 Ac. RE-40</b>	---
No. 1 1/18	2475 Benedict Canyon Drive, Beverly Glen	5.25 Ac. RE-40	\$1,375,000 \$261,905
No. 2 7/20	7707 Mulholland Drive Hollywood Hills	5.61 Ac. RE-40	\$2,950,000 \$525,940
No. 3 12/17	O Kirkland Drive Bel Air	10.70 Ac. RE-40	\$3,900,000 \$304,418
No. 4 3/18	1310 Stradella Road Bel Air	12.88 Ac. RE-40	\$7,900,000 \$613,354
No. 5 1/17	3075 Nicada Drive Bel Air	26.23 Ac. A-1	\$15,600,000 \$594,730
Average Price Per Acre.....			\$460,069

BUSS-SHELGER ASSOCIATES

**Market Data Map – Subject location is yellow arrow**



**VALUE DETERMINATION**

The asking prices very broadly from \$261,965 to \$613,354 per acre, the parcels range in size from 5.25 to 26.23 acres, none approach the size of the subject with 66.79 acres. It is clearly noted that none of the properties listed transferred at the listing price, Data Nos. 1 and 4 had already experienced a price reduction. It is noted that a larger holding can accommodate more residences, the subject is constrained in that no more than three residences are permitted.

It is a plus for the subject that Certifications of Compliance are recorded for the three prospective dwelling units, the aggregate size of the holding would not command a price approaching that of the data points listed. Accordingly, a value of one half the group average, or \$230,000 per acre has been adopted plus allowing for reported capital expended to-date.

Raw Land – 66.79 Acres @ \$230,000/Acre .....	\$15,362,000
Plus Capital Expended To-Date .....	<u>9,700,000</u>
Total Comparative Value .....	\$25,062,000
Rounded,	\$25,050,000

BUSS-SHELGER ASSOCIATES

**CORRELATION**

The subject assembled has been evaluated both from a development perspective as well as being hillside land within which three homesites can be created. The two approaches to value, produced the following value benchmarks.

Valuation Approach	Market Value
No. 1 – Land Residual	\$24,175,000
No. 2 – Comparative Study	\$25,050,000
Adopt,	\$24,500,000

**VALUATION**

Based on the investigation, study and analyses made, the following opinion of market value has been formed as of February 4, 2021, the date of inspection.

**TWENTY FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS**

**(\$24,500,000)**

BUSS-SHELGER ASSOCIATES

**LIMITING CONDITIONS**

This report is made expressly subject to the following conditions and stipulations:

- 1) No responsibility is assumed by us for matters which are legal in nature.
- 2) No opinion of title is rendered and the property is appraised as though free of all encumbrances and the title marketable.
- 3) The appraisal covers the property described only.
- 4) No survey of the boundaries of the property has been made. All areas and dimensions furnished are assumed to be correct.
- 5) Sources of information are believed to be correct and, where feasible, have been verified.
- 6) By reason of this appraisal we are not required to give testimony or to be in attendance in court or at any governmental or other hearing with reference to the property without arrangements having been made relative to such addition employment.
- 7) Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute, or to the MAI or RM designation, shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent and approval of the author(s).
- 8) Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test for such substances. The presence of such hazardous substances may affect the value of the property. The value estimated herein is predicated on the assumption that no such hazardous substances exist on or in the property or in such proximity thereto which would cause a loss in value.

BUSS-SHELGER ASSOCIATES

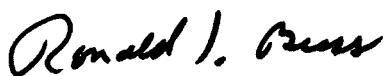
**CERTIFICATION**

The following certification applies to the appraisal of a prospective 3 homesite project on Royalton Drive Hillside (66.79 Acres) in the Coldwater Canyon Area, Los Angeles.

- The undersigned have not performed appraisals as appraisers or in any other capacity, regarding the subject of this report within the three-year period immediately preceding acceptance of this assignment for another client.
- The undersigned appraisers certify that they personally inspected the property described herein; that they have no past, present or prospective, direct or indirect interest in or bias with respect to the subject property, nor personal interest or bias toward the parties involved.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are the personal, unbiased professional analyses, opinions, and conclusions of the undersigned; employment in this appraisal report is not in any manner contingent upon returning appraisal findings in any specified or implied amount or otherwise contingent upon anything other than the delivery of this report.
- This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
- To the best of the appraisers' knowledge and belief, all of the statements contained herein, upon which the analyses, opinions and conclusions expressed are based, are true and accurate; that no one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate set forth in this report.
- The appraisers' analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Ronald L. Buss, MAI and Nolan Knight have completed the requirements of the continuing education program of the Appraisal Institute.

Respectfully submitted,  
**BUSS-SHELGER ASSOCIATES**



Ronald L. Buss, MAI



Nolan Knight

BUSS-SHELGER ASSOCIATES

**ADDENDA OF SUPPORTING DATA**

EXHIBIT A

PRELIMINARY TITLE REPORT



## Chicago Title Company

725 South Figueroa Street, Suite 200, Los Angeles, CA 90017  
Phone: (213) 488-4300 • Fax: (213) 488-4377

### Issuing Policies of Chicago Title Insurance Company

ORDER NO.: 00133983-021-PS4-JC

Escrow/Customer Phone: (213) 488-4300

Chicago Title Company  
725 South Figueroa Street, Suite 200  
Los Angeles, CA 90017  
ATTN: Patricia Schlageck  
Email: Patricia.Schlageck@ctt.com

Title Officer: Jordan Curiel (LA/Comm)  
Title Officer Phone: (213) 488-4377  
Title Officer Fax: (213) 612-4171  
Title Officer Email: UnitX23@ctt.com

PROPERTY: VACANT LAND, BEVERLY HILLS, CA

### PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Florida corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Chicago Title Company

By: \_\_\_\_\_  
Authorized Signature



By: *[Signature]*  
ATTEST  
President  
*Maryann Remigio*  
Secretary

PRELIMINARY REPORT  
YOUR REFERENCE:

Chicago Title Company  
ORDER NO.: 00133983-021-PS4-JC

**EXCEPTIONS  
(Continued)**

25. An assignment of all the moneys due, or to become due as rental, as additional security for the obligations secured by deed of trust shown as item no. 33

Assigned to: Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: 20170310863 of Official Records

26. Matters contained in that certain document

Entitled: Pledge and Collateral Assignment of Economic Incentives  
Dated: March 16, 2017  
Executed by: Coldwater Development LLC, a California limited liability company, Lydda Lud, LLC, a California limited liability company, and Romspen California Mortgage Limited Partnership, an Ontario limited partnership  
Recording Date: March 20, 2017  
Recording No: 20170310864 of Official Records

Reference is hereby made to said document for full particulars.

27. A financing statement as follows:

Debtor: Lydda Lud, LLC  
Secured Party: Romspen California Mortgage Limited Partnership  
Recording Date: March 21, 2017  
Recording No: 20170316463 of Official Records

**THE FOLLOWING MATTERS AFFECT ALL PARCELS:**

28. Matters contained in that certain document

Entitled: Judgement  
Recording Date: June 26, 2018  
Recording No: 2018-636242, of Official Records

Reference is hereby made to said document for full particulars.

29. Matters contained in that certain document

Entitled: Certificate of Lien  
Dated: December 20, 2018  
Executed by: Department of Industrial Relations  
Recording Date: January 7, 2019  
Recording No: 20190014936 of Official Records

Reference is hereby made to said document for full particulars.

PRELIMINARY REPORT  
YOUR REFERENCE:

Chicago Title Company  
ORDER NO.: 00133983-021-PS4-JC

**EXCEPTIONS  
(Continued)**

30. Matters contained in that certain document

Entitled: Certificate of Lien  
Dated: December 20, 2018  
Executed by: Department of Industrial Relations  
Recording Date: January 7, 2019  
Recording No: 20190014940 of Official Records

Reference is hereby made to said document for full particulars.

31. A tax lien for the amount shown and any other amounts due, in favor of the United States of America, assessed by the District Director of Internal Revenue.

Federal Serial No.: 395959519  
Taxpayer: Mohamed A. Hadid  
Amount: \$3,461,919.57  
Recording Date: December 16, 2019  
Recording No: 2019-1398582, of Official Records

32. A state tax lien for the amount shown and any other amounts due,

State Identification No: 20063644015  
Filed by: State of California  
Taxpayer: Mohamed Hadid  
Amount: \$339,068.07  
Recording Date: March 4, 2020  
Recording No: 2020-254926, of Official Records

33. Any policy of title insurance issued under this application will not insure a legal right of access to and from said Land. Insuring Provision # 4 will be deleted.

34. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

35. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

36. The Company will require that a full copy of any unrecorded lease referred to herein be furnished to the Company, together with all supplements, assignments and amendments for review.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

EXHIBIT B

APPRAISERS' QUALIFICATIONS

**PROFESSIONAL QUALIFICATIONS**

**RONALD L. BUSS**

**EXPERIENCE**

**Buss-Shelger Associates**, Los Angeles, California (since 1984).  
**President**. Provides consulting, investment, valuation, advisory, brokerage and leasing services on all types of properties.  
**Landauer Associates, Inc.**, Los Angeles, California (1975-1984).  
**Senior Vice President**. Real estate consulting services.  
**Shattuck Company**, Los Angeles, California (1971-1975).  
**Real Estate Counselor and Consulting Appraiser**.  
**State Board of Equalization**, State of California (1963-1970).

**PROFESSIONAL ACTIVITIES**

Member: Urban Land Institute, 1998 - To date  
Member: Lambda Alpha International, 1997 – To date  
President – 2004  
Member: Land Economics Foundation, 2004 – To date  
International President – 2004 – 2007  
Member: Appraisal Institute, 1976 - To date  
Southern California Chapter President, 1987  
Member: Counselors of Real Estate, 1983 - 2004  
Southern California Chapter President, 1988  
National Vice President, 1996-1997  
Member: Assessment Practices Advisory Council,  
Los Angeles County Assessor's Office, 1980-1986  
Member: Los Angeles Board of Realtors  
Member: California Real Estate Association  
Member: UCLA Center for Finance and Real Estate, 1993 - 1994  
Member: National Association of Realtors  
Member: American Industrial Real Estate Association  
Advisor: Operating Engineers Pension Trust, 1983 - 2006  
Advisor: Electrical Workers Pension Trust, 1994 - To date  
Advisor: Independent Directors, Irvine Apartment Communities  
Investment United States Securities & Exchange Commission  
Advisor: Registered 2000 – 2004  
Advisor: City of Beverly Hills  
Advisor: San Diego Regional Airport Authority

**CERTIFICATION/EDUCATION**

MAI designated and certified under The Appraisal Institute voluntary program of continuing education for its designated members.

Certified as General Real Estate Appraiser in the State of California.  
OREA Appraiser Certification No. AG009146

Licensed State of California Real Estate Broker

Certificate in Real Estate – University of California Extension

Bachelor of Science – California Polytechnic College (1963)

NOLAN B. KNIGHT

**EXPERIENCE:** **Buss-Shelger Associates**, Los Angeles, California (11/2007- Present)  
Assists in various residential, commercial, industrial, and land appraisals.  
Consists of collecting pertinent data on subject properties, gathering comparable transfers, verifying acquisitions, performing subject inspections, field work examination, Word/Excel data input, and report document formatting.

**Pacific Realty Advisors/Associates** (2003 – 2007)

**Executive Appraisal Assistant.** Responsibilities include writing property appraisal reports with Microsoft Word, real estate data input with Microsoft Excel, drafting building plans with WinTotal software, creation and maintenance of subject property files, Internet property data research, money handling and bank deposits, report assembly and delivery, heavy document photocopying, telecommunication with multiple City Hall departments and Real Estate Brokers in the greater Southern California area, and field property description/photos/measurements.

**Manhattan Realty Advisors** (2005-2007)

**Field Work Consultant** - Retrieval of subject, sales, and rental photographs along with building measurements and subject inspections required for reports.

**Nagasaki & Associates** (2005-2007)

**Field Work Consultant** - Retrieval of subject, sales, and rental photographs along with detailed descriptions required for reports.

**CERTIFICATION:** Certified Real Estate Appraiser Trainee in the State of California.

OREA Appraiser Certification No. AT044746

**EDUCATION:** **Bachelor of Arts in English: Creative Writing**  
California State University, Long Beach 2005