

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EXHIBIT 1

ECP COMMERCIAL I LLC)
383 Inverness Parkway, Suite 390)
Englewood, Colorado 80112)

Plaintiff,)

v.)

CASE NO.: 15-cv-02247-STA-cgc

BOAZ SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)

and)

EDEN SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)

and)

MAYODAN SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)

and)

NEWTON SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)

and)

PLAINVIEW II SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)

and)

PUEBLO WEST SHOPPING CENTER LLC)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)
))
and)
))
JEFF H. FARMER, JR.,)
as Collection Agent)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)
))
and)
))
JEFF H. FARMER, III,)
as Collection Agent)
5851 Ridge Bend Road)
Memphis, Tennessee 38120-9412)
))
Defendants.)

)

**SECOND AMENDED COMPLAINT FOR FORECLOSURE,
APPOINTMENT OF A RECEIVER, AND INJUNCTIVE RELIEF**

Plaintiff, ECP Commercial I LLC (“ECP”), for its Complaint against the defendants respectfully states as follows:

PARTIES, JURISDICTION, AND VENUE

1. ECP brings this second amended complaint to address junior lienholders who were omitted inadvertently from the prior Amended Complaint for Foreclosure, Appointment of Receiver and Injunctive Relief.

2. Plaintiff, ECP, is a Delaware limited liability company that has its principal place of business at 383 Inverness Parkway, Suite 390, Englewood, Colorado 80112. The sole

member of ECP is ECP Capital I LLC. The sole member of ECP Capital I LLC is Excelsior Capital Partners LLC. No member of Excelsior Capital Partners LLC is a citizen of the same state as any defendant for diversity purposes. No member or sub-member of ECP or its members and sub-members is a citizen of Tennessee.

3. Defendant Boaz Shopping Center LLC (“Boaz”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Boaz has two members. One member is an individual citizen of Tennessee. The second member is a limited liability company whose members are all individual citizens of Tennessee. Defendant Boaz is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

4. Defendant Eden Shopping Center LLC (“Eden”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Eden has two members. One member is an individual citizen of Tennessee. The second member is a limited liability company whose members are all individual citizens of Tennessee. Defendant Eden is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

5. Defendant Mayodan Shopping Center LLC (“Mayodan”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Mayodan has two members. One member is an individual citizen of Tennessee. The second member is a limited

liability company whose members are all individual citizens of Tennessee. Defendant Mayodan is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

6. Defendant Newton Shopping Center LLC (“Newton”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Newton has two members. One member is an individual citizen of Tennessee. The second member is a limited liability company whose members are all individual citizens of Tennessee. Defendant Newton is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

7. Defendant Plainview Shopping Center II LLC (“Plainview”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Plainview Shopping Center LLC has one member. The sole member is a limited liability company whose sole member is an individual resident of Tennessee. Plainview Shopping Center LLC is diverse with respect to ECP. Defendant Plainview is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

8. Defendant Pueblo West Shopping Center LLC (“Pueblo” and together with Boaz, Eden, Mayodan, Newton and Plainview, the “Shopping Center Defendants”) is a Delaware limited liability company that has its principal place of business at 5851 Ridge Bend Road Memphis, Tennessee 38120-9412, and is a citizen of Tennessee for diversity purposes. Pueblo West Shopping Center LLC has two members. One member is an individual citizen of

Tennessee. The other member is a limited liability company whose members are individual citizens of Tennessee. Pueblo West Shopping Center LLC is diverse with respect to ECP. Defendant Pueblo is named as a Defendant as it may claim an interest in the property, as defined herein, which is the subject of this foreclosure.

9. Defendant Jeff H. Farmer, Jr. ("Farmer"), is an individual citizen of Tennessee. Farmer is named as a Defendant only in his capacity as "Collection Agent" (defined herein) as he may claim an interest in the property as Collection Agent which is the subject of this foreclosure.

10. Defendant Jeff H. Farmer, III ("Farmer III") is an individual citizen of Tennessee. Farmer III is named as a Defendant only in his capacity as "Collection Agent" (defined herein) as he may claim an interest in the property as Collection Agent which is the subject of this foreclosure.

11. This Court has personal jurisdiction over the defendants.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as the Defendants are residents of this judicial district.

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 on the grounds that this civil action constitutes a controversy between citizens of different states and the amount in controversy exceeds \$75,000.

FACTS

The Master Loan

14. On December 8, 2005, The Spectra Group, Inc. ("Spectra"), Farmer, and KeyBank, National Association ("KeyBank") entered into a Master Construction Loan

Agreement (the “Original Master Loan Agreement”) and related agreements and documents that established a \$75,000,000.00 commercial loan (the “Original Master Loan”) to Spectra and otherwise reflected certain loan arrangements between the parties. A copy of the Original Master Loan Agreement is attached as Exhibit 1 and incorporated herein.

The Cedartown, Georgia Loan

15. On August 4, 2006, Cedartown LLC (“Cedartown”) and KeyBank entered into a Project Agreement (the “Cedartown Loan Agreement”) and related agreements and documents that established a \$3,800,000.00 commercial loan (the “Cedartown Loan”) to Cedartown and otherwise reflected certain loan arrangements between the parties. A copy of the Cedartown Loan Agreement is attached as Exhibit 2 and incorporated herein.

16. Cedartown and KeyBank entered into a \$3,590,000.00 Promissory Note on August 4, 2006 that evidenced a portion of the Cedartown Loan (“Cedartown Note A”). A copy of Cedartown Note A is attached as Exhibit 3 and incorporated herein.

17. Cedartown and KeyBank entered into a \$210,000.00 Promissory Note on August 4, 2006 that evidenced a portion of the Cedartown Loan (“Cedartown Note B” and together with Cedartown Note A, the “Cedartown Notes”). A copy of Cedartown Note B is attached as Exhibit 4 and incorporated herein.

18. The Cedartown Notes included Cedartown’s promise to make certain payments to KeyBank and to perform various other obligations.

19. To secure the payment and performance of its obligations under the Cedartown Loan Agreement and the Cedartown Notes, Cedartown executed a Mortgage, Assignment of

Rents, Security Agreement and Fixture Filing in favor of KeyBank (the “Original Cedartown Mortgage”) on August 4, 2006, which was recorded in the official records of Polk County, Georgia at Book 1172 Page 0001. The property and premises conveyed by the Cedartown Mortgage as security for the Cedartown Loan Agreement and the Cedartown Note, and more fully described in Exhibit A to the Cedartown Mortgage, include certain buildings, improvements, appurtenances, fixtures and personal property located thereon, and all rents, income, proceeds and profits accruing and to accrue therefrom, consisting of a shopping center known as the Cedartown Retail Center (collectively, the “Cedartown Property”). A copy of the Cedartown Mortgage is attached as Exhibit 5 and incorporated herein.

20. Also to secure the payment and performance of its obligations under the Cedartown Loan Agreement and the Cedartown Notes, Cedartown executed an Assignment of Leases and Rents (the “Original Cedartown Assignment”) in favor of KeyBank on August 4, 2006, which was recorded in the official records of Polk County, Georgia at Book 1172 Page 0030. Among other things, the Assignment provides for Cedartown’s assignment and transfer to KeyBank of all the rents, income, and profits then or to become due from the real property and improvements described in the Cedartown Assignment, including but not limited to all payments from the leases identified in the Cedartown Assignment. A copy of the Cedartown Assignment is attached as Exhibit 6 and incorporated herein.

The Eden, North Carolina Loan

21. On August 10, 2005, Eden and KeyBank entered into a Project Agreement (the “Eden Loan Agreement”) and related agreements and documents that established a

\$2,512,500.00 commercial loan (the “Eden Loan”) to Eden and otherwise reflected certain loan arrangements between the parties. A copy of the Eden Loan Agreement is attached as Exhibit 7 and incorporated herein.

22. Eden and KeyBank entered into a \$2,512,500.00 Promissory Note on August 10, 2005 that evidenced the Eden Loan (the “Eden Note”). A copy of the Eden Note is attached as Exhibit 8 and incorporated herein.

23. The Eden Note included Eden’s promise to make certain payments to KeyBank and to perform various other obligations.

24. To secure the payment and performance of its obligations under the Eden Loan Agreement and the Eden Note, Eden executed a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing in favor of KeyBank (the “Original Eden Mortgage”) on August 3, 2005, which was recorded in the official records of Rockingham County, North Carolina at Book 1252 Page 483. The property and premises conveyed by the Eden Mortgage as security for the Eden Loan Agreement and the Eden Note, and more fully described in Exhibit A to the Eden Mortgage, include certain buildings, improvements, appurtenances, fixtures and personal property located thereon, and all rents, income, proceeds and profits accruing and to accrue therefrom, consisting of a shopping center known as the Eden Retail Center (collectively, the “Eden Property”). A copy of the Eden Mortgage is attached as Exhibit 9 and incorporated herein.

25. Also to secure the payment and performance of its obligations under the Eden Loan Agreement and the Eden Notes, Eden executed an Assignment of Leases and Rents (the “Original Eden Assignment”) in favor of KeyBank on August 3, 2005, which was recorded in

the official records of Rockingham County, North Carolina at Book 1252 Page 515. Among other things, the Assignment provides for Eden's assignment and transfer to KeyBank of all the rents, income, and profits then or to become due from the real property and improvements described in the Eden Assignment, including but not limited to all payments from the leases identified in the Eden Assignment. A copy of the Eden Assignment is attached as Exhibit 10 and incorporated herein.

The Mayodan, North Carolina Loan

26. On August 25, 2006, Tyler Shopping Center LLC, Pulaski Shopping Center LLC, Shawnee Shopping Center LLC, Ft. Dodge, Keokuk Shopping Center LLC, West Burlington Shopping Center LLC, Marshalltown Shopping Center LLC, Oskaloosa Shopping Center LLC, (collectively, "Original Mayodan Borrower") and KeyBank entered into a Project Agreement (the "Mayodan Loan Agreement") and related agreements and documents that established a \$4,875,000.00 commercial loan (the "Mayodan Loan") to Original Mayodan Borrower and otherwise reflected certain loan arrangements between the parties. A copy of the Mayodan Loan Agreement is attached as Exhibit 11 and incorporated herein.

27. Original Mayodan Borrower and KeyBank entered into a \$4,875,000.00 Promissory Note on August 25, 2006 that evidenced a portion of the Mayodan Loan (the "Mayodan Note"). A copy of the Mayodan Note is attached as Exhibit 12 and incorporated herein.

28. The Mayodan Note included Original Mayodan Borrower's promise to make certain payments to KeyBank and to perform various other obligations.

29. To secure the payment and performance of its obligations under the Mayodan Loan Agreement and the Mayodan Note, Original Mayodan Borrower executed a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing in favor of KeyBank (the “Original Mayodan Mortgage”) on August 25, 2006, which was recorded in the official records of Rockingham County, North Carolina at Book 1294 Page 1984. The property and premises conveyed by the Mayodan Mortgage as security for the Mayodan Loan Agreement and the Mayodan Note, and more fully described in Exhibit A to the Mayodan Mortgage, include certain buildings, improvements, appurtenances, fixtures and personal property located thereon, and all rents, income, proceeds and profits accruing and to accrue therefrom, consisting of a shopping center known as the Mayodan Retail Center (collectively, the “Mayodan Property”). A copy of the Mayodan Mortgage is attached as Exhibit 13 and incorporated herein.

30. Also to secure the payment and performance of its obligations under the Mayodan Loan Agreement and the Mayodan Notes, Original Mayodan Borrower executed an Assignment of Leases and Rents (the “Original Mayodan Assignment”) in favor of KeyBank on August 25, 2006, which was recorded in the official records of Rockingham County, North Carolina at Book 1294 Page 2015. Among other things, the Assignment provides for Original Mayodan Borrower’s assignment and transfer to KeyBank of all the rents, income, and profits then or to become due from the real property and improvements described in the Mayodan Assignment, including but not limited to all payments from the leases identified in the Mayodan Assignment. A copy of the Mayodan Assignment is attached as Exhibit 14 and incorporated herein.

The Pueblo, Colorado Loan

31. On October 11, 2006, Durant Shopping Center LLC, Newton, Zachary Shopping Center LLC (collectively, "Original Pueblo Borrower"), Spectra, Farmer, and KeyBank entered into a Project Agreement (the "Pueblo Loan Agreement") and related agreements and documents that established a \$2,250,000.00 commercial loan (the "Pueblo Loan") to Pueblo Borrower and otherwise reflected certain loan arrangements between the parties. A copy of the Pueblo Loan Agreement is attached as Exhibit 15 and incorporated herein.

32. Original Pueblo Borrower and KeyBank entered into a \$2,250,000.00 Promissory Note on October 11, 2006 that evidenced the Pueblo Loan (the "Pueblo Note"). A copy of the Pueblo Note is attached as Exhibit 16 and incorporated herein.

33. The Pueblo Note included Original Pueblo Borrower's promise to make certain payments to KeyBank and to perform various other obligations.

34. To secure the payment and performance of its obligations under the Pueblo Loan Agreement and the Pueblo Note, Original Pueblo Borrower executed a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing in favor of KeyBank (the "Original Pueblo Mortgage") on October 11, 2006, which was recorded in the official records of Pueblo County, Colorado as file number 1698835. The property and premises conveyed by the Pueblo Mortgage as security for the Pueblo Loan Agreement and the Pueblo Note, and more fully described in Exhibit A to the Pueblo Mortgage, include certain buildings, improvements, appurtenances, fixtures and personal property located thereon, and all rents, income, proceeds and profits accruing and to accrue therefrom, consisting of a shopping center known as the Pueblo Retail Center (collectively, the "Pueblo Property") and, together with the Cedartown

Property, the Eden Property and the Mayodan Property, the “Mortgaged Properties”). A copy of the Pueblo Mortgage is attached as Exhibit 17 and incorporated herein.

35. Also to secure the payment and performance of its obligations under the Pueblo Loan Agreement and the Pueblo Note, Original Pueblo Borrower executed an Assignment of Leases and Rents (the “Original Pueblo Assignment”) in favor of KeyBank on October 11, 2006, which was recorded in the official records of Pueblo County, Colorado as file number 1698836. Among other things, the Assignment provides for Pueblo’s assignment and transfer to KeyBank of all the rents, income, and profits then or to become due from the real property and improvements described in the Pueblo Assignment, including but not limited to all payments from the leases identified in the Pueblo Assignment. A copy of the Pueblo Assignment is attached as Exhibit 18 and incorporated herein.

Amendments to the Loan Documents

36. Spectra, Farmer and others requested and KeyBank agreed to make certain modifications to their agreements. As a result, the following amendments were made:

- A. Spectra, Farmer and KeyBank entered into a First Amendment to Master Construction Loan Agreement on June 30, 2006 (the “First Amendment to Master Loan Agreement”). A copy of the First Amendment to Loan Agreement is attached as Exhibit 19 and incorporated herein.
- B. Spectra, Farmer and KeyBank entered into a Second Amendment to Master Construction Loan Agreement on October 10, 2006 (the “Second Amendment to Master Loan Agreement”). A copy of the Second Amendment to Loan Agreement is attached as Exhibit 20 and incorporated herein.
- C. Spectra, Farmer and KeyBank entered into a Third Amendment to Master Construction Loan Agreement on July 18, 2007 (the “Third Amendment to Master Loan Agreement”).

A copy of the Third Amendment to Loan Agreement is attached as Exhibit 21 and incorporated herein.

- D. Spectra, Farmer and KeyBank entered into a Fourth Amendment to Master Construction Loan Agreement on October 10, 2007 (the “Fourth Amendment to Master Loan Agreement”). A copy of the Fourth Amendment to Loan Agreement is attached as Exhibit 22 and incorporated herein.
- E. Spectra, Farmer and KeyBank entered into a Fifth Amendment to Master Construction Loan Agreement on April 15, 2009 (the “Fifth Amendment to Master Loan Agreement”). A copy of the Fifth Amendment to Loan Agreement is attached as Exhibit 23 and incorporated herein.
- F. In connection with the Fifth Amendment to Master Loan Agreement, certain mortgages were modified, including as follows:
- i. On June 26, 2009, Tell City Shopping Center LLC, Ottumwa Shopping Center LLC, Newcastle Shopping Center LLC, Keokuk Shopping Center LLC (together, “Cedartown Borrower”) and KeyBank entered into a First Amendment to Mortgage, Assignment of Rents, Security Agreement and Fixture Filing and Deed to Secure Debt which amended the Original Cedartown Mortgage (the “Cedartown Mortgage Amendment” and together with the Original Cedartown Mortgage, the “Cedartown Mortgage”), which was recorded in the official records of Polk County, Georgia on September 9, 2009 at book 1340 page 112. A copy of the Cedartown Mortgage Amendment is attached hereto as Exhibit 24 and incorporated herein by reference.
 - ii. On June 26, 2009, Cedartown Borrower and KeyBank entered into a First Amendment to Assignment of Leases and Rents which amended the Original Cedartown Assignment (the “Cedartown Assignment Amendment” and together with the Original Cedartown Assignment, the “Cedartown Assignment”), which was recorded in the official records of Polk County, Georgia on September 9, 2009 at book 1340 page 123. A copy of the Cedartown Assignment Amendment is attached hereto as Exhibit 25 and incorporated herein by reference.
 - iii. On June 26, 2009, Eden and KeyBank entered into a First Amendment to Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing which amended the Original Eden Mortgage (the “Eden Mortgage Amendment” and together with the Original Eden Mortgage, the “Eden Mortgage”), which was recorded in the official records of Rockingham County, North Carolina on September 3, 2009 as file number 20090009155. A copy of the Eden Mortgage Amendment is attached hereto as Exhibit 26 and incorporated herein by reference.

- iv. On June 26, 2009, Eden and KeyBank entered into a First Amendment to Assignment of Leases and Rents which amended the Original Eden Assignment (the "Eden Assignment Amendment" and together with the Original Eden Assignment, the "Eden Assignment"), which was recorded in the official records of Rockingham County, North Carolina on September 3, 2009 as file number 20090009156. A copy of the Eden Assignment Amendment is attached hereto as Exhibit 27 and incorporated herein by reference.
- v. On June 26, 2009, Mayodan Borrower and KeyBank entered into a First Amendment to Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing which amended the Original Mayodan Mortgage (the "Mayodan Mortgage Amendment" and together with the Original Mayodan Mortgage, the "Mayodan Mortgage"), which was recorded in the official records of Rockingham County, North Carolina on September 3, 2009 as file number 20090009157. A copy of the Mayodan Mortgage Amendment is attached hereto as Exhibit 28 and incorporated herein by reference.
- vi. On June 26, 2009, Mayodan Borrower and KeyBank entered into a First Amendment to Assignment of Leases and Rents which amended the Original Mayodan Assignment (the "Mayodan Assignment Amendment" and together with the Original Mayodan Assignment, the "Mayodan Assignment"), which was recorded in the official records of Rockingham County, North Carolina on September 3, 2009 as file number 20090009158. A copy of the Mayodan Assignment Amendment is attached hereto as Exhibit 29 and incorporated herein by reference.
- vii. On June 26, 2009, Pueblo Borrower and KeyBank entered into a First Amendment to Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing which amended the Original Pueblo Mortgage (the "Pueblo Mortgage Amendment" and together with the Original Pueblo Mortgage, the "Pueblo Mortgage"; the Pueblo Mortgage, together with the Cedartown Mortgage, the Eden Mortgage and the Mayodan Mortgage, the "Mortgages"), which was recorded in the official records of Pueblo County, Colorado on August 25, 2009 as file number 1816477. A copy of the Pueblo Mortgage Amendment is attached hereto as Exhibit 30 and incorporated herein by reference.
- viii. On June 26, 2009, Pueblo Borrower and KeyBank entered into a First Amendment to Assignment of Leases and Rents which amended the Original Pueblo Assignment (the "Pueblo Assignment Amendment" and together with the Original Pueblo Assignment, the "Pueblo Assignment"; the Pueblo Assignment, together with the Cedartown Assignment, the Eden Assignment and the Mayodan Assignment, the "Assignments"), which was recorded in the official records of Pueblo County, Colorado on August 25, 2009 as file number 1816478. A copy of

the Pueblo Assignment Amendment is attached hereto as Exhibit 31 and incorporated herein by reference.

- ix. Each amendment described in paragraph 111(F)(i-viii) caused the documents described therein to be cross-collateralized, so that each secured all indebtedness owed to KeyBank under the Master Loan Agreement, as amended.

G. Spectra, Farmer and KeyBank entered into a Loan Extension Agreement and Sixth Amendment to Master Construction Loan Agreement on July 15, 2010 (the “Sixth Amendment to Master Loan Agreement”). A copy of the Sixth Amendment to Loan Agreement is attached hereto as Exhibit 32 and incorporated herein by reference.

H. KeyBank, Defendants and others entered into a Seventh Amendment to Master Construction Loan Agreement on April 15, 2011 (the “Seventh Amendment to Master Loan Agreement”). A copy of the Seventh Amendment to Master Loan Agreement is attached hereto as Exhibit 33 and incorporated herein by reference.

The Amended and Restated Notes

37. Certain defendants and other parties (collectively, the “Main Note Borrowers”) and KeyBank entered into an April 15, 2011 Fourth Amended and Restated Promissory Note #1 (“Note 1”), whereby the Main Note Borrowers promised to pay KeyBank the sum of \$61,183,162.51 with interest at the rate and according to the terms of Note 1. A copy of Note 1 is attached hereto as Exhibit 34 and incorporated herein by reference.

38. The Main Note Borrowers and KeyBank entered into an April 15, 2011 Fourth Amended and Restated Promissory Note #2 (“Note 2”), whereby the Main Note Borrowers promised to pay KeyBank the sum of \$4,563,625.15 with interest at the rate and according to the terms of Note 2. A copy of Note 2 is attached hereto as Exhibit 35 and incorporated herein by reference.

39. The Main Note Borrowers and KeyBank entered into an April 15, 2011 Third Amended and Restated Promissory Note #3 (“Note 3”), whereby the Note 3 Borrowers

promised to pay KeyBank the sum of \$2,670,206.11 with interest at the rate and according to the terms of Note 3. A copy of Note 3 is attached as Exhibit 36 and incorporated herein.

40. Radcliff Shopping Center LLC, Ottumwa Shopping Center LLC, Shelbyville Shopping Center LLC, Plainview Shopping Center LLC, Boaz, La Junta Shopping Center LLC, Wauseon Shopping Center LLC, Ft. Dodge Shopping Center LLC (collectively, the “Salisbury Borrowers”; the Salisbury Borrowers, together with the Main Note Borrowers, the “Borrowers”) and KeyBank entered into an April 15, 2011 Amended and Restated Promissory Note (the “Salisbury Note” and, together with Note 1, Note 2 and Note 3, the “Notes”), whereby the Salisbury Borrowers promised to pay KeyBank the sum of \$732,032.97 with interest at the rate and according to the terms of the Salisbury Note and the Master Agreement. A copy of the Salisbury Note is attached as Exhibit 37 and incorporated herein.

Defaults and Forbearance

41. The Notes matured on April 15, 2012 (the “Original Maturity Date”).

42. Spectra, Farmer, Borrowers and KeyBank entered into a Forbearance Agreement dated July 5, 2012, (“Forbearance Agreement”) by which KeyBank agreed to forbear from exercising its remedies until the earlier of certain “Terminating Events” (as described therein) or September 24, 2012 (the “Forbearance Date”). A copy of the Forbearance Agreement is attached as Exhibit 38 and incorporated herein.

43. Spectra, Farmer and Borrowers defaulted on their Obligations to KeyBank under the Notes by, among other things, failing to pay KeyBank all amounts due under the Notes on the Forbearance Date.

KeyBank's Assignment of the Loan Documents to ECP

44. By a Purchase and Sale Agreement dated September 27, 2013 and related documents, KeyBank assigned to ECP all of KeyBank's right, title, and interest in and to the Loan Documents and all amounts due thereunder.

45. A copy of the Allonge to Note 1 is attached hereto as Exhibit 39 and incorporated herein by reference.

46. A copy of the Allonge to Note 2 is attached hereto as Exhibit 40 and incorporated herein by reference.

47. A copy of the Allonge to Note 3 is attached hereto as Exhibit 41 and incorporated herein by reference.

48. A copy of the Allonge to the Salisbury Note is attached hereto as Exhibit 42 and incorporated herein by reference.

49. A copy of the Assignment of Mortgage, assigning the Cedartown Mortgage from KeyBank to ECP and recorded in the official records of Polk County, Georgia at book 1483 page 219, is attached hereto as Exhibit 43 and incorporated herein by reference.

50. A copy of the Assignment of Construction Deed of Trust, assigning the Eden Mortgage from KeyBank to ECP and recorded in the official records of Rockingham County, North Carolina at book 1464 page 1898, is attached hereto as Exhibit 44 and incorporated herein by reference.

51. A copy of the Assignment of Construction Deed of Trust, assigning the Mayodan Mortgage from KeyBank to ECP and recorded in the official records of Rockingham County,

North Carolina at book 1464 page 1888, is attached hereto as Exhibit 45 and incorporated herein by reference.

52. A copy of the Assignment of Construction Deed of Trust, assigning the Pueblo Mortgage from KeyBank to ECP and recorded in the official records of Pueblo County, Colorado as file number 1957991, is attached hereto as Exhibit 46 and incorporated herein by reference.

53. To date, Borrowers remain in default of their Obligations to ECP under the Notes and the Loan Agreement, and have failed to make payment of their outstanding obligations to ECP.

Need and Grounds for Appointment of a Receiver

54. The appointment of a receiver is necessary to preserve and manage the Mortgaged Properties and collect the rents and profits therefrom during the pendency of this foreclosure action.

55. Each of the Mortgages contains a clause granting the secured party the right to seek appointment of a receiver of the mortgaged property upon the occurrence of an Event of Default (Cedartown Mortgage, §6.3(b); Eden Mortgage, §6.3(b); Mayodan Mortgage, §6.3(b); Pueblo Mortgage, §6.3(b)).

56. Absent the granting of the relief requested in this Complaint, the Mortgaged Properties remains at risk of damage or loss, and neither Borrowers nor ECP will be able to maximize the value of the Mortgaged Properties in a controlled, orderly fashion.

57. ECP's interests in the Mortgaged Properties will be irreparably harmed if a receiver is not appointed to take control of and to manage the Mortgaged Properties and collect the rents and profits therefrom.

58. As a direct and proximate result of Borrowers' breach of the Loan Documents, ECP has suffered injury in the amount of \$36,067,244.35 as of May 28, 2015, plus reasonable attorneys' fees, interest, costs of this action, and other expenses incurred by ECP in enforcing its rights under the Loan Documents.

59. ECP's economic injury increases so long as the Obligations owed by the Borrowers remain unpaid.

The Collection Agents

60. Farmer and Farmer III are authorized "Collection Agent" for Phillip Bittker, 6960 Orchard LLC, Scott Breimeister, Bittjal, Janet Brueck, John Clayton, Cohen Building, Cohen Realty, MAJ Investors, MarthaGraber Hartman Trust, JF Investments, James Jalenak – YDJ, L.R. Jalenak, Robert J Kaplan, Ronald Krelstein, Morris J Kriger, Frank Ognibene, Michael Pietrangelo, Michael Pietrangelo Grandchildrens Trust, William Plough Trust, Joe Prather - The Cascade Group, Alan Samules – YDJ, Rudi Scheidt, Lee Schwartzberg, Bobbie Shainberg Marital Trust, Sally Shainberg Trust, Marty Silver, Martin Stein, Steve Wishnia, and Wishnia LLC with respect to certain transactions related to the Cedartown Property (the "Cedartown Collection Agent").

61. Cedartown Collection Agent may claim some interest in the Cedartown Property, which interest, if any, is subordinate to ECP's first priority lien.

62. Farmer is the duly authorized successor collection agent for Phillip Bittker, Bittjal, Allan Bittker, Ernest Buttross, John Buttross, John Clayton, Francis L. Fraenkel, Physical Medicine Assoc. - Mayo Friedlis, L.R. Jalenak, Shimon Kaminetzky, Robert J Kaplan, Wes Kraker, Ronald Krelstein, Fred Kesselman, Debbie Ognibene, Frank Ognibene Clinic, Michael Pietrangelo, Bill Razzouk, Lee Schwartzberg, Marty Silver, and Steve Wishnia with respect to certain transactions related to the Eden Property (the “Eden Collection Agent”).

63. Eden Collection Agent may claim some interest in the Eden Property, which interest, if any, is subordinate to ECP’s first priority lien.

64. Farmer is the duly authorized collection agent for 6960, Lois Abrosh, Richard Awdeh, Bittjal Partners, Phillip Bittker, Allan Bittker, Ernest Buttross, John Buttross, John Clayton, Francis Fraenkel, Zachary Fusco, Jo A. Fusco, L. R. Jalenak, JF Investments, Wesley Kraker, Davis Kraus, Ronald Krelstein, Morris Kriger, MAJ Investors, Jerome Makowsky, Hubert Menke Mar Trt A, Hubert Menke Mar Trt B, Debbie Ognibene, Ognibene Clinic PS Plan, R.M./Peter Osborne Partn, Michael Pietrangelo, William Razzouk, Lee Schwartzberg, Bobbie Shainberg, Martin G. Silver, TTEE, Merle Stahl, Prather Family Trust, and Steven Wishnia with respect to certain transactions related to the Mayodan Property (the “Mayodan Collection Agent”).

65. Mayodan Collection Agent may claim some interest in the Mayodan Property, which interest, if any, is subordinate to ECP’s first priority lien.

66. Farmer is the duly authorized collection agent for Allan M. Bittker, Sole Trustee, or his successors in Trust, under the Allen M. Bittker Living Trust, dated December 20, 1996, as

amended, and Phillip L. Bittker, Sole Trustee, or his successors in Trust, under the Phillip L. Bittker Living Trust, dated June 23, 1983, as amended, with respect to certain transactions related to the Pueblo Property (the “Pueblo Collection Agent”).

67. Pueblo Collection Agent may claim some interest in the Pueblo Property, which interest, if any, is subordinate to ECP’s first priority lien.

COUNT ONE – FORECLOSURE OF THE CEDARTOWN MORTGAGE

68. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count.

69. The Cedartown Mortgage is a valid and subsisting first lien on the Cedartown Property, subject only to any lien of the other persons named as defendants in this action.

70. ECP is the owner and holder of the Cedartown Mortgage and is entitled to foreclose the Cedartown Mortgage.

71. Title to the Cedartown Property is vested in defendant Plainview and Plainview is thus the real party in interest with respect to this action to foreclose upon the Cedartown Mortgage. A copy of a First American Title Insurance Company Title Insurance Commitment evidencing Plainview's interest in the Plainview Property is attached hereto as Exhibit 47 and incorporated by reference.

COUNT TWO – FORECLOSURE OF THE EDEN MORTGAGE

72. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count.

73. The Eden Mortgage is a valid and subsisting first lien on the Eden Property, subject only to any lien of the other persons named as defendants in this action.

74. ECP is the owner and holder of the Eden Mortgage and is entitled to foreclose the Eden Mortgage.

75. Title to the Eden Property is vested in defendant Eden and Eden is thus the real party in interest with respect to this action to foreclose upon the Eden Mortgage. A copy of a First American Title Insurance Company Title Insurance Commitment evidencing Eden's interest in the Eden Property is attached hereto as Exhibit 48 and incorporated by reference.

COUNT THREE – FORECLOSURE OF THE MAYODAN MORTGAGE

76. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count.

77. The Mayodan Mortgage is a valid and subsisting first lien on the Mayodan Property, subject only to any lien of the other persons named as defendants in this action.

78. ECP is the owner and holder of the Mayodan Mortgage and is entitled to foreclose the Mayodan Mortgage.

79. Title to the Mayodan Property is vested in defendant Mayodan and Mayodan is thus the real party in interest with respect to this action to foreclose upon the Mayodan Mortgage. A copy of a First American Title Insurance Company Title Insurance Commitment evidencing Mayodan's interest in the Mayodan Property is attached hereto as Exhibit 49 and incorporated by reference.

COUNT FOUR – FORECLOSURE OF THE PUEBLO MORTGAGE

80. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count.

81. The Pueblo Mortgage is a valid and subsisting first lien on the Pueblo Property, subject only to any lien of the other persons named as defendants in this action.

82. ECP is the owner and holder of the Pueblo Mortgage and is entitled to foreclose the Pueblo Mortgage.

83. Title to the Pueblo Property is vested in defendants Boaz, Newton and Pueblo and Boaz, Newton and Pueblo are thus the real parties in interest with respect to this action to foreclose upon the Pueblo Mortgage. A copy of a First American Title Insurance Company Title Insurance Commitment evidencing the interests of Boaz, Newton and Pueblo in the Pueblo Property is attached hereto as Exhibit 50 and incorporated by reference.

COUNT FIVE – APPOINTMENT OF RECEIVER FOR MORTGAGED PROPERTIES

84. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count Eleven.

85. Borrowers consented in writing to the appointment of a receiver for the Mortgaged Properties, upon the occurrence and during the continuation of an event of default under the Mortgages.

86. As a matter of enforcement of the Mortgages, ECP is entitled to the appointment of a receiver.

87. The Mortgaged Properties are at risk of diminution and loss of value if a receiver is not appointed to protect and manage the Mortgaged Properties and collect the rents and profits therefrom during the pendency of this foreclosure action.

88. By reason of the foregoing, ECP is suffering and will continue to suffer immediate and irreparable injury, loss, and damage unless a receiver is appointed in this case.

89. The appointment of a receiver is necessary to preserve, protect, and maintain the value of ECP's secured interests in the Mortgaged Properties.

90. The Mortgaged Properties and the rents and proceeds therefrom constitute funds in litigation, and the rights of ECP cannot be fully protected without the appointment of a receiver as requested herein.

91. There is an imminent and foreseeable danger of harm to the Mortgaged Properties, thereby authorizing the intervention of equity to appoint a receiver to take possession and control of same.

92. The Mortgaged Properties securing ECP's claims constitute assets charged with the payment of debts where there is manifest danger of loss, destruction, or diminution in value thereof.

93. Appointment of a receiver in this case is consistent with Rule 66 of the Federal Rules of Civil Procedure, 28 U.S.C. § 959, and applicable law.

94. ECP is entitled to the immediate appointment of a receiver having the powers, privileges, immunities and duties substantially as set forth in the draft proposed form of order attached as Exhibit 51 and incorporated herein (the "Proposed Order").

COUNT SIX - INJUNCTION IN AID OF RECEIVERSHIP

95. ECP incorporates each of the averments of the foregoing paragraphs of this Complaint as if such averments were set forth in full and at length in this Count Six.

96. ECP has no adequate remedy at law and is in danger of suffering irreparable harm and injury as a result of imminent damage to or loss of the Mortgaged Properties.

97. ECP is likely to succeed on the merits in this action.

98. In connection with the appointment of a receiver as prayed for herein, it is necessary and appropriate for the Court to enter an order imposing an injunction in aid of the receiver fulfilling his duties as set forth in the Proposed Order. Such relief is necessary to the implementation of the Proposed Order and the protection and preservation of the Mortgaged Property.

WHEREFORE, ECP prays that process issue and that ECP have judgment as follows:

- (a) Pursuant to Count One, that the Court find that the liens of the Cedartown Mortgage and financing statements are valid and subsisting first liens on the Cedartown Property, subject only to any lien that may be held by the other persons named as defendants in this action, and that the Court enter an order (i) foreclosing and cancelling the Cedartown Mortgage; (ii) foreclosing all rights, title, liens and the equity of redemption and dower of all defendants named in this action, (iii) requiring that the Cedartown Property be sold free and clear of all liens, interests and dower, (iv) requiring all defendants to set up their liens or interest in the Cedartown Property or be forever barred from asserting such liens or interests, (v) ordering all liens to be marshaled; (vi) requiring that the proceeds

of the sale of the Cedartown Property be applied to pay all amounts due ECP under the Loan Documents, and (vii) granting ECP all other relief, legal and equitable, as may be proper and necessary, including, for example, a writ of possession

(b) Pursuant to Count Two, that the Court find that the liens of the Eden Mortgage and financing statements are valid and subsisting first liens on the Eden Property, subject only to any lien that may be held by the other persons named as defendants in this action, and that the Court enter an order (i) foreclosing and cancelling the Eden Mortgage; (ii) foreclosing all rights, title, liens and the equity of redemption and dower of all defendants named in this action, (iii) requiring that the Eden Property be sold free and clear of all liens, interests and dower, (iv) requiring all defendants to set up their liens or interest in the Eden Property or be forever barred from asserting such liens or interests, (v) ordering all liens to be marshaled; (vi) requiring that the proceeds of the sale of the Eden Property be applied to pay all amounts due ECP under the Loan Documents, and (vii) granting ECP all other relief, legal and equitable, as may be proper and necessary, including, for example, a writ of possession

(c) Pursuant to Count Three, that the Court find that the liens of the Mayodan Mortgage and financing statements are valid and subsisting first liens on the Mayodan Property, subject only to any lien that may be held by the other persons named as defendants in this action, and that the Court enter an order (i) foreclosing and cancelling the Mayodan Mortgage; (ii) foreclosing all rights, title,

liens and the equity of redemption and dower of all defendants named in this action, (iii) requiring that the Mayodan Property be sold free and clear of all liens, interests and dower, (iv) requiring all defendants to set up their liens or interest in the Mayodan Property or be forever barred from asserting such liens or interests, (v) ordering all liens to be marshaled; (vi) requiring that the proceeds of the sale of the Mayodan Property be applied to pay all amounts due ECP under the Loan Documents, and (vii) granting ECP all other relief, legal and equitable, as may be proper and necessary, including, for example, a writ of possession

(d) Pursuant to Count Four, that the Court find that the liens of the Pueblo Mortgage and financing statements are valid and subsisting first liens on the Pueblo Property, subject only to any lien that may be held by the other persons named as defendants in this action, and that the Court enter an order (i) foreclosing and cancelling the Pueblo Mortgage; (ii) foreclosing all rights, title, liens and the equity of redemption and dower of all defendants named in this action, (iii) requiring that the Pueblo Property be sold free and clear of all liens, interests and dower, (iv) requiring all defendants to set up their liens or interest in the Pueblo Property or be forever barred from asserting such liens or interests, (v) ordering all liens to be marshaled; (vi) requiring that the proceeds of the sale of the Pueblo Property be applied to pay all amounts due ECP under the Loan Documents, and (vii) granting ECP all other relief, legal and equitable, as may be proper and necessary, including, for example, a writ of possession

(e) Pursuant to Count Five, that the Court enter the Proposed Order appointing a

receiver for the Mortgaged Property, and all of the income, revenue and fixtures relating thereto, with all of the powers and authorities set forth in the Proposed Order;

(f) Pursuant to Count Six, that the Court grant the injunctive relief provided in the Proposed Order; and

(g) That the Court grant to ECP such other and further relief as is just and equitable under the circumstances.

Respectfully submitted, this 29th day of January, 2016.

LEITESS FRIEDBERG PC

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Attorneys for ECP Commercial I LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this 29th day of January, 2016, caused a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT FOR FORECLOSURE, APPOINTMENT OF A RECEIVER, AND INJUNCTIVE RELIEF** and exhibits thereto to be served by electronic delivery, upon the following parties:

Michael P. Coury
Glankler Brown, PLLC
6000 Poplar Avenue
Suite 400
Memphis, TN 38119

Counsel for Defendants for Boaz Shopping Center, LLC, Eden Shopping Center, LLC, Mayodan Shopping Center, LLC, Newton Shopping Center, LLC, Plainview II Shopping Center, LLC, Pueblo West Shopping Center, LLC, Jeff H. Farmer, Jr. and Jeff H. Farmer, III

By: /s/ Jeremy S. Friedberg
Jeremy Friedberg

MASTER CONSTRUCTION LOAN AGREEMENT
FOR A PROJECT LOAN FACILITY IN THE AMOUNT OF
\$75,000,000.00

MADE BY AND BETWEEN

THE SPECTRA GROUP, INC.,
a Delaware corporation

AND

JEFF H. FARMER, JR.

AND

KEYBANK NATIONAL ASSOCIATION,
a national banking association,
580 Walnut Street, 2nd Floor,
Cincinnati, Ohio 45202

Dated as of December 8, 2005

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EXHIBITS TO LOAN AGREEMENT

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Exhibit B	Form of Survey Certification
Exhibit C	LIBOR Notice Election
Exhibit D	Insurance Requirements
Exhibit E	Architect's Certificate
Exhibit F	Borrower's Certificate
Exhibit G	Soft and Hard Cost Requisition Form
Exhibit H	Borrower's Certificate of Compliance
Exhibit I	Project Agreement

MASTER CONSTRUCTION LOAN AGREEMENT

THIS MASTER CONSTRUCTION LOAN AGREEMENT ("Agreement") is made as of December 8, 2005 ("the date of this Agreement"), by and between THE SPECTRA GROUP, INC., a Delaware corporation and JEFF H. FARMER, JR., jointly and severally ("Developer"), and KEYBANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

WITNESSETH:

RECITALS

A. Developer is engaged in the business of acquisition and construction of "Shadow-Anchored" retail centers that are adjacent to Super Wal-Mart stores.

B. Developer has requested, and Lender has agreed to make available to Developer, and entities owned and controlled by Developer, or any of them, a revolving line of credit facility for the acquisition of land and construction of retail centers thereon in various states in the United States of America, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1 INCORPORATION OF RECITALS AND EXHIBITS

1.1 Incorporation of Recitals.

The foregoing preambles and all other recitals set forth herein are made a part hereof by this reference.

1.2 Incorporation of Exhibits.

Exhibits A through I, to this Agreement, attached hereto are incorporated in this Agreement and expressly made a part hereof by this reference.

ARTICLE 2 DEFINITIONS

2.1 Defined Terms.

The following terms as used herein shall have the following meanings:

Adjusted LIBOR Rate: For any LIBOR Rate Interest Period, an interest rate per annum equal to the sum of (A) the rate obtained by dividing (x) the LIBOR Rate for such LIBOR Rate

Interest Period by (y) a percentage equal to one hundred percent (100%) minus the Reserve Percentage for such LIBOR Rate Interest Period and (B) the LIBOR Rate Margin.

Adjusted Prime Rate: A rate per annum equal to the sum of (a) the Prime Rate Margin and (b) the greater of (i) the Prime Rate or (ii) zero percent (0%) in excess of the Federal Funds Effective Rate. Any change in the Adjusted Prime Rate shall be effective immediately from and after such change in the Adjusted Prime Rate.

Affiliate: With respect to a specified person or entity, any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association or other entity which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person or entity, including, without limitation, any general or limited partnership in which such person or entity is a partner.

Agreement: This Master Construction Loan Agreement, as the same may be supplemented, modified or amended from time to time.

Applicable Rate: As such term is defined in Section 5.1(a).

Appraisal: An MAI certified appraisal of a Project performed in accordance with FIRREA and Lender's appraisal requirements by an appraiser selected and retained by Lender.

Architect: Duplantis Design Group, P.C. or such other architect designated for a particular Project and approved by Lender in its sole but reasonable discretion.

Architect's Certificate: A certificate with respect to a particular Project in the form of Exhibit E attached hereto executed by the Architect in favor of Lender.

Assignment of Rents: An assignment of leases and rents made by Borrower in favor of Lender with respect to a Project assigning all leases, subleases and other agreements relating to the use and occupancy of all or any portion of such Project, and all present and future leases, rents, issues and profits therefrom.

Authorized Representative: Jeff H. Farmer, Jr.

Bankruptcy Code: Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute.

Bond: A Performance Bond and Labor and Material Payment Bond in a form approved by Lender, with the General Contractor or each Major Subcontractor, as the case may be, as principal, with a surety company acceptable to Lender and licensed to do business in the State, as surety, with a dual obligee rider in favor of Lender.

Borrower: An entity which will be the owner of a Project and the borrower under the Project Loan made in respect of such Project. Jeff H. Farmer, Jr. shall control at least 50% of the ownership interest of each Borrower and shall control the managing member or general partner of each Borrower.

Breakage Costs: (a) The cost to Lender of re-employing funds bearing interest at an Adjusted LIBOR Rate, incurred (or expected to be incurred) in connection with (i) any payment of any portion of a Project Loan bearing interest at an Adjusted LIBOR Rate prior to the termination of any applicable LIBOR Rate Interest Period, (ii) the conversion of an Adjusted LIBOR Rate to any other applicable interest rate on a date other than the last day of the relevant interest period, or (iii) the failure of Borrower to draw down, on the first day of the applicable LIBOR Rate Interest Period, any amount as to which Borrower has elected a LIBOR Rate Option and (b) any amounts payable by Borrower under any Interest Rate Agreement with respect to any Project Loan in connection with termination of such Agreement.

Budget: The budget for a Project specifying all costs and expenses of every kind and nature whatever to be incurred by Borrower in connection with a particular Project prior to the Maturity Date for the Project Loan relating to such Project as it may be amended or supplemented from time to time with the consent of Lender.

Budget Line Item: As such term is defined in Section 10.2.

Business Day: A day of the year on which banks are not required or authorized to close in Cincinnati, Ohio.

Change Order: Any request for changes in the Plans and Specifications or a Construction Contract for a Project (other than minor field changes involving no extra cost).

Completion Date: With respect to a Project, the date set forth in the Project Agreement relating to such Project, subject to extension pursuant to Section 15.1(b).

Construction or construction: With respect to a particular Project, the construction and equipping of the Improvements in accordance with the Plans and Specifications, and all Tenant Work and related improvements required to be performed by Borrower under Leases and the installation of all personal property, fixtures and equipment required for the operation of such Project.

Construction Commencement Date: With respect to a particular Project, no later than 30 days from the date of the Project Agreement.

Construction Schedule: A schedule satisfactory to Lender and Lender's Consultant, establishing a timetable for completion of the Construction of a particular Project, showing, on a monthly basis, the anticipated progress of the Construction and also showing that the Improvements can be completed on or before the Completion Date.

Construction Tranche. As such term is defined in Section 4.1.

Contingency Fund: A Budget Line Item which shall represent an amount necessary to provide reasonable assurances to Lender that additional funds are available to be used if additional costs and expenses are incurred or additional interest accrues on a particular Project Loan, or unanticipated events or problems occur.

Control: As such term is used with respect to any person or entity, including the correlative meanings of the terms "controlled by" and "under common control with", shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

Debt Service Coverage Ratio: With respect to a particular period, the ratio of (a) the annualized Net Operating Income of a Project to (b) the Total Annual Debt Service in connection with the Project Loan for such Project.

Default or default: Any event, circumstance or condition, which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default hereunder.

Default Rate: A rate per annum equal to three percentage points (300 basis points) in excess of the Interest Rate otherwise applicable on each outstanding advance of a Project Loan, but shall not at any time exceed the highest rate permitted by law.

Deficiency Deposit: As such term is defined in Section 11.1.

Environmental Indemnity: An environmental indemnity from the Borrower and Guarantors, jointly and severally, indemnifying Lender, with respect to a particular Project Site, with regard to all matters related to Hazardous Material and other environmental matters in form acceptable to Lender in its sole discretion.

Environmental Proceedings: Any environmental proceedings, whether civil (including actions by private parties), criminal, or administrative proceedings, relating to a Project.

Environmental Report: An environmental report prepared at Borrower's expense by a qualified environmental consultant approved by Lender for a particular Project, dated not more than three (3) months prior to the Loan Opening Date for such Project and addressed to Lender (or subject to separate letter agreement permitting Lender to rely on such environmental report).

ERISA: The Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

Event of Default: As such term is defined in Article 19.

Exit Fee: As such term is defined in Section 7.3.

Extended Project Maturity Date: As such term is defined in Section 4.4.

Extension Option: As such term is defined in Section 4.4.

Extension Term: The period of time commencing on the day after the Initial Project Maturity Date for any particular Project Loan which has an Extension Option and ending on the Extended Project Maturity Date for such Project Loan.

Federal Funds Effective Rate: Shall mean, for any day, the rate per annum (rounded upward to the nearest one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of Cleveland on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate."

FIRREA: The Financial Institutions Reform, Recovery And Enforcement Act of 1989, as amended from time to time.

General Contract: With respect to a Project, the general contract(s) between the Borrower owning the Project and General Contractor, pertaining to the construction of all onsite and offsite improvements for such Project.

General Contractor: To be selected by Borrower for each Project and acceptable to Lender.

Governmental Approvals: Collectively, all consents, licenses, and permits and all other authorizations or approvals required from any Governmental Authority for the Construction in accordance with the Plans and Specifications for a particular Project.

Governmental Authority: Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

Gross Revenues: For any period, all revenues of Borrower, determined on a cash basis, derived from the ownership, operation, use, leasing and occupancy of a particular Project during such period; provided, however, that in no event shall Gross Revenues include (i) any loan proceeds, (ii) proceeds or payments under insurance policies (except proceeds of business interruption insurance); (iii) condemnation proceeds; (iv) any security deposits received from tenants in the Project, unless and until the same are applied to rent or other obligations in accordance with the tenant's lease; or (v) any other extraordinary items, in Lender's reasonable discretion.

Guarantor: Collectively, those parties or entities that have guaranteed any Project Loan.

Guaranty: A guaranty executed by each Guarantor and pursuant to which one or more of the Guarantors guarantee payment of principal, interest and other amounts due under the Project Documents as to any Project Loan.

Hazardous Material: Means and includes gasoline, petroleum, asbestos containing materials, explosives, radioactive materials or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Law of any Governmental Authority having jurisdiction over any Project or any portion thereof or its use, including: (i) any "hazardous substance" defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601(14) as may be amended from time to time, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (ii) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (iii) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (iv) any petroleum, including crude oil or any fraction thereof; (v) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (vi) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; and (vii) any other toxic substance or contaminant that is subject to any other Law or other past or present requirement of any Governmental Authority. Any reference above to a Law, includes the same as it may be amended from time to time, including the judicial interpretation thereof.

Improvements: A shopping center consisting of one or more buildings together with related improvements to be constructed by Borrower upon a Project Site in accordance with the applicable Plans and Specifications.

In Balance or in balance: As such term is defined in Article 11.

Including or including: Including but not limited to.

Initial Project Maturity Date: With respect to each Project Loan, twelve (12) months from the date of the Project Agreement for such Project Loan.

Interest Rate Agreement: As such term is defined in Section 5.2.

Interest Rate Protection Product: As such term is defined in Section 5.2.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended from time to time.

Laws: Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority in the applicable jurisdiction.

Late Charge: As defined in Section 4.8.

Leases: The collective reference to all leases, subleases and occupancy agreements affecting a particular Project or any part thereof now existing or hereafter executed and all amendments, modifications or supplements thereto approved in writing by Lender.

Lender: As defined in the opening paragraph of this Agreement, and including any successor holder of the Loan from time to time.

Lender's Consultant: An independent consulting architect, inspector, and/or engineer designated by Lender in Lender's sole discretion.

LIBOR Business Day: A Business Day on which dealings in U.S. dollars are carried on in the London Interbank Market.

LIBOR Rate: For any LIBOR Rate Interest Period, the average rate (rounded upwards to the nearest 1/16th) as shown in Dow Jones Markets (formerly Telerate) (Page 3750) at which deposits in U.S. dollars are offered by first class banks in the London Interbank Market at approximately 11:00 a.m. (London time) on the day that is two (2) LIBOR Business Days prior to the first day of such LIBOR Rate Interest Period with a maturity approximately equal to such LIBOR Rate Interest Period and in an amount approximately equal to the amount to which such LIBOR Rate Interest Period relates, adjusted for reserves and taxes if required by future regulations. If Dow Jones Markets no longer reports such rate or Lender determines in good faith that the rate so reported no longer accurately reflects the rate available to Lender in the London Interbank Market, Lender may select a replacement index.

LIBOR Rate Interest Period: With respect to each amount bearing interest at a LIBOR based rate, a period of one, two or three months, to the extent deposits with such maturities are available to Lender, commencing on a LIBOR Business Day, as selected by Borrower provided, however, that (i) any LIBOR Rate Interest Period which would otherwise end on a day which is not a LIBOR Business Day shall continue to and end on the next succeeding LIBOR Business Day, unless the result would be that such LIBOR Rate Interest Period would be extended to the next succeeding calendar month, in which case such LIBOR Rate Interest Period shall end on the next preceding LIBOR Business Day and (ii) any LIBOR Rate Interest Period which begins on a day for which there is no numerically corresponding date in the calendar month in which such LIBOR Rate Interest Period would otherwise end shall instead end on the last LIBOR Business Day of such calendar month.

LIBOR Rate Margin: (a) For Project Loans (except as hereinafter described in (b) of this definition) 1.85 percent (185 basis points) per annum, provided that if an Interest Rate Agreement in form and substance acceptable to Lender in its sole discretion is in effect with respect to all Project Loans outstanding hereunder and no Event of Default has occurred and is continuing, then 1.75 percent (175 basis points) per annum; and (b) for those portions of Project Loans designated an Outlot Loan, 2.35 percent (235 basis points) per annum provided that if an Interest Rate Agreement in form and substance acceptable to Lender in its sole discretion is in effect with respect to all Project Loans outstanding hereunder and no Event of Default has occurred and is continuing, then 2.25 percent (225 basis points) per annum.

LIBOR Rate Option: As defined in Section 5.1(b).

Loan: The \$75,000,000 line of credit facility made up of the Construction Tranche and the Stabilized Tranche.

Loan Amount: The maximum amount of the aggregated Project Loans as set forth in Section 4.1 as reduced by principal payments made from time to time.

Loan Opening Date: With respect to any particular Project Loan, the date the Mortgage has been recorded and all conditions to the initial disbursement of the particular Project Loan have been satisfied.

Major Subcontractor: Any subcontractor under a Major Subcontract.

Major Subcontracts: With respect to a particular Project Loan, all subcontracts between the General Contractor and any subcontractors and material suppliers which provide for an aggregate contract price equal to or greater than \$25,000.00.

Material Adverse Change or material adverse change: If, in Lender's reasonable discretion, the business prospects, operations or financial condition of a person, entity or property has changed in a manner which could impair the value of Lender's security for any particular Project Loan or the Loan in general, prevent timely repayment of any Project Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under any Project Documents.

Monthly Excess Cash Flow: For any month, the amount by which Gross Revenues for any Project Loan exceed the sum of (w) actual cash operating expenses and (x) actual debt service on such Project Loan.

Mortgage: For each particular Project Loan, a mortgage (or deed of trust), assignment of leases and rents, security agreement and fixture filing in form and substance satisfactory to Lender in its sole discretion, executed by Borrower for the benefit of Lender securing this Agreement, the Project Agreement and all other Project Documents and all obligations of Borrower in connection with the Project Loan, granting a first priority lien on Borrower's fee interest in the particular Project, subject only to the Permitted Exceptions, as such mortgage or deed of trust may be amended, supplemented or modified from time to time.

Net Operating Income: For any period, the gross income from operations of a particular Project derived from arm's length, market rate rents from leases with unaffiliated third parties, service fees or charges, (excluding capital gains income derived from the sale of assets and other items of income which the Lender reasonably determines are unlikely to occur in any subsequent period), less operating expenses (such as cleaning, utilities, administrative, landscaping, security and management expenses), repairs and maintenance and reserves for replacements), and less fixed expenses (such as insurance, real estate and other taxes), all as relating to the particular Project, assuming for each of the foregoing categories of expenses, for any period during which ninety-five percent (95%) of the net rentable area of the Project is not leased and occupied, a ninety-five percent (95%) occupancy level. All operating expenses shall be related to the particular Project, shall be for services from arm's length third party transactions or equivalent to the same, and shall exclude all expenses for capital improvements and replacements, debt service and depreciation or amortization of capital expenditures and other similar non-cash items.

Note: With respect to a Project Loan, a promissory note, in the amount of the Project Loan, executed by the appropriate Borrower and payable to the order of Lender, evidencing the Project Loan.

Opening of a Project Loan or Project Loan Opening: The first disbursement of Project Loan proceeds with respect to a particular Project.

Operating Account: A deposit account opened and maintained by a Borrower with Lender with respect to a Project Loan, to be utilized in the manner set forth in Section 4.9.

Operating Expenses: For any period, the pro forma costs and expenses of owning, operating, managing and maintaining a particular Project (as shown in the Appraisal obtained for such Project) during such period incurred by a Borrower, determined on a cash basis (except for real and personal property taxes and insurance premiums, which shall be determined on an accrual basis) (including, a \$0.15 per square foot structural reserve, a seven percent (7%) vacancy factor and a five percent (5%) management fee), excepting, however, (i) interest or principal due on the particular Project Loan and (ii) capital expenditures by such Borrower.

Outlot Loan. As defined in Section 4.10.

Performance and Completion Guaranty: A guaranty of performance and completion, executed by one or more of the Guarantors and pursuant to which one or more of the Guarantors guaranty the lien-free and timely completion of a particular Project in accordance with all provisions of this Agreement and Borrower's obligation to keep such Project Loan In Balance and to pay for all cost overruns.

Permitted Exceptions: With respect to a particular Project, those matters listed on Schedule B to the Title Policy to which title to the Project may be subject at the Project Loan Opening and thereafter such other title exceptions as Lender may reasonably approve in writing.

Plans and Specifications: Detailed plans and specifications for the Improvements for a particular Project Site, as approved by Lender pursuant to Section 9.1(f), as modified hereafter with Lender's prior written approval or as otherwise expressly permitted by this Agreement.

Prime Rate: That interest rate established from time to time by Lender as Lender's Prime Rate, whether or not such rate is publicly announced; the Prime Rate may not be the lowest interest rate charged by Lender for commercial or other extensions of credit;

Prime Rate Margin: 0% (0 basis points) per annum, except for an Outlot Loan, .50% (50 basis points) per annum.

Pro-Forma Projection: A pro forma statement of projected income and expenses of a particular Project.

Project Agreement: A Project Agreement in the form of Exhibit J attached hereto, with blanks completed appropriately, entered into between Lender and a Borrower, pursuant to which Lender approves a Project for funding hereunder as required by Section 4.2, as the same may be supplemented, modified or amended from time to time.

Project Closing: The closing date for a Project Loan.

Project Cost: With respect to a Project, all costs and expenses incurred or to be incurred by a Borrower in acquiring a Project Site, owning the Project and for work, labor and materials furnished in connection with or incidental to the construction of such Project.

Project Documents: The collective reference, with respect to a Project Loan, to this Agreement, the Project Agreement and the documents and instruments listed in Section 4.3, and all the other documents and instruments entered into from time to time with respect to, or evidencing or securing, the particular Project Loan or any obligation of payment thereof or performance of Borrower's or Guarantor's obligations in connection with the transaction contemplated hereunder and any Interest Rate Agreement, each as it may be amended, supplemented or modified from time to time.

Project Loan: With respect to a Project, that portion of the Loan approved by the Lender and allocated to pay Project Costs for such Project, as shown on the Budget for such Project and reflected in the Note and the Project Agreement for such Project.

Project Loan Commitment Expiration Date: June 30, 2006.

Project Loan Maturity Date: The Initial Project Maturity Date, provided, if a Borrower timely satisfies the conditions to extend the term of a particular Project Loan pursuant to Section 4.4(b), then the Project Maturity Date for such Project Loan shall be extended to the Extended Project Maturity Date.

Project Site: The real estate designated by a Borrower or the Developer and approved by Lender for the location and construction of a retail shopping center and related improvements.

Project: A Project Site and the Improvements to be constructed thereon.

Required Leases: Leases covering in the aggregate not less than 75% of the total rentable space of any particular Project with tenants, and containing terms, satisfactory to Lender in its sole discretion.

Required Permits: With respect to any particular Project, each building permit, environmental permit, utility permit, land use permit, wetland permit and any other permits, approvals or licenses issued by any Governmental authority which are required in connection the Construction or operation of such Project.

Reserve Percentage: For any LIBOR Rate Interest Period, that percentage which is specified three (3) Business Days before the first day of such LIBOR Rate Interest Period by the Board of Governors of the Federal Reserve System (or any successor) or any other governmental or quasi-governmental authority with jurisdiction over Lender for determining the maximum reserve requirement (including, but not limited to, any marginal reserve requirement) for Lender with respect to liabilities constituting of or including (among other liabilities) Eurocurrency liabilities in an amount equal to that portion of the Loan affected by such LIBOR Rate Interest Period and with a maturity equal to such LIBOR Rate Interest Period.

Soil Report: A soil test report prepared by a licensed engineer satisfactory to Lender indicating to the satisfaction of Lender that the soil and subsurface conditions underlying a particular Project will support the Improvements with respect to such Project.

Stabilized Tranche. As such term is defined in Section 4.1.

State: The state in which a particular Project Site is located.

Subcontracts: Subcontracts for labor or materials to be furnished to a particular Project.

Tenant: The tenant under a Lease.

Tenant Work: With respect to a particular Project, work that Borrower is obligated to perform pursuant to Leases for individual Tenants in their respective leased premises in the Improvements for such Project.

Title Insurer: First American Title Insurance Company, or such other title insurance company licensed in the State as may be approved in writing by Lender.

Title Policy: With respect to any particular Project, an ALTA Mortgagee's Loan Title Insurance Policy with extended coverage issued by the Title Insurer insuring the lien of the Mortgage as a valid first, prior and paramount lien upon the Project and all appurtenant easements, and subject to no other exceptions other than the Permitted Exceptions and otherwise satisfying the requirements of Exhibit A attached hereto and made a part hereof.

Total Annual Debt Service: The aggregate of debt service payments for a 12 month period on the stated principal amount of any particular Project Loan, assuming (i) a per annum interest rate (herein, "Assumed Rate") equal to 2.0% above the yield on ten year United States Treasury notes as of the close of business on the day preceding the date of calculation, as announced on Bloomberg.com or another reliable source selected by Lender, provided that such rate shall in no event be lower than 7% for purposes of this calculation, and (ii) monthly payments of principal and interest based on an amortization period of twenty-five (25) years.

Transfer: Any sale, transfer, lease (other than a Lease approved by Lender), conveyance, alienation, pledge, assignment, mortgage, encumbrance hypothecation or other disposition of (a) all or any portion of a Project or any portion of any other security for any Project Loan, (b) all or any portion of a Borrower's right, title and interest (legal or equitable) in and to a Project or any portion of any other security for any Project Loan, or (c) any interest in a Borrower or any interest in any entity which directly or indirectly holds an interest in, or directly or indirectly controls, a Borrower.

Unavoidable Delay: Any delay in the construction of any particular Project, caused by natural disaster, fire, earthquake, floods, explosion, extraordinary adverse weather conditions, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes or lockouts for which Borrower has notified Lender in writing.

2.2 Other Definitional Provisions.

All terms defined in this Agreement shall have the same meanings when used in the Note, Mortgage, any other Project Documents, or any certificate or other document made or delivered pursuant hereto. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement.

ARTICLE 3 BORROWER'S REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties.

To induce Lender to fund each Project Loan approved by Lender, Developer and each Borrower with respect to such Project Loan, represent and warrant, jointly and severally, to Lender as follows (with references to the Project being to that Project funded by such Project Loan):

(a) Borrower has good and marketable fee simple title to the Project, subject only to the Permitted Exceptions.

(b) Except as previously disclosed to Lender in writing, no litigation or proceedings are pending, or to the best of Borrower's or Developer's knowledge threatened, against Borrower or any Guarantor, which could, if adversely determined, cause a Material Adverse Change with respect to Borrower, any Guarantor or the Project. There are no pending Environmental Proceedings and neither Borrower nor Developer has any knowledge of any threatened Environmental Proceedings or any facts or circumstances which may give rise to any future Environmental Proceedings.

(c) Borrower is a duly organized and validly existing limited liability company and has full power and authority to execute, deliver and perform all Project Documents to which Borrower is a party, and such execution, delivery and performance have been duly authorized by all requisite action on the part of Borrower.

(d) No consent, approval or authorization of or declaration, registration or filing with any Governmental Authority or nongovernmental person or entity, including any creditor, partner, or member of Borrower or any Guarantor, is required in connection with the execution, delivery and performance of this Agreement or any of the Project Documents other than the recordation of the Mortgage, Assignment of Leases and Rents and the filing of UCC-1 Financing Statements, except for such consents, approvals or authorizations of or declarations or filings with any Governmental Authority or non-governmental person or entity where the failure to so obtain would not have an adverse effect on Borrower or such Guarantor or which have been obtained as of any date on which this representation is made or remade.

(e) The execution, delivery and performance of this Agreement, the execution and payment of the Note and the granting of the Mortgage and other security interests under the other Project Documents have not constituted and will not constitute, upon the giving of notice or

lapse of time or both, a breach or default under any other agreement to which Borrower or Guarantor is a party or may be bound or affected, or a violation of any law or court order which may affect the Project, any part thereof, any interest therein, or the use thereof.

(f) There is no default under this Agreement or the other Project Documents, nor any condition which, after notice or the passage of time or both, would constitute a default or an Event of Default under said documents.

(g) No condemnation of any portion of the Project, (ii) no condemnation or relocation of any roadways abutting the Project, and (iii) no proceeding to deny access to the Project from any point or planned point of access to the Project, has commenced or, to the best of Borrower's or Developer's knowledge, is contemplated by any Governmental Authority.

(h) The amounts set forth in the Budget present a full and complete itemization by category of all costs, expenses and fees which Borrower and Developer reasonably expect to pay or reasonably anticipates becoming obligated to pay to complete the Construction and operate the Project (until the Project achieves breakeven operations). Borrower and Developer are unaware of any other such costs, expenses or fees which are material and are not covered by the Budget.

(i) Neither the construction of the Improvements nor the use of the Project when completed and the contemplated accessory uses will violate (i) any Laws (including subdivision, zoning, building, environmental protection and wetland protection Laws), or (ii) any building permits, restrictions of record, or agreements affecting the Project or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon or related to any real estate other than the Project Site. All Government Approvals required for the Construction in accordance with the Plans and Specifications have been obtained or will be obtained prior to the Loan Opening Date for the Project, and all Laws relating to the Construction and operation of the Improvements have been complied with and all permits and licenses required for the operation of the Project which cannot be obtained until the Construction is completed can be obtained if the Improvements are completed in accordance with the Plans and Specifications.

(j) The Project will have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, other required public utilities, fire and police protection, and means of access between the Project and public highways; none of the foregoing will be foreseeably delayed or impeded by virtue of any requirements under any applicable Laws.

(k) No brokerage fees or commissions are payable by or to any person in connection with this Agreement, the Project Agreement or the Project Loan to be disbursed hereunder.

(l) All financial statements and other information previously furnished by Borrower or any Guarantor or Tenant to Lender in connection with the Project Loan or the Loan are true, complete and correct and fairly present the financial conditions of the subjects thereof as of the respective dates thereof and do not fail to state any material fact necessary to make such statements or information not misleading, and no Material Adverse Change with respect to Borrower or any Guarantor or Tenant has occurred since the respective dates of such statements

and information. Neither Borrower nor any Guarantor or Tenant has any material liability, contingent or otherwise, not disclosed in such financial statements.

(m) Except as disclosed by Borrower to Lender, (i) the Project is in a clean, safe and healthful condition, and, except for materials used in the ordinary course of construction, maintenance and operation of the Project, is free of all Hazardous Material and is in compliance with all applicable Laws; (ii) neither Borrower nor, to the best knowledge of Borrower and Developer, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under, at or in a manner to affect the Project, or any part thereof, and the Project has never been used (whether by Borrower or, to the best knowledge of Borrower and Developer, by any other person or entity) for any activities involving, directly or indirectly, the use, generation, treatment, storage, transportation, or disposal of any Hazardous Material; (iii) neither the Project nor Borrower is subject to any existing, pending, or, to the best of Borrower's and Developer's knowledge, threatened investigation or inquiry by any Governmental Authority, and the Project is not subject to any remedial obligations under any applicable Laws pertaining to health or the environment; and (iv) there are no underground tanks, vessels, or similar facilities for the storage, containment or accumulation of Hazardous Materials of any sort on, under or affecting the Project.

(n) The Project is taxed separately without regard to any other property and for all purposes the Project may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

(o) Except for Leases which have been provided to and approved by Lender in writing, Borrower and its agents have not entered into any Leases, subleases or other arrangements for occupancy of space within the Project. True, correct and complete copies of all Leases, as amended, have been delivered to Lender. All Leases are in full force and effect. Neither Borrower nor any Tenant is in default under any Lease and Borrower has disclosed to Lender in writing any material default by the tenant under any Lease.

(p) When the Construction is completed in accordance with the Plans and Specifications, no building or other improvement will encroach upon any property line, building line, setback line, side yard line or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) with respect to the Project.

(q) The Loan is not being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation G, T, U or X issued by the Board of Governors of the Federal Reserve System, and Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System.

(r) Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code.

(s) Borrower is not a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code.

(t) Borrower uses no trade name other than its actual name set forth herein. The principal place of business of Borrower is as stated in Article 22.

(u) Borrower's place of formation or organization is the State of Delaware.

(v) All statements set forth in the Recitals are true and correct.

(w) Neither Borrower nor any Guarantor is (or will be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide to the Lender with any additional information that the Lender deems necessary from time to time in order to ensure compliance with all applicable Laws concerning money laundering and similar activities.

(x) All times during the term of the Loan, Jeff H. Farmer, Jr. or an entity controlled by Jeff H. Farmer, Jr. shall be the managing member of the Borrower.

3.2 Survival of Representations and Warranties.

Such Borrower agrees that all of the representations and warranties set forth in Section 3.1 and elsewhere in this Agreement are true as of the date hereof, will be true at the Project Closing and, except for matters which have been disclosed by Borrower and approved by Lender in writing, at all times thereafter. Each request for a disbursement under the Project Documents shall constitute a reaffirmation of such representations and warranties, as deemed modified in accordance with the disclosures made and approved as aforesaid, as of the date of such request. It shall be a condition precedent to the Project Closing and each subsequent disbursement that each of said representations and warranties is true and correct as of the date of such requested disbursement. Each disbursement of Loan proceeds shall be deemed to be a reaffirmation by Borrower that each of the representations and warranties is true and correct as of the date of such disbursement. In addition, at Lender's request, Borrower shall reaffirm such representations and warranties in writing prior to each disbursement hereunder.

ARTICLE 4 PROJECT LOANS AND PROJECT LOAN DOCUMENTS

4.1 Project Loan.

Subject to the terms and conditions hereof, and relying upon the representations and warranties herein set forth, during the period commencing on the date of this Agreement and ending on the Project Loan Commitment Expiration Date, Lender agrees to make Project Loans to various Borrowers from time to time in an aggregate principal amount not to exceed Fifty

Million Dollars (\$50,000,000) (the "Construction Tranche"). Additionally, in the event a Project Loan in the Construction Tranche becomes stabilized by meeting the requirements set forth in Section 4.5 hereof in Lender's sole determination and discretion, a Borrower shall have the right to request that such Project Loan be designated by Lender in writing as stabilized and removed from the Construction Tranche. In no event shall the aggregate principal amount of Project Loans designated by Lender as stabilized and removed from the Construction Tranche exceed Twenty-Five Million Dollars (\$25,000,000.00) (the "Stabilized Tranche"). In the event a Project Loan is removed from the Construction Tranche and designated as part of the Stabilized Tranche by Lender, the aggregate principal amount of such Project Loan shall not be included in calculating availability of Loan proceeds under the Construction Tranche. Lender's commitment to make Project Loans shall expire on the Project Loan Commitment Expiration Date. In no event shall Lender be obligated to make any Project Loan on or after the Project Loan Commitment Expiration Date. Notwithstanding the foregoing, subject to the terms and conditions hereof, Lender shall fund after the Project Loan Commitment Expiration Date any Project Loan for which the Project Closing has occurred prior to the Project Loan Commitment Expiration Date. The proceeds of a Project Loan will be advanced to the Borrower thereunder as acquisition and construction of the Project in respect of which such Project Loan is made progresses, in accordance with and subject to the requirements and limitations set forth herein and in the other Project Documents for such Project Loan. Proceeds of the Loan shall be allocated to the Projects by the Developer in such manner as the Developer shall determine and Lender may approve pursuant to Section 4.2 below. If prior to the Project Loan Commitment Expiration Date, a Borrower repays a Project Loan, Loan proceeds in an amount equal to the amount of the repaid Project Loan will again be made available to the Developer to allocate to a Project, subject to the terms and conditions hereof. In no event shall Lender be obligated to approve or fund a new Project Loan if there is then continuing an Event of Default under any Project Loan. The parties acknowledge that the Project Loans in existence as of the date of this Agreement are described on Schedule 1 attached hereto and made a part hereof and the Project Loans in the Construction Tranche and the Stabilized Tranche as of the date of this Agreement are accurately shown thereon. This Agreement shall not in any way be deemed to apply to the Project, or amend the Project Documents, for the Project Loans referred to on Schedule 1, provided that the amounts of such Project Loans shall be applied against the limits on the Loan.

4.2 Project Loan Requests; Approval.

Developer shall submit a written request for any desired Project Loan. The written request for approval for a Project Loan shall be accompanied by a Budget, a site plan or location map, an authorization and request to engage appraiser, name of Borrower and identity of Borrower's members, a pro forma operating statement and relevant market information, together with the information required under Articles 8 and 9 hereof and such other information as Lender deems reasonable, appropriate or necessary with respect to such Project Loan and the Project to be acquired and constructed with the proceeds thereof. Lender covenants and agrees to use commercially reasonable efforts to approve or disapprove a Project Loan, subject to the terms of this Agreement, following receipt of a request for approval by Developer and all information and documents requested by Lender. Lender shall be under no obligation to approve any specific Project Loan whether or not the following minimum conditions are met.

Lender and Developer agree each Project Loan in respect of a Project shall satisfy the following minimum conditions together with the requirements set forth elsewhere herein:

(a) The Project must be shadow anchored by Wal-Mart and share a parking field with Wal-Mart or be considered part of the "retail hub" in a given community, all as determined by Lender in its sole discretion.

(b) The amount of a Project Loan (including any Outlot Loan in connection with such Project Loan) shall not exceed \$4,800,000.

(c) The Project shall be 75% pre-leased with tenants acceptable to Lender and generate a "Debt Service Coverage Ratio" of not less than 1.15:1.00 based upon (i) the actual rental income provided under the leases meeting the pre-leasing requirement, (ii) an assumed interest rate of 7% per annum, and (iii) interest only payments on the debt.

(d) The Project must be a new construction project and contain not more than 40,000 square feet of leasable space.

(e) Such Project shall generate a "Debt Service Coverage Ratio" of not less than 1.25:1.00, based upon (i) such Borrower's pro forma operating statement for such Project (as approved by Lender in its sole discretion with such assumptions consistent with Lender's assumptions when underwriting permanent take out loans), (ii) an assumed interest rate equal to the then current ten (10) year U.S. Treasury Note plus two hundred (200) basis points (but in no event less than 7% per annum), and (iii) a thirty (30) year amortization period. The Appraisal for such Project must support Borrower's pro forma rent and expense statement.

(f) The ratio of the amount of such Project Loan to the fair market value of such Project based on the Appraisal shall not exceed seventy-five percent (75%).

(g) The ratio of the amount of such Project Loan to the total cost of such Project as set forth in the Budget, excluding contractor profit in the event an affiliate of a Developer or a member of a Developer is the contractor and developer's fee in excess of \$100,000.00 unless approved in writing by Lender, shall not exceed eighty percent (80%).

(h) The spread of the stage of completion of all Projects financed by the Loan is satisfactory to Lender in its sole discretion.

In connection with the approval of a Project Loan, Lender may impose reasonable requirements regarding disbursement of Project Loan proceeds in addition to those set forth herein. Such additional requirements will be set forth in the Project Agreement to be executed by Lender and the Borrower in respect to such Project, which Project Agreement, when executed, shall be deemed to be a modification and amendment of this Agreement as to the particular Project Loan.

4.3 Project Documents.

Developer agrees that it will cause each Borrower or Guarantor, as appropriate, on or before the Loan Opening Date with respect to any Project Loan, to execute and deliver or cause to be executed and delivered to Lender the following documents in form and substance acceptable to Lender with respect to such Project Loan:

- (a) The Project Agreement.
- (b) The Note.
- (c) The Mortgage.
- (d) The Assignment of Rents.
- (e) The Performance and Completion Guaranty.
- (f) The Guaranties.
- (g) The Environmental Indemnity.

(h) A collateral assignment of construction documents, including, without limitation, the General Contract, all architecture and engineering contracts, Plans and Specifications, permits, licenses, approvals and development rights, together with consents to the assignment and continuation agreements from the General Contractor, the architect and other parties reasonably specified by Lender.

(i) Such UCC financing statements as Lender determines are advisable or necessary to perfect or notify third parties of the security interests intended to be created by the Project Documents.

(j) Such other documents, instruments or certificates as Lender and its counsel may reasonably require, including such documents as Lender in its sole discretion deems necessary or appropriate to effectuate the terms and conditions of this Agreement and the Project Documents, and to comply with any Laws.

4.4 Term of Each Project Loan.

(a) All principal, interest and other sums due under the Project Documents with respect to any Project Loan shall be due and payable in full on the Project Maturity Date for such Project Loan, without relief from valuation and appraisal laws. All references herein to the Maturity Date shall mean Initial Project Maturity Date, provided that Borrower shall have the one-time right to extend the Initial Maturity Date for one additional six (6) month term (the "Extension Option"), thereby extending the Initial Maturity Date to the six month anniversary of the Initial Project Maturity Date (the "Extended Maturity Date").

(b) Borrower may only exercise the Extension Option with respect to any particular Project Loan upon satisfying the following conditions with respect to such Project Loan:

- (i) Borrower shall have delivered to Lender written notice of such election no earlier than sixty (60) days and no later than thirty (30) prior to the Initial Project Maturity Date;
- (ii) Lender shall have received Borrower's and Guarantors' current financial statements, certified as correct by Borrower and Guarantor. There must be no material adverse change in Borrower's or Guarantor's financial condition;
- (iii) Construction of the Improvements has been completed in accordance with all requirements of this Loan Agreement and the Project Agreement;
- (iv) Such notice is accompanied by an extension fee in the amount of 25 basis points (.25%) of the maximum amount of the Project Loan;
- (v) No Event of Default exists under the Project Documents, nor any event which would be an Event of Default if not cured within the time allowed; and
- (vi) For the Extended Term, the Debt Service Coverage Ratio is not less than 1.25:1.00 based on (i) the actual rental income provided under the Leases for the Project, (ii) an assumed interest rate equal to the then current ten (10) year U.S. Treasury Note plus two hundred (200) basis points (but in no event less than 7% per annum), and (iii) a twenty-five (25) year amortization period;
- (vii) For the Extended Term, the Project is at least 93% occupied by Tenants acceptable to Lender under Leases providing for rents no less than pro forma rents set out in the Appraisal approved by Lender hereunder; and
- (viii) Any portion of the Project Loan which is an Outlot Loan shall be paid in full on the Initial Maturity Date for such Project Loan.

4.5 Stabilized Tranche.

In connection with Developer's or Borrower's request to move a Project Loan from the Construction Tranche to the Stabilized Tranche, such party shall deliver, or cause the Borrower to deliver, to Lender such information and documentation requested by Lender, including without limitation operating statements and rent rolls. Lender shall use commercially reasonable efforts to approve or disapprove the transfer of a Project Loan after request by Borrower and receipt by Lender of all requested documents and information. Lender shall be under no obligation to approve the transfer of a Project Loan from the Construction Tranche to the Stabilized Tranche whether or not the following conditions are met. Lender, Developer and each Borrower agree that the following minimum conditions must be satisfied prior to the transfer of a Project Loan from the Construction Tranche to the Stabilized Tranche:

- (a) The ratio of the amount of such Project Loan for which transfer is requested to the fair market value of such Project shall not exceed seventy-five percent (75%);

(b) The ratio of the amount of such Project Loan to the total cost of such Project, excluding contractor profit in the event an affiliate of a Developer or a member of a Developer is the contractor and developer's fee in excess of \$100,000.00 unless approved in writing by Lender, shall not exceed eighty percent (80%);

(c) The Project relating to the Project Loan for which such transfer is requested shall generate a Debt Service Coverage Ratio of not less than 1.00:1.00 based upon (i) the actual rental income provided by the Leases for the Project, (ii) an assumed interest rate equal to seven percent (7%) per annum, and (iii) a thirty (30) year amortization period;

(d) Upon inclusion of the Project Loan for such Project in the Stabilized Tranche, the Debt Service Coverage Ratio for all Projects in the Stabilized Tranche in the aggregate shall be not less than 1.20:1.00 based upon (i) actual income provided by the Leases for all such aggregated Projects, (ii) the higher of annualized actual expenses or pro forma expenses as shown in the Budget when the Project Loan was approved, shall be used in determining Net Operating Income, (iii) an assumed interest rate equal to seven percent (7%) per annum, and (iv) a thirty (30) year amortization period;

(e) Eighty percent (80%) of the rentable square footage of the Project shall be leased to tenants (which tenants and leases shall be acceptable to Lender in its sole discretion) who shall be occupying their entire space and paying their full rent due under their Lease;

(f) Upon inclusion of the Project Loan for such Project in the Stabilized Tranche, an aggregate of eighty-five percent (85%) of all of the rentable square footage of all of the Projects included in the Stabilized Tranche shall be leased to tenants (which tenants and leases shall be acceptable to Lender in its sole discretion) who shall be occupying their entire space and paying their full rent due under their Lease; and

(g) Such other conditions and requirements of Lender in its sole but reasonable discretion.

4.6 Prepayments.

Except as set forth herein, Borrower shall have the right to make prepayments of any Project Loan, in whole or in part, without prepayment penalty, upon not less than seven (7) days' prior written notice to Lender. No prepayment of all or part of any Project Loan shall be permitted unless same is made together with the payment of all interest accrued on the Project Loan through the date of prepayment and an amount equal to all Breakage Costs and attorneys' fees and disbursements incurred by Lender as a result of the prepayment.

4.7 Required Principal Payments.

All principal shall be paid on or before the Maturity Date. On the first day of each month during the Extended Term, Borrower shall make mortgage-style principal and interest payments based on the assumed term and interest rate used in calculating the Debt Service Coverage Ratio.

4.8 Late Charge.

Any and all amounts due hereunder or under the other Project Documents which remain unpaid more than ten (10) days after the date said amount was due and payable shall incur a fee (the "Late Charge") equal to the greater of (a) ten percent (10%) of said amount or (b) \$25.00, which payment shall be in addition to all of Lender's other rights and remedies under the Project Documents, provided that no Late Charge shall apply to the final payment of principal on the Maturity Date.

4.9 Miscellaneous.

To the extent that Lender may have acquiesced in noncompliance with any requirements precedent to the Project Loan Opening or precedent to any subsequent disbursement of Loan proceeds, such acquiescence shall not constitute a waiver by Lender, and Lender may at any time after such acquiescence require Borrower to comply with all such requirements with respect to the same or any other Project Loan.

Borrower shall, prior to the Opening of the Loan, at the request of Lender, open an Operating Account. Borrower authorizes Lender to disburse Loan proceeds by crediting the Operating Account; provided, however, that Lender shall not be obligated to use such method. Lender is further authorized to pay any principal, interest or other amounts due upon the Note or other Project Documents when and as same shall become due by debiting funds on deposit in the Operating Account.

4.10 Outlot Loan.

Lender and Developer acknowledge that certain Projects may include parcels of land which will be used as outlots and either leased or sold to third parties. Lender agrees to make available to Developer up to a maximum of \$1,500,000.00 of the Loan proceeds for the acquisition of outlots in connection with Projects (the "Outlot Loan"): provided that (i) in no event shall Lender be obligated to disburse more than \$500,000.00 for an outlot for any one Project, (ii) the ratio of the amount of the Outlot Loan to the fair market value of the outlot shall not exceed fifty percent (50%), and (iii) the ratio of the amount of the Outlot Loan to the cost of the Outlot shall not exceed sixty percent (60%). An Outlot Loan shall only be made by Lender in connection with an approved Project Loan and such Outlot Loan shall be subject to all of the provisions of this Agreement. The Extension Option shall not apply to the Outlot Loan and the Outlot Loan shall be aggregated with the Project Loan to which it relates when determining if the provisions of Section 4.2 are met. The parties acknowledge that the current outstanding Outlot Loans as of the date of this Agreement are Keokuk Shopping Center at \$208,000.00, Pampa Shopping Center at \$260,000.00 and Uvalde Shopping Center at \$175,500.00 for a total of \$643,500.00. No pay down of these existing Outlot Loans shall be required to meet the above loan to cost and loan to value ratios.

4.11 Indebtedness Secured By Project Loan Documents. At the request of Lender, any Borrower which is 100% owned by Developer shall cross-collateralize its Project Loan with any other Project Loans owned by a Borrower which is owned 100% by Developer. It is the intention of the parties hereto and all Borrowers that the Note for each Project Loan, and the Mortgage and other documents securing the Note, shall evidence and secure the following: any

and all loans, advances, debts, liabilities, obligations, covenants and duties owing by any Developer, any Borrower, or any Affiliate of any Borrower or any Developer, to Lender, or any direct or indirect subsidiary or any Affiliate of Lender, or any parent or related party to Lender, of any kind or nature, present or future, whether direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereinafter arising, whether or not (i) evidenced by any other note, guaranty or other instrument, (ii) arising under any agreement, instrument or document, (iii) for the payment of money, (iv) arising by reason of an extension of credit, opening of a letter of credit, loan, equipment lease or guaranty, or (v) arising under any interest or currently swap, future, option or other interest rate protection or similar agreement, including without limitation, a "Interest Rate Agreement" as hereinafter defined.

ARTICLE 5 INTEREST

5.1 Interest Rate.

(a) Each Project Loan (including without limitation Project Loans closed prior to the date of this Agreement) will bear interest at the Applicable Rate, unless the Default Rate is applicable. The Adjusted Prime Rate shall be the "Applicable Rate", except that the Adjusted LIBOR Rate shall be the "Applicable Rate" with respect to portions of the Loan as to which a LIBOR Rate Option is then in effect. Borrower shall pay interest in arrears on the first day of every calendar month in the amount of all interest accrued and unpaid in accordance with the terms of any Note.

(b) Provided that no Event of Default exists, Borrower shall have the option (the "LIBOR Rate Option") to elect from time to time in the manner and subject to the conditions hereinafter set forth an Adjusted LIBOR Rate as the Applicable Rate for all or any portion of any Project Loan which would otherwise bear interest at the Adjusted Prime Rate.

(c) The only manner in which Borrower may exercise the LIBOR Rate Option is by giving Lender irrevocable notice (which may be verbal notice provided that Borrower delivers to Lender facsimile confirmation in the form of Exhibit C attached hereto within twenty-four (24) hours) of such exercise not later than 11:00 a.m. Cincinnati time on the second LIBOR Business Day prior to the proposed commencement of the relevant LIBOR Rate Interest Period, which written notice shall specify: (i) the particular Project Loan and the portion of such Project Loan with respect to which Borrower is electing the LIBOR Rate Option, (ii) the LIBOR Business Day upon which the applicable LIBOR Rate Interest Period is to commence and (iii) the duration of the applicable LIBOR Rate Interest Period. The Applicable Rate for any portion of any Project Loan with respect to which Borrower has elected the LIBOR Rate Option shall revert to the Adjusted Prime Rate as of the last day of the LIBOR Rate Interest Period applicable thereto (unless Borrower again exercises the LIBOR Rate Option for such portion of such Project Loan). Lender shall be under no duty to notify Borrower that the Applicable Rate on any portion of any Project Loan is about to revert from an Adjusted LIBOR Rate to the Adjusted Prime Rate. The LIBOR Rate Option may be exercised by Borrower only with respect to any portion of a Project Loan equal to or in excess of \$250,000.00. At no time may there be more than four (4) LIBOR Rate Interest Periods in effect with respect to any Project Loan.

(d) If Lender determines (which determination shall be conclusive and binding upon Borrower, absent manifest error) (i) that Dollar deposits in an amount approximately equal to the portion of the Project Loan for which Borrower has exercised the LIBOR Rate Option for the designated LIBOR Rate Interest Period are not generally available at such time in the London interbank market for deposits in Dollars, (ii) that the rate at which such deposits are being offered will not adequately and fairly reflect the cost to Lender of maintaining a LIBOR Rate on such portion of the Project Loan or of funding the same for such LIBOR Rate Interest Period due to circumstances affecting the London interbank market generally, (iii) that reasonable means do not exist for ascertaining a LIBOR Rate, or (iv) that an Adjusted LIBOR Rate would be in excess of the maximum interest rate which Borrower may by law pay, then, in any such event, Lender shall so notify Borrower and all portions of any Project Loan bearing interest at an Adjusted LIBOR Rate that are so affected shall, as of the date of such notification with respect to an event described in clause (ii) or (iv) above, or as of the expiration of the applicable LIBOR Rate Interest Period with respect to an event described in clause (i) or (iii) above, bear interest at the Adjusted Prime Rate until such time as the situations described above are no longer in effect or can be avoided by Borrower exercising a LIBOR Rate Option for a different LIBOR Rate Interest Period.

(e) Interest at the Applicable Rate (or Default Rate) shall be calculated for the actual number of days elapsed on the basis of a 360-day year, including the first date of the applicable period to, but not including, the date of repayment.

(f) A Borrower shall pay all Breakage Costs relating to the Project Loan incurred from time to time by Lender upon demand.

(g) If the introduction of or any change in any Law, regulation or treaty, or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof, shall make it unlawful for Lender to maintain the Applicable Rate at an Adjusted LIBOR Rate with respect to any Project Loan or any portion thereof, or to fund any Project Loan or any portion thereof in Dollars in the London interbank market, or to give effect to its obligations regarding the LIBOR Rate Option as contemplated by any Project Documents, then (1) Lender shall notify Borrower that Lender is no longer able to maintain the Applicable Rate at an Adjusted LIBOR Rate, (2) the LIBOR Rate Option shall immediately terminate, (3) the Applicable Rate for any portion of any Project Loan for which the Applicable Rate is then an Adjusted LIBOR Rate shall automatically be converted to the Adjusted Prime Rate, and (4) each Borrower of each converted Project Loan shall pay to Lender the amount of Breakage Costs (if any) incurred in connection with such conversion. Thereafter, each Borrower shall not be entitled to exercise the LIBOR Rate Option until such time as the situation described herein is no longer in effect or can be avoided by Borrower exercising a LIBOR Rate Option for a LIBOR Rate Interest Period.

5.2 Interest Rate Agreements.

(a) If any or all Borrowers or Developer purchase an Interest Rate Protection Product from Lender, such party(ies) shall enter into Lender's customary form of agreement ("Interest Rate Agreement") relating to such Interest Rate Protection Product. Any indebtedness incurred pursuant to an Interest Rate Agreement entered into by such party(ies) and Lender shall constitute indebtedness evidenced by the Note and secured by the Mortgage for each such applicable Project Loan and the other Project Documents to the same extent and effect as if the terms and provisions of such Interest Rate Agreement were set forth herein, whether or not the aggregate of such indebtedness, together with the disbursements made by Lender of the proceeds of the Loan, shall exceed the face amount of the aggregate amount of all of the Notes.

(b) Each such Borrower hereby collaterally assigns to agent for the benefit of Lender any and all Interest Rate Protection Products purchased or to be purchased by each such Borrower in connection with a Project Loan, as additional security for such Project Loan, and agrees to provide Lender with any additional documentation requested by Lender in order to confirm or perfect such security interest during the term of such Project Loan. If a Borrower obtains an Interest Rate Protection Product from a party other than Lender, such Borrower shall deliver to Lender such third party's consent to such collateral assignment. No Interest Rate Protection Product purchased from a third party may be secured by an interest in a Borrower or a Project.

(c) Each Borrower shall, as a condition to the Opening of a Project Loan if required by Lender and otherwise within five (5) Business Days after Lender's request, institute an interest rate hedging program through the purchase of an interest rate swap, cap or such other interest rate protection product ("Interest Rate Protection Product") with respect to such Project Loan. The Interest Rate Protection Product, the portion of the Project Loan (if less than the entire amount of the Project Loan) to which such Interest Rate Protection Product shall apply, and the financial institution providing the Interest Rate Protection Product, shall be subject to Lender's prior written approval in its sole discretion. Borrower shall afford Lender a right of first opportunity to provide all Interest Rate Protection Products but shall not be required to purchase such Interest Rate Protection Product from Lender.

ARTICLE 6 COSTS OF MAINTAINING LOAN

6.1 Increased Costs and Capital Adequacy.

(a) Each Borrower recognizes that the cost to Lender of maintaining a Project Loan or any portion thereof may fluctuate and, Borrower agrees to pay Lender additional amounts to compensate Lender for any increase in its actual costs incurred in maintaining a Project Loan or any portion thereof outstanding or for the reduction of any amounts received or receivable from Borrower as a result of:

- (i) any change after the date hereof in any applicable Law, regulation or treaty, or in the interpretation or administration thereof, or by any domestic or foreign court,

(A) changing the basis of taxation of payments under this Agreement to Lender (other than taxes imposed on all or any portion of the overall net income or receipts of Lender), or (B) imposing, modifying or applying any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, credit extended by, or any other acquisition of funds for loans by Lender (which includes the Loan, a Project Loan or any applicable portion thereof) (provided, however, that Borrower shall not be charged again the Reserve Percentage already accounted for in the definition of the Adjusted LIBOR Rate), or (C) imposing on Lender, or the London interbank market generally, any other condition affecting the Loan or a Project Loan, provided that the result of the foregoing is to increase the cost to Lender of maintaining the Loan, a Project Loan or any portion thereof or to reduce the amount of any sum received or receivable from Borrower by Lender under the Project Documents for the Project Loan pursuant to which Borrower is a borrower; or

(ii) the maintenance by Lender of reserves in accordance with reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States with respect to "Eurocurrency Liabilities" of a similar term to that of the applicable portion of a Project Loan (without duplication for reserves already accounted for in the calculation of a LIBOR Rate pursuant to the terms hereof).

(b) If the application of any Law, rule, regulation or guideline adopted or arising out of the July, 1988 report of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards", or the adoption after the date hereof of any other Law, rule, regulation or guideline regarding capital adequacy, or any change after the date hereof in any of the foregoing, or in the interpretation or administration thereof by any domestic or foreign Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender, with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has the effect of reducing the rate of return on Lender's capital to a level below that which Lender would have achieved but for such application, adoption, change or compliance (taking into consideration the policies of Lender with respect to capital adequacy), then, from time to time Borrower shall pay to Lender such additional amounts as will compensate Lender for such reduction with respect to any portion of the Project Loan relating to such Borrower outstanding.

(c) Any amount payable by Borrower under subsection (a) or subsection (b) of this Section 6.1 shall be paid within five (5) days of receipt by Borrower of a certificate signed by an authorized officer of Lender setting forth the amount due and the basis for the determination of such amount, which statement shall be conclusive and binding upon Borrower, absent manifest error. Failure on the part of Lender to demand payment from Borrower for any such amount attributable to any particular period shall not constitute a waiver of Lender's right to demand payment of such amount for any subsequent or prior period. Lender shall use reasonable efforts to deliver to Borrower prompt notice of any event described in subsection (a) or (b) above, of the amount of the reserve and capital adequacy payments resulting therefrom and the reasons therefor and of the basis of calculation of such amount; provided, however, that any failure by

Lender to so notify Borrower shall not affect Borrower's obligation to pay the reserve and capital adequacy payment resulting therefrom.

6.2 Borrower Withholding.

If by reason of a change in any applicable Laws occurring after the date hereof, Borrower is required by Law to make any deduction or withholding in respect of any taxes (other than taxes imposed on or measured by the net income of Lender or any franchise tax imposed on Lender), duties or other charges from any payment due under the Note to the maximum extent permitted by law, the sum due from Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, Lender receives and retains a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

ARTICLE 7 LOAN EXPENSE AND ADVANCES

7.1 Loan and Administration Expenses.

Each Borrower unconditionally agrees to pay all expenses of the Project Loan borrowed by such Borrower, including all amounts payable pursuant to Sections 7.2 and 7.3 and any and all other fees owing to Lender pursuant to the applicable Project Documents, and also including, without limiting the generality of the foregoing, all recording, filing and registration fees and charges, mortgage or documentary taxes, all insurance premiums, title insurance premiums and other charges of the Title Insurer, printing and photocopying expenses, survey fees and charges, cost of certified copies of instruments, cost of premiums on surety company bonds and the Title Policy, charges of the Title Insurer or other escrowee for administering disbursements, all fees and disbursements of Lender's Consultant, all appraisal fees, insurance consultant's fees, environmental consultant's fees, travel related expenses and all costs and expenses incurred by Lender in connection with the determination of whether or not Borrower has performed the obligations undertaken by Borrower hereunder or has satisfied any conditions precedent to the obligations of Lender hereunder and, if any default or Event of Default occurs hereunder or under any of such Project Documents or if the Project Loan or applicable Note or any portion thereof is not paid in full when and as due, all costs and expenses of Lender (including, without limitation, court costs and counsel's fees and disbursements and fees and costs of paralegals) incurred in attempting to enforce payment of the Project Loan and expenses of Lender incurred (including court costs and counsel's fees and disbursements and fees and costs of paralegals) in attempting to realize, while a default or Event of Default exists, on any security or incurred in connection with the sale or disposition (or preparation for sale or disposition) of any security for the Project Loan. Borrower agrees to pay all brokerage, finder or similar fees or commissions payable in connection with the transactions contemplated hereby and shall indemnify and hold Lender harmless against all claims, liabilities, costs and expenses (including attorneys' fees and expenses) incurred in relation to any claim by broker, finder or similar person.

7.2 Loan Fee; Commitment Fee.

Developer shall pay to Lender upon the date of this Agreement a Loan Fee of \$31,250.00. Each Borrower shall pay to Lender with respect to a Project Loan on or before the date of Project Closing for such Project Loan a commitment fee in the amount of .5% of the maximum principal amount of such Project Loan. Such fee when paid shall be deemed fully earned and non-refundable.

7.3 Exit Fee.

Upon the repayment of the Loan (whether at Maturity or at any other date), Borrower will pay to Lender an exit fee equal to .5% percent of the maximum principal amount of such Project Loan borrowed by such Borrower (the "Exit Fee"); unless (a) the Loan is repaid with permanent loan from Lender or an affiliate of Lender, or (b) the Loan is repaid by the acquisition of the Project by a bona fide arms-length purchaser, whether or not such purchaser is arranged by Lender or an affiliate of Lender. The Exit Fee shall be deemed to be earned upon Maturity unless the events described in subparts (a) and (b) of this Section 7.3 occur.

7.4 Lender's Attorneys' Fees and Disbursements.

Developer and Borrower agree to pay Lender's attorney fees and disbursements incurred in connection with this Loan and each Project Loan, including (i) the preparation of this Agreement, any intercreditor agreements and the other Project Documents for each Project Loan and the preparation of the closing binders, (ii) the disbursement, syndication and administration of the Loan and each Project Loan and (iii) the enforcement of the terms of this Agreement and all Project Documents.

7.5 Time of Payment of Fees and Expenses.

Borrower shall pay all expenses and fees incurred as of the Project Loan Opening on the Loan Opening Date for the Project Loan (unless sooner required herein). At the time of the Opening of the Loan, Lender may pay from the proceeds of the initial disbursement of the Project Loan (to the extent provided for in the Budget) all Project Loan expenses and all fees payable to Lender. Lender may require the payment of outstanding fees and expenses as a condition to any disbursement of the Project Loan. Lender is hereby authorized, without any specific request or direction by Borrower, to make disbursements from time to time in payment of or to reimburse Lender for all Project Loan expenses and fees (whether or not, at such time, there may be any undisbursed amounts of the Project Loan allocated in the Budget for the same).

7.6 Expenses and Advances Secured by Project Documents.

Any and all advances or payments made by Lender under this Article 7 from time to time, and any amounts expended by Lender pursuant to Section 20.1(a), shall, as and when advanced or incurred, constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Project Documents.

7.7 Right of Lender to Make Advances to Cure Borrower's Defaults.

In the event that Borrower fails to perform any of Borrower's covenants, agreements or obligations contained in this Agreement or any of the other Project Documents (after the expiration of applicable grace periods, except in the event of an emergency or other exigent circumstances), Lender may (but shall not be required to) perform any of such covenants, agreements and obligations, and any amounts expended by Lender in so doing and shall constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Project Documents and shall bear interest at a rate per annum equal to the Applicable Rate (or Default Rate following an Event of Default).

**ARTICLE 8
NON-CONSTRUCTION REQUIREMENTS PRECEDENT
TO THE OPENING OF A PROJECT LOAN**

8.1 Non-Construction Conditions Precedent.

By acceptance of a Project Loan, Borrower agrees that Lender's obligation to open the Project Loan and thereafter to make further disbursements of proceeds thereof is conditioned upon Borrower's delivery, performance and satisfaction of the following conditions precedent in form and substance satisfactory to Lender in its reasonable discretion:

(a) Equity: Borrower shall have provided evidence reasonably satisfactory to Lender that Borrower's cash equity invested in the Project is not less than the difference between the total Project cost as set forth in the Budget and the maximum amount of the Project Loan; provided, however, in no event shall Borrower's cash equity in the Project be less than 20% of the total cost of the Project as set out in the Budget approved by Lender hereunder; provided if the Project includes acquisition of an outlot, Borrower's cash equity in the Project with respect to the cost of such outlot shall be 40%. Borrower's cash equity must be either (i) deposited with the Lender on or prior to the date of the Project Agreement and disbursed prior to the first disbursement of Project Loan proceeds or (ii) used to pay direct Project costs approved by Lender with evidence of payment delivered to Lender prior to the first disbursement of Project Loan proceeds; provided, however, that the appraised value of the Land as approved by Lender hereunder in excess of the Borrower's cost shall be included in the determination of minimum equity hereunder.

(b) Required Leases: Borrower shall have provided to Lender for Lender's written approval in Lender's sole discretion the Required Leases. The financial condition of all Tenants under Required Leases and all terms under the Required Leases (including, without limitation the term of the lease and any co-tenancy provisions) must be acceptable to Lender and Borrower shall have obtained guarantees of Leases from acceptable guarantors where required by Lender. The only cotenancy provisions acceptable to Lender shall be the presence and occupancy of the Super Wal-Mart store and the Required Leases shall all require openings within the same 30-day period;

(c) Tenant Estoppels: Intentionally Omitted;

(d) SNDA: Borrower shall have furnished to Lender subordination, non-disturbance and attornment agreements from the Tenants under the Required Leases in form acceptable to Lender;

(e) Title and Other Documents: Borrower shall have furnished to Lender the Title Policy together with legible copies of all title exception documents cited in the Title Policy and all other legal documents affecting the Project or the use thereof;

(f) Survey: Borrower shall have furnished to Lender an ALTA/ACSM "Class A" Land Title Survey of the Project. Said survey shall be dated no earlier than ninety (90) days prior to the Project Loan Opening, shall be made (and certified to have been made) as set forth in Exhibit B attached hereto and made a part hereof. Such survey shall be sufficient to permit issuance of the Title Policy in the form required by this Agreement. Such survey shall include the legal description of the land on which the Project shall be constructed;

(g) Insurance Policies: Borrower shall have furnished to Lender not less than ten (10) days prior to the date of the Project Agreement policies or binders evidencing that insurance coverages are in effect with respect to the Project and Borrower, in accordance with the Insurance Requirements attached hereto as Exhibit D, for which the premiums have been fully prepaid with endorsements satisfactory to Lender.

(h) No Litigation: Borrower shall have furnished evidence that no litigation or proceedings shall be pending or threatened which could or might cause a Material Adverse Change with respect to Borrower, any Guarantor or Tenant, or the Project;

(i) Utilities: Borrower shall have furnished to Lender (by way of utility letters or otherwise) evidence establishing to the satisfaction of Lender that the Project when constructed will have adequate water supply, storm and sanitary sewerage facilities, telephone, gas, electricity, fire and police protection, means of ingress and egress to and from the Project and public highways and any other required public utilities and that the Project is benefited by insured easements as may be required for any of the foregoing;

(j) Attorney Opinions: Borrower shall have furnished to Lender an opinion from counsel for Borrower and Guarantor covering due authorization, execution and delivery and enforceability of the Project Documents and also containing such other legal opinions as Lender shall require;

(k) Appraisal: Lender shall have obtained an Appraisal in an amount indicating that the Loan Amount is not greater than 75% of the appraised value (based upon the Project's stabilized value upon completion of construction) which Appraisal is satisfactory to Lender in all respects;

(l) Searches: Borrower shall have furnished to Lender current bankruptcy, federal tax lien and judgment searches and searches of all Uniform Commercial Code financing statements filed in each place UCC Financing Statements are to be filed hereunder, demonstrating the absence of adverse claims;

(m) Financial Statements: Borrower shall have furnished to Lender current annual financial statements of Borrower, the Guarantors, the General Contractor (provided, however, if a Bond is provided by General Contractor, Borrower need not furnish Lender with General Contractor's current annual financial statements) and such other persons or entities connected with the Loan as Lender may request, each in form and substance and certified by such individual as acceptable to Lender. Borrower and the Guarantors shall provide such other additional financial information Lender reasonably requires;

(n) Pro Forma Projection: Borrower shall have furnished to Lender a Pro Forma Projection covering the succeeding five year period;

(o) Management Agreements: If such agreements have been entered into by Borrower. Borrower shall have delivered to Lender executed copies of any leasing, management and development agreements entered into by Borrower in connection with the Construction and/or the operation of the Project;

(p) Flood Hazard: Lender has received evidence that the Project is not located in an area designated by the Secretary of Housing and Urban Development as a special flood hazard area, or flood hazard insurance acceptable to Lender in its sole discretion;

(q) Zoning: If the Title Policy does not include a zoning endorsement, Borrower shall have furnished to Lender a legal opinion or zoning letter as to compliance of the Project with zoning and similar laws;

(r) Organizational Documents: Borrower shall have furnished to Lender proof satisfactory to Lender of authority, formation, organization and good standing in the state of its incorporation or formation and, if applicable, qualification as a foreign entity in good standing in the state of its incorporation or formation, of all corporate, partnership, trust and limited liability company entities (including Borrower and each Guarantor) executing any Project Documents, whether in their own name or on behalf of another entity. Borrower shall also provide certified resolutions in form and content satisfactory to Lender, authorizing execution, delivery and performance of the Project Documents, and such other documentation as Lender may reasonably require to evidence the authority of the persons executing the Project Documents;

(s) No Default: There shall be no uncured Event of Default by Borrower hereunder nor any event, circumstance or condition which with notice or passage of time or both would be an Event of Default;

(t) Easements: Borrower shall have furnished Lender all easements reasonably required for the construction, maintenance or operation of the Project and such easements shall be insured by the Title Policy; and

(u) Additional Documents: Borrower shall have furnished to Lender such other materials, documents, papers or requirements regarding the Project, Borrower and any Guarantor or Tenant as Lender shall reasonably request.

(v) Debt Service Coverage Ratio: Lender shall have received evidence reasonable satisfactory to Lender that the pro forma Debt Service Coverage ratio for the Project, set forth in the Pro Forma Projection, is greater than or equal to 1.25:1.

(w) Financial Covenants: Jeff H. Farmer, Jr. shall, as a continuing obligation throughout the term of the Loan: (i) maintain on an ongoing basis a minimum net worth of \$10,000,000.00 and a minimum net cash flow of \$1,000,000.00; and (ii) maintain a minimum liquidity level of \$1,500,000.00. The Borrower shall have furnished to Lender proof, satisfactory to Lender, which shall be updated on, and as of, each anniversary of the date of this Agreement, that Jeff H. Farmer, Jr. is maintaining the foregoing financial requirements at the required levels throughout the term of the Loan.

ARTICLE 9 CONSTRUCTION REQUIREMENTS PRECEDENT TO THE OPENING OF THE PROJECT LOAN

9.1 Required Construction Documents.

With respect to a Project Loan, Borrower shall cause to be furnished to Lender the following, in form and substance satisfactory to Lender and Lender's Consultant in all respects, for Lender's approval in its reasonable discretion prior to the Opening of the Project Loan:

(a) Fully executed copies of the following, each satisfactory to Lender and Lender's Consultant in all respects: (i) a fixed or guaranteed maximum price General Contract with the General Contractor; and (ii) all contracts with architects and engineers;

(b) A schedule of values, including a trade payment breakdown, setting forth a description of all contracts let by Borrower and/or the General Contractor for the design, engineering, construction and equipping of the Improvements;

(c) An initial sworn statement of the General Contractor, approved by Borrower and the Architect covering all work done and to be done, together with lien waivers covering all work and materials for which payments have been made by Borrower prior to the Loan Opening;

(d) Bonds in favor of Lender guaranteeing all of the obligations of General Contractor under the General Contract and the obligations of such Major Subcontractors as are designated by Lender;

(e) Copies of each of the Required Permits, except for those Required Permits which cannot be issued until completion of Construction, in which event such Required Permits will be obtained by Borrower on a timely basis in accordance with all recorded maps and conditions, and applicable building, land use, zoning and environmental codes, statutes and regulations and will be delivered to Lender at the earliest possible date. In all events the Required Permits required to be delivered prior to the Opening of the Project Loan shall include full building permits.

(f) Full and complete detailed Plans and Specifications for the Improvements in duplicate, prepared by the Architect;

(g) The Construction Schedule;

(h) The Soil Report;

(i) The Environmental Report; The Environmental Report shall, at a minimum, (A) demonstrate the absence of any existing or potential Hazardous Material contamination or violations of environmental Laws at the Project, except as acceptable to Lender in its sole and absolute discretion, (B) include the results of all sampling or monitoring to confirm the extent of existing or potential Hazardous Material contamination at the Project, including the results of leak detection tests for each underground storage tank located at the Project, if any, (C) describe response actions appropriate to remedy any existing or potential Hazardous Material contamination, and report the estimated cost of any such appropriate response, (D) confirm that any prior removal of Hazardous Material or underground storage tanks from the Project was completed in accordance with applicable Laws, and (E) confirm whether or not the Project Site is located in a wetlands district;

(j) At Lender's discretion, a report from Lender's Consultant which contains an analysis of the Plans and Specifications, the Budget, the Construction Schedule, the General Contract, all subcontracts then existing and the Soil Report. Such report shall be solely for the benefit of Lender and contain (i) an analysis satisfactory to Lender demonstrating the adequacy of the Budget to complete the Project and (ii) a confirmation that the Construction Schedule is realistic. Lender's Consultant shall monitor construction of the Project and shall visit the Project whenever requested by Lender, and shall certify as to amounts of construction costs for all requested fundings. Notwithstanding the foregoing, Lender shall charge Borrower for only three (3) visits to the Project during construction as contemplated by the immediately preceding sentence, except such limit shall not apply upon the occurrence of an Event of Default. It is anticipated that Lender's consultant will visit and inspect the Project at foundation completion, shell completion and substantial completion.

(k) The Architect's Certificate;

(l) Certification from an engineer or other professional reasonably acceptable to Lender in a form acceptable to Lender confirming that any wetlands located on the Land will not preclude the development of the Project;

(m) A Notice of Commencement complying with applicable state or local law; and

(n) Such other papers, materials and documents as Lender may require with respect to the Construction.

**ARTICLE 10
BUDGET AND CONTINGENCY FUND**

10.1 Budget.

Disbursement of the Project Loan shall be governed by the Budget for the Project, in form and substance acceptable to Lender in Lender's reasonable discretion. The Budget shall specify the amount of cash equity invested in the Project, and all costs and expenses of every kind and nature whatever to be incurred by Borrower in connection with the Project. The Budget shall include, in addition to the Budget Line Items described in Section 10.2 below, the Contingency Fund described in Section 10.3 below, and amounts satisfactory to Lender for soft costs and other reserves acceptable to Lender. Once the Budget is approved by Lender all changes to the Budget shall in all respects be subject to the prior written approval of Lender.

10.2 Budget Line Items.

The Budget shall include as line items ("Budget Line Items"), to the extent determined to be applicable by Lender in its reasonable discretion, the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of the Construction, and all other costs, fees and expenses relating in any way whatsoever to the Construction of the Improvements, leasing commissions, tenant improvements and tenant allowances, operating deficits, real estate taxes, and all other sums due in connection with Construction and operation of the Project, the Project Loan, and this Agreement. Borrower agrees that all Project Loan proceeds disbursed by Lender shall be used only for the Budget Line Items for which such proceeds were disbursed.

Borrower shall have the right to reallocate cost savings effected by final Change Order or other appropriate final documentation to other Budget Line Items subject to Lender's prior written consent not to be unreasonably withheld.

Lender shall not be obligated to disburse any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item. Borrower shall pay as they become due all amounts set forth in the Budget with respect to costs to be paid for by Borrower. The developer fee of \$100,000.00 in the Budget will be advanced as follows: (i) 50% shall be disbursed to Borrower at the time all the tenants under the Required Leases have taken occupancy and begun to pay their base rent; and (ii) the remaining 50% shall be disbursed to Borrower at the time Borrower has obtained and accepted a take-out commitment that would repay the Loan in full or closed the sale of the Project to a third party.

10.3 Contingency Fund.

The Budget shall contain a Budget Line Item designated for the Contingency Fund. Borrower may from time to time request that the Contingency Fund be reallocated to pay needed costs of the Project. Such requests shall be subject to Lender's written approval in its reasonable discretion.

Borrower agrees that the decision with respect to utilizing portions of the Contingency Fund in order to keep the Project Loan In Balance shall be made by Lender in its reasonable discretion, and that Lender may require Borrower to make a Deficiency Deposit even if funds

remain in the Contingency Fund. Once the Project begins to generate Net Operating Income, Borrower may only borrow from the Loan interest in excess of the Net Operating Income so generated.

10.4 Optional Method for Payment of Interest.

For Borrower's benefit, the Budget includes a Budget Line Item for interest payments on the Project Loan and, at Lender's option, amounts due from Borrower under any Interest Rate Agreement with respect to the Project Loan. Borrower hereby authorizes Lender from time to time, for the mutual convenience of Lender and Borrower, to disburse Project Loan proceeds to pay all the then accrued interest on the Note and to pay amounts due from Borrower under any Interest Rate Agreement with respect to the Project Loan, regardless of whether Borrower shall have specifically requested a disbursement of such amount. Any such disbursement, if made, shall be added to the outstanding principal balance of the Note and shall, when disbursed, bear interest at the Adjusted Prime Rate. The authorization hereby granted, however, shall not obligate Lender to make disbursements of the Project Loan for interest payments or any amount due under any Interest Rate Agreement (except upon Borrower's qualifying for and requesting disbursement of that portion of the proceeds of the Project Loan allocated for such purposes in the Budget) nor prevent Borrower from paying accrued interest or amounts due under any Interest Rate Agreement from its own funds.

ARTICLE 11 SUFFICIENCY OF PROJECT LOAN

11.1 Project Loan In Balance.

Anything contained in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that each Project Loan shall at all times be "In Balance", on a Budget Line Item and an aggregate basis. A Budget Line Item shall be deemed to be "In Balance" only if Lender in its reasonable discretion determines that amount of such Budget Line Item is sufficient for its intended purpose. The Project Loan shall be deemed to be "In Balance" in the aggregate only when the total of the undisbursed portion of the Project Loan less the Contingency Fund (subject to Borrower's reallocation rights under Section 10.3), equals or exceeds the aggregate of (a) the costs required to complete the construction of the Project in accordance with the Plans and Specifications and the Budget, including, without limitation, all Tenant Work required to be performed by Borrower or tenant allowances to be paid for by Borrower under Leases or reasonably anticipated for unleased space; (b) the amounts to be paid as retainages to persons who have supplied labor or materials to the Project; (c) the amount in excess of the projected Net Operating Income required to pay interest on the Project Loan through the Maturity Date; and (d) all other hard and soft costs not yet paid for in connection with the Project, as such costs and amounts described in clauses (a), (b), (c) and (d) may be estimated and/or approved in writing by Lender from time to time. Borrower agrees that if for any reason, in Lender's reasonable discretion, the amount of such undistributed Project Loan proceeds shall at any time be or become insufficient for such purpose regardless of how such condition may be caused, Borrower will, within ten (10) days after written request by Lender, deposit the deficiency with Lender ("Deficiency Deposit"). The Deficiency Deposit shall first be

exhausted before any further disbursement of Project Loan proceeds shall be made. Lender shall not be obligated to make any Project Loan disbursements if and for as long as the Project Loan is not In Balance.

ARTICLE 12 CONSTRUCTION PAYOUT REQUIREMENTS

12.1 Applicability of Sections.

The provisions contained in this Article 12 shall apply to the Opening of the Project Loan and to all disbursements of proceeds during Construction.

12.2 Monthly Payouts.

After the Opening of the Project Loan, further disbursements shall be made during Construction from time to time as the Construction progresses, but no more frequently than once in each calendar month. At Lender's option, disbursements may be made by Lender into an escrow and subsequently disbursed to Borrower by the Title Insurer. If such option is exercised, those Project Loan proceeds shall be deemed to be disbursed to Borrower from the date of deposit into that escrow and interest shall accrue on those proceeds from that date, regardless of the date such proceeds are released by the Title Insurer.

12.3 Documents to be Furnished for Each Disbursement.

As a condition precedent to each disbursement of the Project Loan proceeds (including the initial disbursement at the Opening of the Project Loan), Borrower shall furnish or cause to be furnished to Lender the following documents covering each disbursement, in form and substance satisfactory to Lender:

(a) A completed Borrower's Certificate in the form of Exhibit G attached hereto and made a part hereof and a completed Soft and Hard Cost Requisition Form in the form of Exhibit I attached hereto and made a part hereof, each executed by the Authorized Representative of Borrower;

(b) A completed standard AIA Form G702 and Form G703 signed by the General Contractor, subcontractors, and the Project engineer, together with General Contractor's sworn statements and unconditional waivers of lien, and all subcontractors', material suppliers' and laborers' conditional waivers of lien, covering all work, paid with the proceeds of the prior draw requests, together with such invoices, contracts or other supporting data as Lender may require to evidence that all costs for which disbursement is sought have been incurred;

(c) Paid invoices or other evidence satisfactory to Lender that fixtures and equipment, if any, have been paid for and are free of any lien or security interest therein;

(d) An endorsement to the Title Policy issued to Lender covering the date of disbursement and showing the Mortgage as a first, prior and paramount lien on the Project subject only to the Permitted Exceptions and real estate taxes that have accrued but are not yet

due and payable and particularly that nothing has intervened to affect the validity or priority of the Mortgage;

(e) Copies of any proposed or executed Change Orders on standard AIA G701 form which have not been previously furnished to Lender and which require and are not valid without the signatures of the General Contractor, Borrower and Architect;

(f) Copies of all construction contracts (including subcontracts) which have been executed since the last disbursement, together with any Bonds obtained or required to be obtained with respect thereto;

(g) All Required Permits;

(h) Satisfactory evidence that all Government Approvals have been obtained for development of the Project; and

(i) Such other instruments, documents and information as Lender or the Title Insurer may reasonably request.

Disbursements shall be made approximately ten (10) days after receipt of all information required by Lender to approve the requested disbursements.

12.4 Retainages.

At the time of each disbursement of Project Loan proceeds, ten percent (10%) of the total amount then due the General Contractor and the various contractors, subcontractors and material suppliers for costs of the Construction shall be withheld from the amount disbursed. The retained Loan amounts for the Construction costs will be disbursed only at the time of the final disbursement of Loan proceeds under Article 13 below; provided, however, upon the satisfactory completion of one hundred percent (100%) of the work with respect to any trade (including any trade performed by the General Contractor) or the delivery of all materials pursuant to a purchase order in accordance with the Plans and Specifications as certified by the Architect and the Lender's Consultant, Lender may decide on a case by case basis (but shall not be obligated) to permit retainages with respect to such trade or order, as the case may be, to be disbursed to Borrower upon the Lender's Consultant's approval of all work and materials and Lender's receipt of a final waiver of lien with respect to such completed work or delivered materials.

12.5 Disbursements for Materials Stored On-Site.

Any requests for disbursements which in whole or in part relate to materials, equipment or furnishings which Borrower owns and which are not incorporated into the Improvements as of the date of the request for disbursement, but are to be temporarily stored at the Project, shall be made in an aggregate amount not to exceed \$25,000.00. Any such request must be accompanied by evidence satisfactory to Lender that (i) such stored materials are included within the coverages of insurance policies carried by Borrower, (ii) the ownership of such materials is vested in Borrower free of any liens and claims of third parties, (iii) such materials are properly insured and protected against theft or damage, (iv) the materials used in the Construction are not commodity items but are uniquely fabricated for the Construction, (v) the Lender's Consultant

has viewed and inspected the stored materials, and (vi) in the opinion of the Lender's consultant the stored materials are physically secured and can be incorporated into the Project within forty five (45) days. Lender may require separate Uniform Commercial Code financing statements to cover any such stored materials.

12.6 Disbursements for Offsite Materials.

Lender may in its sole discretion, but shall not be obligated to, make disbursements for materials stored off-site, in which event all of the requirements of Section 12.5 shall be applicable to such disbursement as well as any other requirements which Lender may, in its sole discretion, determine are appropriate under the circumstances.

12.7 Disbursements For Tenant Work and Allowances.

(a) Lender shall make disbursements for tenant allowances or Tenant Work based on the percentage of the Construction complete at the time of the disbursement request, subject to the retainages set forth in Section 12.4.

(b) The first request for disbursement for Tenant Work in connection with a specific leased space in the Project shall be accompanied by the following, all of which shall be subject to the approval of Lender:

- (i) copies of all contracts, if not previously delivered to Lender, for the performance of such Tenant Work;
- (ii) a cost breakdown for each trade performing Tenant Work in such leased space, and an estimated commencement and completion date;
- (iii) an estimate of all direct costs of the Tenant Work to be performed in such leased space which has not been contracted for or made subject to a work order or order to proceed;
- (iv) plans and specifications for the leased space, together with a certificate from an architect acceptable to Lender that such plans and specifications comply with all Laws affecting the Project and the lease covering such leased space; and
- (v) a fully executed Lease approved by Lender covering such leased space.

ARTICLE 13 FINAL DISBURSEMENT FOR CONSTRUCTION

13.1 Final Disbursement for Construction.

Lender will advance to Borrower the final disbursement for the cost of the Construction for a particular Project (including retainages) when the following conditions have been complied with, provided that all other conditions in this Agreement for disbursements have been complied with:

(a) The Improvements have been fully completed and equipped in accordance with the Plans and Specifications free and clear of mechanics' liens and security interests and are ready for occupancy;

(b) Borrower shall have furnished to Lender "all risks" casualty insurance in form and amount and with companies satisfactory to Lender in accordance with the requirements contained herein;

(c) Borrower shall have furnished to Lender copies of all licenses and permits required by any Governmental Authority having jurisdiction for the occupancy of the Improvements and the operation thereof, including a certificate of occupancy from the municipality in which the Project is located, or a letter from the appropriate Governmental Authority that no such certificate is issued;

(d) All Tenants shall have executed acknowledgments of acceptance of their respective premises in form and substance acceptable to Lender;

(e) Borrower shall have furnished a plat of survey covering the completed Improvements in compliance with Section 8.1(f);

(f) All fixtures, furnishings, furniture, equipment and other property required for the operation of the Project shall have been installed free and clear of all liens and security interests, except in favor of Lender;

(g) Borrower shall have furnished to Lender copies of all final waivers of lien and sworn statements from contractors, subcontractors and material suppliers and an affidavit from the General Contractor in accordance with the mechanic's lien law of the State or as otherwise established by Lender;

(h) Borrower shall have furnished to Lender a certificate from the Architect or other evidence satisfactory to Lender dated at or about the Completion Date stating that (i) the Improvements have been completed in accordance with the Plans and Specifications, and (ii) the Improvements as so completed comply with all applicable Laws; and

(i) Lender shall have received a certificate from the Lender's Consultant for the sole benefit of Lender that the Improvements have been satisfactorily completed in accordance with the Plans and Specifications.

If Borrower fails to comply with and satisfy any of the final disbursement conditions contained in this Section 13.1 within sixty (60) days after the Completion Date, such failure shall constitute an Event of Default hereunder.

**ARTICLE 14
RESERVED**

**ARTICLE 15
OTHER COVENANTS**

15.1 Borrower further covenants and agrees as follows:

(a) Opening of Project Loan on or Prior to Project Loan Opening Date. All conditions precedent to the Opening of the Project Loan shall be complied with on or prior to the Project Loan Opening Date. If the Project Loan Opening Date has not occurred on or before ninety (90) days from the date of the applicable Project Agreement, Lender may at its sole option terminate Lender's obligation to fund the Loan or any Project Loan by written notice to Borrower.

(b) Construction of Improvements. The Improvements shall be constructed and fully equipped in a good and workmanlike manner with materials of high quality, strictly in accordance with the Plans and Specifications (or in accordance with any changes therein that may be approved in writing by Lender or as to which Lender's approval is not required), and such construction and equipping will be commenced on or before the Construction Commencement Date and prosecuted with due diligence and continuity in accordance with the Construction Schedule and fully completed not later than the Completion Date. The Completion Date shall be extended in writing by Lender by the number of days resulting from any Unavoidable Delay in the construction of the Project, (but under no circumstances shall Lender be obligated to extend the Completion Date beyond thirty (30) days), provided that Lender shall not be obligated to grant any such extension unless (a) Borrower gives notice of such delay to Lender within ten (10) days of learning of the event resulting in such delay, (b) after giving effect to the consequences of such delay, the Project Loan shall remain "In Balance" and (c) such delay is permitted under each of the Leases, or Borrower obtains a written extension from each Tenant whose Lease does not permit such delay.

(c) Changes in Plans and Specifications. No changes will be made in the Plans and Specifications without the prior written approval of Lender; provided, however, that Borrower may make changes to the Plans and Specifications if (i) Borrower notifies Lender in writing of such change within seven (7) days thereafter; (ii) Borrower obtains the approval of all parties whose approval is required, including any Tenants under Leases, sureties, and any Governmental Authority to the extent approval from such parties is required; (iii) the structural integrity of the Improvements is not impaired; (iv) no material change in architectural appearance is effected; (v) the performance of the mechanical, electrical, and life safety systems of the Improvements is not affected; (vi) the cost of or reduction resulting from such change (x) does not exceed \$25,000 and (y) when added to all other changes which have not been approved in writing by Lender, the resulting aggregate cost or reduction does not exceed \$25,000. Changes in the scope of construction work or to any construction related contract must be documented with a change order on the AIA Form G701 or equivalent form.

(d) Inspection by Lender. Borrower will cooperate with Lender in arranging for inspections by representatives of Lender of the progress of the Construction from time to time including an examination of (i) the Improvements, (ii) all materials to be used in the Construction, (iii) all plans and shop drawings which are or may be kept at the construction site, (iv) any contracts, bills of sale, statements, receipts or vouchers in connection with the

Improvements, (v) all work done, labor performed, materials furnished in and about the Improvements, (vi) all books, contracts and records with respect to the Improvements, and (vii) any other documents relating to the Improvements or the Construction. Borrower shall cooperate with Lender's Consultant to enable him to perform his functions hereunder and will promptly comply with Lender's requirements and remove any dissatisfaction regarding the Construction of the Improvements or the progress thereof.

(e) Mechanics' Liens and Contest Thereof. Borrower will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Project or any funds due to the General Contractor, and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, provided, however, that Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim provided that Borrower posts a statutory lien bond which removes such lien from title to the Project within twenty (20) days of written notice by Lender to Borrower of the existence of the lien.) Lender will not be required to make any further disbursements of the proceeds of the Loan until any mechanics' lien claims have been removed and Lender may, at its option, restrict disbursements to reserve sufficient sums to pay 150% of the lien.

(f) Settlement of Mechanics' Lien Claims. If Borrower shall fail promptly either (i) to discharge any such lien, or (ii) post a statutory lien bond in the manner provided in Section 15.1(e) Lender may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, may in its sole discretion effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Insurer, and any amounts so expended by Lender, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute disbursement of the proceeds of the Project Loan hereunder. In settling, compromising or discharging any claims for lien, Lender shall not be required to inquire into the validity or amount of any such claim.

(g) Renewal of Insurance. Borrower shall cause insurance policies to be maintained in compliance with Exhibit D at all times. Borrower shall timely pay all premiums on all insurance policies required hereunder, and as and when additional insurance is required, from time to time, during the progress of Construction, and as and when any policies of insurance may expire, furnish to Lender, premiums prepaid, additional and renewal insurance policies with companies, coverage and in amounts satisfactory to Lender in accordance with Section 8.1(g).

(h) Payment of Taxes. Borrower shall pay all real estate taxes and assessments and charges of every kind upon the Project before the same become delinquent, provided, however, that Borrower shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (i) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Project or any part thereof or any interest therein, (ii) Borrower has notified Lender of Borrower's intent to contest such taxes, and (iii) Borrower has deposited security in form and amount satisfactory to Lender, in its sole discretion, and has increased the amount of such security so deposited promptly after Lender's request therefor. If Borrower fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Lender for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse

conclusion of any such contest, shall fail to pay such tax, assessment or charge, Lender may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Lender shall be deemed to constitute disbursements of the Project Loan proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note). Borrower shall furnish to Lender evidence that taxes are paid at least five (5) days prior to the last date for payment of such taxes and before imposition of any penalty or accrual of interest.

(i) Tax and Insurance Escrow Accounts. Borrower shall, following the written request of Lender or upon the occurrence of any Event of Default, make insurance and tax escrow deposits, in amounts reasonably determined by Lender from time to time as being needed to pay taxes and insurance premiums when due, in an interest bearing escrow account held by Lender in Lender's name and under its sole dominion and control. All payments deposited in the escrow account, and all interest accruing thereon, are pledged as additional collateral for the Project Loan. Notwithstanding Lender's holding of the escrow account, nothing herein shall obligate Lender to pay any insurance premiums or real property taxes with respect to any portion of the Project unless the Event of Default has been cured to the satisfaction of Lender. If the Event of Default has been satisfactorily cured, Lender shall make available to Borrower such funds as may be deposited in the escrow account from time to time for Borrower's payment of insurance premiums or real property taxes due with respect to the Project.

(j) Personal Property. All of Borrower's personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the Construction or the operation of the Project shall always be located at the Project and shall be kept free and clear of all liens, encumbrances and security interests.

(k) Leasing Restrictions. Without the prior written consent of Lender, Borrower and Borrower's agents shall not (i) enter into any additional Leases, (ii) modify, amend or terminate any Lease, or (iii) accept any rental payment in advance of its due date. The terms of all Leases, whether now existing or hereafter executed (including, without limitation, the term of the leases and any co-tenancy provisions) must be acceptable to Lender. Borrower shall provide Lender with a copy of all Leases no less than ten (10) days prior to execution of such Leases. Borrower shall provide Lender with a copy of the fully executed original of all Leases promptly following their execution.

(l) Defaults Under Leases. Borrower will not suffer or permit any breach or default to occur in any of Borrower's obligations under any of the Leases nor suffer or permit the same to terminate by reason of any failure of Borrower to meet any requirement of any Lease including those with respect to any time limitation within which any of Borrower's work is to be done or the space is to be available for occupancy by the lessee. Borrower shall notify Lender promptly in writing in the event a Tenant commits a material default under a Lease.

(m) Lender's Attorneys' Fees for Enforcement of Agreement. In case of any default or Event of Default hereunder, Borrower (in addition to Lender's attorneys' fees, if any, to be paid pursuant to Section 7.4) will pay Lender's attorneys' and paralegal fees (including, without limitation, any attorney and paralegal fees and costs incurred in connection with any litigation or bankruptcy or administrative hearing and any appeals therefrom and any post-judgment

enforcement action including, without limitation, supplementary proceedings) in connection with the enforcement of this Agreement; without limiting the generality of the foregoing, if at any time or times hereafter Lender employs counsel (whether or not any suit has been or shall be filed and whether or not other legal proceedings have been or shall be instituted) for advice or other representation with respect to the Project, this Agreement, or any of the other Project Documents, or to protect, collect, lease, sell, take possession of, or liquidate any of the Project, or to attempt to enforce any security interest or lien in any portion of the Project, or to enforce any rights of Lender or Borrower's obligations hereunder, then in any of such events all of the attorneys' fees arising from such services, and any expenses, costs and charges relating thereto (including fees and costs of paralegals), shall constitute an additional liability owing by Borrower to Lender, payable on demand.

(n) Appraisals. Lender shall have the right to obtain a new or updated Appraisal of the Project from time to time. Borrower shall cooperate with Lender in this regard. If the Appraisal is obtained to comply with this Agreement or any applicable law or regulatory requirement, or bank policy promulgated to comply therewith, or if an Event of Default exists, Borrower shall pay for any such Appraisal upon Lender's request.

(o) Furnishing Information. Borrower shall deliver or cause to be delivered to Lender: (i) annual financial statements and a completed Certificate of Compliance in the form of Exhibit H attached hereto within one hundred and twenty (120) days after the end of each calendar year with respect to the Borrower and the Guarantors (other than Jeff H. Farmer, Jr.), and (ii) with respect to Jeff H. Farmer, Jr., updated personal financial statements and a completed Certificate of Compliance in the form of Exhibit H attached hereto every twelve (12) months from the date that such information was last provided to the Lender. All such financial statements shall be in a format approved in writing by Lender in Lender's reasonable sole discretion. Each financial statement shall be certified as true, complete and correct by its preparer and by Borrower or, in the case of each of the Guarantors' financial statements, by the Guarantor to whom it relates. Borrower shall deliver to Lender with respect to Borrower and Guarantor annual Federal Income Tax Returns within ten (10) days after timely filing. In addition, prior to the Project Loan Opening and then not later than sixty (60) days before the end of each fiscal year of Borrower, Borrower shall deliver to Lender the Project's updated annual operating budget for the following fiscal year. Within fifteen (15) days following the end of each month, Borrower shall deliver to Lender: (i) monthly unaudited operating cash flow statements for the Project, certified as true, complete and correct by Borrower showing actual sources and uses of cash during the preceding month, and (ii) a current rent roll and a summary of all leasing activity then taking place with respect to the Project, particularly describing the status of all pending non-residential lease negotiations, if any. Borrower shall deliver to Lender upon the Completion Date and then not later than forty-five (45) days after the end of each calendar quarter operating statements for the Project, in form acceptable to Lender. Borrower and the Guarantor shall provide such additional financial information as Lender reasonably requires. Borrower shall during regular business hours permit Lender or any of its agents or representatives to have access to and examine all of its books and records regarding the development and operation of the Project. If any such financial statement or other report or information described in this subsection is not delivered to Lender as provided above, Borrower agrees to pay a late charge to Lender in the amount of \$500 per item per day.

(p) Sign and Publicity. Upon Lender's request, Borrower shall promptly erect a sign approved in advance by Lender in a conspicuous location on the Project during the Construction indicating that the financing for the Project is provided by Lender. Lender reserves the right to publicize the making of the Project Loan.

(q) Lost Note. Upon Lender's furnishing to Borrower an affidavit to such effect, Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new note containing the same terms and conditions as the Note.

(r) Indemnification. Developer and Borrower shall indemnify Lender, including each party owning an interest in the Loan and their respective officers, directors, employees and consultants (each, an "Indemnified Party") and defend and hold each Indemnified Party harmless from and against all claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs and expenses) of any and every kind to any persons or property by reason of (i) the Construction; (ii) the operation or maintenance of the Project; (iii) any breach of representation or warranty, default or Event of Default under this Agreement or any other Project Document or Related Document; or (iv) any other matter arising in connection with the Loan, the Project Loan, Borrower, Guarantor or Tenant, or the Project. No Indemnified Party shall be entitled to be indemnified against its own gross negligence or willful misconduct. The foregoing indemnification shall survive repayment of the Project Loan and shall continue to benefit Lender following any assignment of the Project Loan with respect to matters arising or accruing prior to such assignment.

(s) No Additional Debt. Except for the Project Loan, Borrower shall not incur any indebtedness (whether personal or nonrecourse, secured or unsecured) other than customary trade payables paid within sixty (60) days after they are incurred.

(t) Compliance With Laws. Borrower shall comply with all applicable requirements (including applicable Laws) of any Governmental Authority having jurisdiction over Borrower or the Project.

(u) Organizational Documents. Borrower shall not, without the prior written consent of Lender, permit or suffer (i) a material amendment or modification of its organizational documents, (ii) the admission of any new member, partner or shareholder, or (iii) any dissolution or termination of its existence.

(v) Furnishing Reports. Upon Lender's request, Borrower shall provide Lender with copies of all inspections, reports, test results and other information received by any Borrower, which in any way relate to the Project or any part thereof.

(w) Management Contracts. Borrower shall not enter into, modify, amend, terminate or cancel any management contracts for the Project or agreements with agents or brokers, without the prior written approval of Lender.

(x) Furnishing Notices. Borrower shall provide Lender with copies of all material notices pertaining to the Project received by Borrower from any Tenant, Governmental Authority or insurance company within seven (7) days after such notice is received.

(y) Construction Contracts. Borrower shall not enter into, modify, amend, terminate or cancel any contracts for the Construction, without the prior written approval of Lender, which approval shall not be unreasonably withheld. Borrower will furnish Lender promptly after execution thereof executed copies of all contracts between Borrower, architects, engineers and contractors and all subcontracts between the General Contractor or contractors and all of their subcontractors and suppliers, which contracts and subcontracts may not have been furnished pursuant to Section 9.1(a) at the time of the Opening of the Project Loan.

(z) Correction of Defects. Within five (5) days after Borrower acquires knowledge of or receives notice of a defect in the Improvements or any departure from the Plans and Specifications, or any other requirement of this Agreement, Borrower will proceed with diligence to correct all such defects and departures.

(aa) Hold Disbursements in Trust. Borrower shall receive and hold in trust for the sole benefit of Lender (and not for the benefit of any other person, including, but not limited to, contractors or any subcontractors) all advances made hereunder directly to Borrower, for the purpose of paying costs of the Construction in accordance with the Budget. Borrower shall use the proceeds of the Project Loan solely for the payment of costs as specified in the Budget. Borrower will pay all other costs, expenses and fees relating to the acquisition, equipping, use and operation of the Project.

(bb) Foundation Survey. Not later than thirty (30) days after completion of the foundation with respect to the Improvements, Borrower shall furnish to Lender a survey of the land underlying the Project with the foundation of the Improvements located thereon, and also satisfying the requirements set forth in Section 8.1(f).

(cc) Alterations. Without the prior written consent of Lender, Borrower shall not make any material alterations to the Project (other than completion of the Construction in accordance with the Plans and Specifications).

(dd) Cash Distributions. Borrower shall not make any distributions to partners, members or shareholders, provided that after completion of Construction and achievement of breakeven operations Borrower may so distribute Monthly Excess Cash Flow not needed to pay Operating Expenses or amount payable under the Project Documents.

(ee) Net Cash Flow Deposit. All Net Cash Flow from the Project shall be deposited with Lender in a demand deposit account in Borrower's name but under Lender's sole dominion and control. Funds deposited into such account shall be applied against the monthly payments of interest and principal on the Project Loan and Project Loan proceeds will be disbursed from the interest reserve set out in the Budget only to the extent the Net Cash Flow is not sufficient to make the payments.

(ff) Conduit Program. Lender shall have the right to make the first offer, and to match Borrower's best offer, with respect to placing the Project Loan into a conduit program.

(gg) Project Sale. Developer shall use its best efforts to obtain, on or before December 31, 2005, in form and substance reasonably satisfactory to Lender, either (i) a bona fide third-party arms-length offer for the sale of 28 properties listed on the engagement letter with the

(iv) no material Leases in effect at the time of such casualty or condemnation are or will be terminated nor rent decreased as a result of such casualty or condemnation, (v) if the cost of restoration exceeds ten percent (10%) of the Loan Amount, in Lender's sole determination after completion of restoration the Loan Amount will not exceed 75% of the fair market value of the Project, (vi) in Lender's reasonable determination, the Project can be restored to an architecturally and economically viable project in compliance with applicable Laws, (vii) each Guarantor reaffirms its Guaranty in writing, and (viii) in Lender's reasonable determination, such restoration is likely to be completed not later than three months prior to the Maturity Date.

16.2 Borrower's Obligation to Rebuild and Use of Proceeds Therefor.

In case Lender does not elect to apply or does not have the right to apply the Proceeds to the indebtedness, as provided in Section 16.1 above, a Borrower shall:

(a) Proceed with diligence to make settlement with insurers or the appropriate governmental authorities and cause the Proceeds to be deposited with Lender;

(b) In the event of any delay in making settlement with insurers or the appropriate governmental authorities or effecting collection of the Proceeds, deposit with Lender the full amount required to complete construction as aforesaid;

(c) In the event the Proceeds and the available proceeds of the Project Loan are insufficient to assure the Lender that the Project Loan will be In Balance, promptly deposit with Lender any amount necessary to place the Project Loan In Balance; and

(d) Promptly proceed with the assumption of construction of the Improvements, including the repair of all damage resulting from such fire, condemnation or other cause and restoration to its former condition.

Any request by Borrower for a disbursement by Lender of Proceeds and funds deposited by Borrower shall be treated by Lender as if such request were for an advance of the Project Loan hereunder, and the disbursement thereof shall be conditioned upon Borrower's compliance with and satisfaction of the same conditions precedent as would be applicable under this Agreement for an advance of the Project Loan.

ARTICLE 17 ASSIGNMENTS BY LENDER AND BORROWER

17.1 Assignments and Participations.

Lender may from time to time sell the Loan or any or all of the Project Loans and the Project Documents (or any interest therein) relating thereto and may grant participations in the Loan or any or all of the Project Loans. Borrower agrees to cooperate with Lender's efforts to do any of the foregoing and to execute all documents reasonably required by Lender in connection therewith which do not materially adversely affect Borrower's rights under the Project Documents.

17.2 Prohibition of Assignments and Transfers by Borrower.

Borrower shall not assign or attempt to assign its rights under this Agreement, the Project Agreement and any Project Documents and any purported assignment shall be void. Without the prior written consent of Lender, in Lender's sole discretion, Borrower shall not suffer or permit (a) any change in the management (whether direct or indirect) of the Project, or (b) any Transfer.

17.3 Prohibition of Transfers in Violation of ERISA.

In addition to the prohibitions set forth in Section 17.2 above, neither Developer nor Borrower shall assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of its interest or rights in this Agreement, the Project Agreement or in the Project, or attempt to do any of the foregoing or suffer any of the foregoing, nor shall any party owning a direct or indirect interest in Borrower or Developer assign, sell, pledge, mortgage, encumber, transfer, hypothecate or otherwise dispose of any of its rights or interest (direct or indirect) in Borrower or Developer, attempt to do any of the foregoing or suffer any of the foregoing, if such action would cause the Loan, any Project Loan or the exercise of any of Lender's rights in connection therewith, to constitute a prohibited transaction under ERISA or the Internal Revenue Code or otherwise result in Lender being deemed in violation of any applicable provision of ERISA. Borrower and Developer, jointly and severally, agree to indemnify and hold Lender free and harmless from and against all losses, costs (including attorneys' fees and expenses), taxes, damages (including consequential damages) and expenses Lender may suffer by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA necessary or desirable in Lender's sole judgment or by reason of a breach of the foregoing prohibitions. The foregoing indemnification shall be a recourse obligation of Borrower and Developer and shall survive repayment of the Note, notwithstanding any limitations on recourse contained herein or in any of the Project Documents.

17.4 Successors and Assigns.

Subject to the foregoing restrictions on transfer and assignment contained in this Article 17, this Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and permitted assigns.

**ARTICLE 18
TIME OF THE ESSENCE**

18.1 Time is of the Essence.

Borrower and Developer agree that time is of the essence under this Agreement.

ARTICLE 19
EVENTS OF DEFAULT

The occurrence of any one or more of the following shall constitute an "Event of Default" as said term is used herein:

(a) Failure of any Borrower (i) (A) to make any principal payment when due, (B) to pay any interest within ten (10) days after the date when due or (C) to observe or perform any of the other covenants or conditions by any Borrower to be performed under the terms of this Agreement, the Project Agreement or any other Project Document concerning the payment of money, for a period of ten (10) days after written notice from Lender that the same is due and payable; or (ii) for a period of thirty (30) days after written notice from Lender, to observe or perform any non-monetary covenant or condition contained in this Agreement, the Project Agreement or any other Project Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure and cannot reasonably be cured within said thirty (30) day period, then such Borrower shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (Y) Borrower commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Lender's notice, and (Z) the existence of such default will not result in any Tenant having the right to terminate its Lease due to such default; and provided further that if a different notice or grace period is specified under any other subsection of this Article 19 with respect to a particular breach, or if another subsection of this Article 19 applies to a particular breach and does not expressly provide for a notice or grace period the specific provision shall control.

(b) The disapproval by Lender or Lender's Consultant at any time of any construction work and failure of any Borrower to cause the same to be corrected to the satisfaction of Lender within the cure period provided in Section 19.1(a)(ii) above.

(c) A delay in the Construction of any Project or a discontinuance for a period of fifteen (15) days after written notice from Lender concerning such delay or discontinuance (other than Unavoidable Delays), or in any event a delay in the Construction of any Project so that the same is not, in Lender's judgment (giving due consideration to the assessment of Lender's Consultant), likely to be completed on or before the Completion Date for such Project.

(d) The bankruptcy or insolvency of any General Contractor and failure of a Borrower to procure a contract with a new contractor satisfactory to Lender within thirty (30) days from the occurrence of such bankruptcy or insolvency.

(e) Any Transfer or other disposition in violation of Sections 17.2 or 17.3.

(f) Any material default by any Borrower, as lessor, under the terms of any Lease following the expiration of any applicable notice and cure period, provided that if the Lease does not provide a notice and cure period, then the notice and cure period provided in (a)(i) above will apply to any such monetary default, and the notice and cure period provided in (a)(ii) will apply to any such non-monetary default (which respective periods shall commence upon written notice of default from Lender or the applicable Tenant, whichever occurs first).

(g) If any warranty, representation, statement, report or certificate made now or hereafter by any Borrower or any Guarantor is untrue or incorrect at the time made or delivered, provided that if such breach is reasonably susceptible of cure, then no Event of Default shall exist so long as such Borrower cures said breach (i) within the notice and cure period provided in (a)(i) above for a breach that can be cured by the payment of money or (ii) within the notice and cure period provided in (a)(ii) above for any other breach.

(h) Any Borrower or any Guarantor shall commence a voluntary case concerning Borrower or such Guarantor under the Bankruptcy Code; or an involuntary proceeding is commenced against any Borrower or any Guarantor under the Bankruptcy Code and relief is ordered against such Borrower or such Guarantor, or the petition is controverted but not dismissed or stayed within sixty (60) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of any Borrower or any Guarantor; or any Borrower or any Guarantor commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to any Borrower or any Guarantor; or there is commenced against any Borrower or any Guarantor any such proceeding which remains undismissed or unstayed for a period of sixty (60) days; or any Borrower or any Guarantor fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or any Borrower or any Guarantor by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of sixty (60) days.

(i) Any Borrower or any Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of any Borrower or any Guarantor are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

(j) If any Borrower is enjoined, restrained or in any way prevented by any court order from constructing or operating its Project.

(k) Failure by any Borrower to make any Deficiency Deposit with Lender within the time and in the manner required by Article 11 hereof.

(l) One or more final, unappealable judgments are entered (i) against any Borrower in amounts aggregating in excess of \$100,000 or (ii) against any Guarantor in amounts aggregating in excess of \$250,000, and said judgments are not stayed or bonded over within thirty (30) days after entry.

(m) If any Borrower or any Guarantor shall fail to pay any debt owed by it or is in default under any agreement with Lender or any other party (other than a failure or default for which Borrower's maximum liability does not exceed \$100,000 and Guarantor's maximum

liability does not exceed \$250,000) and such failure or default continues after any applicable grace period specified in the instrument or agreement relating thereto.

(n) If a Material Adverse Change occurs with respect to any Borrower, any Project or any Guarantor or any material Tenant.

(o) The occurrence of any other event or circumstance denominated as an Event of Default in this Agreement, any Project Agreement or under any of the other Project Documents and the expiration of any applicable grace or cure periods, if any, specified for such Event of Default herein or therein, as the case may be.

(p) Failure of the Guarantor to meet the minimum net worth test and the minimum liquidity test set forth in 8.1(w) on each anniversary of the date of this Agreement occurring during the term of the Loan.

ARTICLE 20 LENDER'S REMEDIES IN EVENT OF DEFAULT

20.1 Remedies Conferred Upon Lender.

Upon the occurrence of any Event of Default, Lender may pursue any one or more of the following remedies concurrently or successively with respect to one or any combination of Borrowers and Projects, it being the intent hereof that none of such remedies shall be to the exclusion of any other and that an Event of Default by one Borrower under its Project Documents shall be an Event of Default with respect to all Borrowers:

(a) Take possession of any or all of the Projects (at Lender's sole discretion and sole determination) and complete the Construction with respect thereto and do anything which is necessary or appropriate in its sole judgment to fulfill the obligations of any Borrower under this Agreement, any Project Agreement and the other Project Documents, including either the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution in its Project to complete the Construction in the name of Borrower; to use unadvanced funds remaining under the Note or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Note, to complete the Construction; to make changes in the Plans and Specifications which shall be necessary or desirable to complete the Construction in substantially the manner contemplated by the Plans and Specifications; to retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims, which may be liens or security interests, or to avoid such bills and claims becoming liens against the Project; to execute all applications and certificates in the name of Borrower prosecute and defend all actions or proceedings in connection with the Improvements or Project; and to do any and every act which the Borrower might do in its own behalf; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked;

(b) Withhold further disbursement of the proceeds of any or all of the Project Loans and/or terminate Lender's obligations to make further disbursements hereunder;

(c) Declare the indebtedness evidenced by any or all of the Notes to be immediately due and payable;

(d) Use and apply any monies or letters of credit deposited by any Borrower with Lender, regardless of the purposes for which the same was deposited, to cure any such default or to apply on account of any indebtedness under this Agreement which is due and owing to Lender; and

(e) Exercise or pursue any other remedy or cause of action permitted under this Agreement, any of the Project Agreements or any other Project Documents, or conferred upon Lender by operation of Law.

Notwithstanding the foregoing, upon the occurrence of any Event of Default under Section 19.1(h) with respect to Borrower, all amounts evidenced by the Notes shall automatically become due and payable, without any presentment, demand, protest or notice of any kind to any Borrower.

ARTICLE 21 GENERAL PROVISIONS

21.1 Captions.

The captions and headings of various Articles, Sections and subsections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

21.2 Modification; Waiver.

No modification, waiver, amendment or discharge of this Agreement, the Project Agreements or any other Project Document shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment or discharge is sought.

21.3 Governing Law.

Irrespective of the place of execution and/or delivery, this Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Ohio.

21.4 Acquiescence Not to Constitute Waiver of Lender's Requirements.

Each and every covenant and condition for the benefit of Lender contained in this Agreement may be waived by Lender, provided, however, that to the extent that Lender may have acquiesced in any noncompliance with any construction or nonconstruction conditions precedent to the Opening of the Project Loan or to any subsequent disbursement of Project Loan

proceeds, such acquiescence shall not be deemed to constitute a waiver by Lender of such requirements with respect to any future disbursements of Loan proceeds.

21.5 Disclaimer by Lender.

This Agreement is made for the sole benefit of Developer, each Borrower and Lender, and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement, or by reason of any actions taken by Lender pursuant to this Agreement. Lender shall not be liable to any contractors, subcontractors, supplier, architect, engineer, tenant or other party for labor or services performed or materials supplied in connection with the Construction. Lender shall not be liable for any debts or claims accruing in favor of any such parties against any Borrower or others or against any Project. Lender, by making the Loan and the Project Loans or taking any action pursuant to any of the Project Documents, shall not be deemed a partner or a joint venturer with any Borrower or fiduciary of any Borrower. No payment of funds directly to a contractor or subcontractor or provider of services shall be deemed to create any third-party beneficiary status or recognition of same by the Lender. Without limiting the generality of the foregoing:

(a) Lender shall have no liability, obligation or responsibility whatsoever with respect to the Construction. Any inspections of the Construction made by or through Lender are for purposes of administration of a Project Loan only and neither any Borrower nor any third party is entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans and Specifications, state of completion or otherwise;

(b) Lender neither undertakes nor assumes any responsibility or duty to any Borrower to select, review, inspect, supervise, pass judgment upon or inform any Borrower of any matter in connection with any Project, including matters relating to the quality, adequacy or suitability of: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and material suppliers employed or utilized in connection with the Construction, or the workmanship of or the materials used by any of them, or (iii) the progress or course of Construction and its conformity or nonconformity with the Plans and Specifications; Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information to any Borrower by Lender in connection with such matters is for the protection of Lender only, and neither any Borrower nor any third party is entitled to rely thereon; and

(c) Lender owes no duty of care to protect any Borrower, Guarantor, or any Tenant against negligent, faulty, inadequate or defective building or construction.

21.6 Partial Invalidity; Severability.

If any of the provisions of this Agreement, or the application thereof to any person, party or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21.7 Definitions Include Amendments.

Definitions contained in this Agreement which identify documents, including, but not limited to, the Project Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments, modifications, and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of Lender. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Agreement.

21.8 Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

21.9 Entire Agreement.

This Agreement, taken together with all of the other Project Documents and all certificates and other documents delivered by Borrower to Lender, embody the entire agreement and supersede all prior agreements, written or oral, relating to the subject matter hereof.

21.10 Waiver of Damages.

In no event shall Lender be liable to any Borrower for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by Lender of its obligations under this Agreement or any of the Project Documents, and Borrower for itself and its Guarantors waive all claims for punitive, exemplary or consequential damages.

21.11 Claims Against Lender.

Lender shall not be in default under this Agreement, or under any other Project Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within three (3) months after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Borrower waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrower does not give such notice timely as aforesaid. Borrower acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrower with regard to the Loan. No Guarantor or Tenant is intended to have any rights as a third-party beneficiary of the provisions of this Section 21.11.

21.12 Jurisdiction.

TO THE GREATEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), BORROWER IRREVOCABLY

(A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE COUNTY OF HAMILTON AND STATE OF OHIO, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY OHIO STATE OR UNITED STATES COURT SITTING IN THE COUNTY OF HAMILTON MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

21.13 Set-Offs.

After the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and directs Lender from time to time to charge Borrower's accounts and deposits with Lender (or its Affiliates), and to pay over to Lender an amount equal to any amounts from time to time due and payable to Lender hereunder, under the Note or under any other Project Document. Borrower hereby grants to Lender a security interest in and to all such accounts and deposits maintained by the Borrower with Lender (or its Affiliates).

ARTICLE 22 NOTICES

Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to Developer and Borrower:

Spectra Group, Inc.
5851 Ridge Bend Road
Memphis, Tennessee 38120
Attention: Jeff H. Farmer, Jr.
Telephone: 901-665-2320
Facsimile: 901-665-2354

With a copy to:

Attention: _____
Telephone: _____
Facsimile: _____

If to Lender:

KeyBank National Association
580 Walnut Street, 2nd Floor
Cincinnati, Ohio 45202
Attention: Kurt L. Reiber
Telephone: (513) 762-8215
Facsimile: (513) 762-8450

With a copy to:

Thompson Hine LLP
312 Walnut Street
Suite 1400
Cincinnati, Ohio 45202
Attention: Stephen M. King
Telephone: (513) 352-6746
Facsimile: (513) 241-4771

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Lender shall send to each Guarantor (at its notice address set forth in each respective Guaranty) a copy of any notice which is required to be sent to Borrower under Section 19 prior to the occurrence of an Event of Default, and Lender shall accept a cure by any Guarantor within the time periods set forth in Section 19 as a cure by Borrower.

**ARTICLE 23
WAIVER OF JURY TRIAL**

BORROWER AND LENDER EACH WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**ARTICLE 24
OHIO PROVISIONS**

24.1 Lender's Attorneys' Fees.

With respect to any agreement by Borrower in this Agreement or in any other Project Document to pay Lender's attorneys' fees and disbursements incurred in connection with the Loan, Borrower agrees that each Loan Document is a "contract of indebtedness" and that the attorneys' fees and disbursements referenced are those which are a reasonable amount, all as contemplated by Ohio Revised Code Section 1301.21, as such Section may hereafter be amended. Borrower further agrees that the indebtedness incurred in connection with the Loan is not incurred for purposes that are primarily personal, family or household and confirms that the total amount owed on the contract of indebtedness exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00).

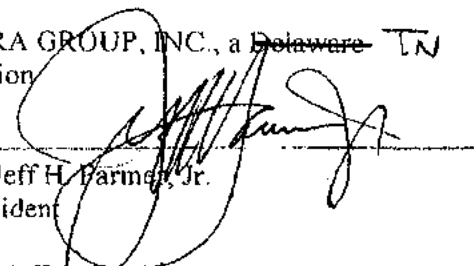
24.2 Notice of Commencement.

Borrower shall file an appropriate Notice of Commencement pursuant to Section 1311.04 of the Ohio Revised Code in the office of the county recorder in the county where the Project Site is located after the recording of the Mortgage and other Project Documents prior to the commencement of any construction, demolition or renovation activities on or to the Project.

EXECUTED as of the date first set forth above.

DEVELOPER:

SPECTRA GROUP, INC., a ~~Delaware~~ TN
corporation


By: 
Name: Jeff H. Farmer, Jr.
Its: President

Borrower's Tax ID No. _____


JEFF H. FARMER, JR., Individually

LENDER:

KEYBANK NATIONAL ASSOCIATION

By: 
Name: Kues L. Ceizer
Title: SVP

SCHEDULE 1

CONSTRUCTION TRANCHE

Project	Project Loan Amount
Mustang Shopping Center	\$2,800,000
Marshalltown Shopping Center	\$2,640,000
Alice Shopping Center	\$4,087,500
Belton Shopping Center	\$3,000,000
Keokuk Shopping Center	\$1,333,000
Tell City Shopping Center	\$2,587,500
Pampa Shopping Center	\$1,685,000
Shelbyville Shopping Center	\$1,875,000
Uvalde Shopping Center	\$3,025,500
Bloomington Shopping Center	\$2,732,000
Wauseon Shopping Center	\$1,612,500
Bad Axe Shopping Center	\$2,898,000
Cortez Shopping Center	\$2,100,000
Douglas Shopping Center	\$3,413,000
Ville Platte Shopping Center	\$2,510,000
Eden Shopping Center	\$2,512,500
Yukon Shopping Center	\$3,570,000
Total	\$44,381,500

STABILIZED TRANCHE

Project	Project Loan Amount
Newton Shopping Center	\$1,612,500
Perry Shopping Center	\$1,425,000
Ottumwa Shopping Center	\$2,625,000
Newcastle Shopping Center	\$1,350,000
Oskaloosa Shopping	\$1,762,500
LaJuta Shopping Center	\$1,987,500
Plainview Shopping Center	\$3,618,750
Total	\$14,381,250

EXHIBIT A

Title Requirements

1. Title Insurance Company Requirements. The maximum single risk (i.e., the amount insured under any one policy) by a title insurer may not exceed 25% of that insurer's surplus and statutory reserves. Reinsurance must be obtained by closing for any policy exceeding such amount.
2. Loan Policy Forms. Standard 1992 American Land Title Association ("ALTA") form of loan title insurance policy, or the 1970 (amended October 17, 1970) ALTA loan form policies must be used.
3. Insurance Amount. The amount insured must equal at least the original principal amount of the Project Loan.
4. Named Insured. The named insured under the Title Policy must be substantially the same as the following: "KeyBank National Association, and its respective successors and assigns."
5. Creditors' Rights. Any "creditors' rights" exception or other exclusion from coverage for voidable transactions under bankruptcy, fraudulent conveyance, or other debtor protection laws or equitable principles must be removed by either an endorsement or a written waiver.
6. Arbitration. In the event that the form policy which is utilized includes a compulsory arbitration provision, the insurer must agree that such compulsory arbitration provisions do not apply to any claims by or on behalf of the insured. Please note that the 1987 and 1992 ALTA form loan policies include such provisions.
7. Date of Policy. The effective date of the Title Policy must be as of the date and time of the closing.
8. Legal Description. The legal description of the property contained in the Title Policy must conform to (a) the legal description shown on the survey of the property, and (b) the legal description contained in the Mortgage. In any event, the Title Policy must be endorsed to provide that the insured legal description is the same as that shown on the survey.
9. Easements. Each Title Policy shall insure, as separate parcels: (a) all appurtenant easements and other estates benefiting the property, and (b) all other rights, title, and interests of the borrower in real property under reciprocal easement agreements, access agreements, operating agreements, and agreements containing covenants, conditions, and restrictions relating to the Project.

10. Exceptions to Coverage. With respect to the exceptions, the following applies:

- a) Each Title Policy shall afford the broadest coverage available in the state in which the subject property is located.
- b) The "standard" exceptions (such as for parties in possession or other matters not shown on public records) must be deleted.
- c) The "standard" exception regarding tenants in possession under residential leases, should also be deleted. For commercial properties, a rent roll should be attached in lieu of the general exception.
- d) The standard survey exception to the Title Policy must be deleted. Instead, a survey reading reflecting the current survey should be incorporated.
- e) Any exception for taxes, assessments, or other lienable items must expressly insure that such taxes, assessments, or other items are not yet due and payable.
- f) Any lien, encumbrance, condition, restriction, or easement of record must be listed in the Title Policy, and the Title Policy must affirmatively insure that the improvements do not encroach upon the insured easements or insure against all loss or damage due to such encroachment
- g) The Title Policy may not contain any exception for any filed or unfiled mechanics' or materialmen's liens.
- h) In the event that a comprehensive endorsement has been issued and any Schedule B exceptions continue to be excluded from the coverage provided through that endorsement, then a determination must be made whether such exceptions would be acceptable to Bank. In the event that it is determined that such exception is acceptable, a written explanation regarding the acceptability must be submitted as part of the delivery of the loan documents.

If Schedule B indicates the presence of any easements that are not located on the survey, the Title Policy must provide affirmative insurance against any loss resulting from the exercise by the holder of such easement of its right to use or maintain that easement. ALTA Form 103.1 or an equivalent endorsement is required for this purpose.

11. Endorsements. With respect to endorsements, the following applies:

- a) Each Title Policy must include an acceptable environmental protection lien endorsement on ALTA Form 8.1. Please note that Form 8.1 may take exception for an entire statute which contains one or more specific sections under which environmental protection liens could take priority over the Mortgage; provided, however, that such specific sections under which the lien could arise must also be referenced.

- b) Each Title Policy must contain an endorsement which provides that the insured legal description is the same as shown on the survey.
- c) Each Title Policy must contain a comprehensive endorsement (ALTA Form 9) if a lien, encumbrance, condition, restriction, or easement is listed in Schedule B to the title insurance policy.
- d) Lender may require the following endorsements where applicable and available:

-access	-due execution	-single tax lot
-address	-first loss	-subdivision
-assessments	-last dollar	-tie in
-assignment of leases and rents	-leasehold	-usury
-assignment of loan documents	-mineral rights	
-contiguity	-mortgage tax	
-doing business	-reverter	

12. Other Coverages. Each Title Policy shall insure the following by endorsement or affirmative insurance to the extent such coverage is not afforded by the ALTA Form 9 or its equivalent in a particular jurisdiction:

- a) that no conditions, covenants, or restrictions of record affecting the property:
 - (i) have been violated,
 - (ii) create lien rights which prime the insured mortgage,
 - (iii) contain a right of reverter or forfeiture, a right of reentry, or power of termination, or
 - (iv) if violated in the future would result in the lien created by the insured mortgage or title to the property being lost, forfeited, or subordinated; and
- b) that except for temporary interference resulting solely from maintenance, repair, replacement, or alteration of lines, facilities, or equipment located in easements and rights of way taken as certain exceptions to each Title Policy, such exceptions do not and shall not prevent the use and operation of the Property or the improvements as used and operated on the effective date of the Title Policy.

13. Informational Matters. The Policy must include, as an informational note, the following:

- a) The recorded plat number together with recording information; and
- b) The property parcel number or the tax identification number, as applicable.

14. Delivery of Copies. Legible copies of all easements, encumbrances, or other restrictions shown as exceptions on the Title Policy must be delivered with the first draft of the title commitment.

EXHIBIT B

Form of Survey Certification

CERTIFICATION FOR SURVEYS

I hereby certify to KeyBank National Association, its successors and assigns, and _____ LLC, Thompson Hine LLP, _____ and First American Title Insurance Company that the survey prepared by me entitled "_____" was actually made upon the ground, that the property has unrestricted ingress and egress to and from _____ and _____ and such streets are completed, dedicated and accepted for public maintenance and use by the public body having jurisdiction over the same; that the property does not lie within flood hazard areas in accordance with the documents entitled "Department of Housing and Urban Development, Federal Insurance Administration - Special Flood Hazard Area Maps"; and that the survey is made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by ALTA and ACSM in 1999 for Class A Urban Survey and includes Items 1-4, 6-11 and 13 of Table A.

EXHIBIT C

LIBOR NOTICE ELECTION

NOTICE OF LIBOR FUNDING ELECTION

John Bertleff
KeyBank National Association
127 Public Square, 8th Floor
OH-01-27-0839
Cleveland, Ohio 44114

Date: _____

Mr. Bertleff:

Reference is made to the Promissory Note dated as of _____, 20__ made by _____, in favor of KeyBank National Association (the "Note"). The undersigned hereby gives notice pursuant to Section 5.1 of the Loan Agreement referenced in the Note of its desire for a LIBOR FUNDING ELECTION of a portion of the proceeds of the loan evidenced by the Note. As set forth in Section 2.1 of the Loan Agreement, the LIBOR Rate Interest Period shall be a period of one, two or three months.

The Following are the details of the LIBOR funding election to be set up as of the commencement date specified below:

1. The LIBOR Rate Interest Period is: One month, two months, or three months (select one)
2. The LIBOR funding commencement date is:
3. The LIBOR funding period expires:
4. The LIBOR funding principal amount is:
5. The LIBOR funding rate is LIBOR plus 1.85%, or

The sources for the above LIBOR are as follows (Choose as appropriate):

Prime Note Outstanding Balance:
Draw # _____ Advance:
Interest due:
Current LIBOR maturing _____ :
Current LIBOR maturing _____ :
Total:

The next LIBOR FUNDING ELECTION NOTIFICATION date is _____.

By: JHF Property Holdings LLC,
a Delaware limited liability
company, its Manager

By: 
Name: Jeff M. Farmer, Jr.
Its: Managing Member

EXHIBIT D

Insurance Requirements

Borrower shall obtain and keep in full force and effect either builder's risk insurance (the "Builder's Risk Insurance policy") coverage or permanent All Perils insurance coverage as appropriate, satisfactory to Lender, on the Project. All insurance policies shall be issued by carriers with a Best's Insurance Reports policy holder's rating of A and a financial size category of Class X and shall include a standard mortgage clause (without contribution) in favor of and acceptable to Lender. The policies shall provide for the following, and any other coverage that Lender may from time to time deem necessary:

a) Coverage Against All Peril and/or Builders Risk in the amount of 100% of the replacement cost of all Improvements located or to be located on the Land. If the policy is written on a CO-INSURANCE basis, the policy shall contain an AGREED AMOUNT ENDORSEMENT as evidence that the coverage is in an amount sufficient to insure the full amount of the mortgage indebtedness. "KeyBank National Association and its successors and assigns" shall be named as the "Mortgagee" and "Loss Payee".

b) Public liability coverage in a minimum amount of not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate. "KeyBank National Association and its successors and assigns" shall be named as an "Additional Insured".

c) Rent loss or business interruption coverage in a minimum amount approved by Lender of not less than the appraised rentals for a minimum of six months.

d) Flood hazard coverage in a minimum amount available, if the premises are located in a special flood hazard area ("Flood Hazard Area") as designated by the Federal Emergency Management Agency on its Flood Hazard Boundary Map and Flood Insurance Rate Maps, and the Department of Housing and Urban Development, Federal Insurance Administration, Special Flood Hazard Area Maps.

e) Workers Compensation and Disability insurance as required by law.

f) Such other types and amounts of insurance with respect to the premises and the operation thereof which are commonly maintained in the case of other property and buildings similar to the premises in nature, use, location, height, and type of construction, as may from time to time be required by the mortgagee.

Each policy shall provide that it may not be canceled, reduced or terminated without at least thirty (30) days prior written notice to Lender.

EXHIBIT E

Architect's Certificate

The firm of _____ hereby certifies for the benefit of KeyBank National Association that:

The firm has been employed by _____ pursuant to a contract dated _____ to provide architectural and engineering services commonly known as _____ which is located at _____

The contract provides for the following services:

_____	preparation of plans and specifications
_____	Pre-qualification of contractors
_____	Contract administration and supervision of construction
_____	Tenant space design
_____	_____
_____	_____

The firm is duly licensed and in good standing under laws of the state of _____ License No. _____

The foundations were designed in accordance with the recommendations contained in a soil report dated _____ which was prepared by _____

The following are all of the permits or governmental agency approvals required for the construction and occupancy of the building:

	<u>Issuing Agency</u>	<u>Date Issued</u>
Excavation Permit	_____	_____
Foundation Permit	_____	_____
Building Permit	_____	_____
EPA - Water	_____	_____
EPA - Sewer	_____	_____
EPA - Air	_____	_____
Cert. Of Occupancy Bldg.	_____	_____
Cert. Of Occupancy - Tenant	_____	_____
Other (Specify)	_____	_____
	_____	_____

All utilities necessary for the operation of the project are available with sufficient capacity at the boundaries of the project. If utility services must be brought to site, please explain: _____

The plans listed on the attached Schedule I comprise all of the plans which will be necessary for the complete construction of the project, excepting tenant space designs, and when the project is built in accordance therewith the project will (excepting completion of tenant improvements) be ready for occupancy. The plans are complete and contain all detail necessary for construction. Calculations of the gross building and the net rentable building area are attached as Schedule II. The plans (and the project will, when constructed in accordance therewith) comply with all applicable building, zoning, land use, subdivision, environmental, fire, safety and other applicable governmental laws, statutes, codes, ordinances, rules and regulations.

The attached Schedule III, establishing a timetable for completion of the project and showing on a monthly basis the anticipated progress of the work, is realistic and can be adhered to.

The following design drawings or plans have been or will be prepared by other designers or contractors.

<u>Type of Plans</u>	<u>Name of Preparing Firm</u>
_____	_____
_____	_____
_____	_____

The Specifications are: _____ shown on plans

_____ Bound separately

By: _____
Title: _____
Date: _____

EXHIBIT F

Borrower's Certificate

KeyBank National Association
580 Walnut Street
2nd Floor
Cincinnati, Ohio 45202

ATTN: REAL ESTATE CAPITAL SERVICES

RE: Application for Disbursement or confirmation of equity contribution in connection with a \$ _____ loan (# _____) to _____ ("Borrower").

1. Pursuant to that certain Project Agreement dated _____, 200__ (the "Construction Loan Agreement") between Borrower and KeyBank National Association ("Lender"), Borrower
 - (a) hereby requests a Loan disbursement as indicated on the Soft and Hard Cost Requisition attached hereto. We acknowledge that this amount is subject to inspection, verification, and available funds.
 - (b) acknowledges and confirms an equity contribution as indicated on the Soft and Hard Cost Requisition attached hereto.

Funding Instructions

2. This Borrower's Certificate is to be utilized only in satisfaction of costs and charges with respect to the Project and Improvements thereon as shown on the Soft and Hard Cost Requisition Form, dated _____, attached hereto.
3. The Borrower agrees to provide, if requested by Lender, a Vendor Payee Listing showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplies. This information would be provided in support of the disbursements set forth in paragraph 2(a) hereof.
4. The Borrower also certifies and agrees that:
 - (a) It has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the terms of the Construction Loan Agreement;

- (b) No Event of Default as defined in the Construction Loan Agreement, nor any event, circumstance or condition which with notice or the passage of time or both would be an Event of Default, has occurred and is continuing and;
 - (c) All Change Orders or changes to the Schedule of Values have been submitted to and approved by Lender to the extent required under the Construction Loan Agreement;
 - (d) All funds previously disbursed have been used for the purposes as set forth in the Construction Loan Agreement;
 - (e) All outstanding claims for labor, materials and/or services furnished prior to this draw period have been paid or will be paid from the proceeds of this disbursement;
 - (f) All construction prior to the date of this Borrower's Certificate has been accomplished in accordance with the Plans and Specifications approved by Lender;
 - (g) All sums advanced by Lender will be used solely for the purpose of paying costs of the Project owing as shown on the attached Soft and Hard Cost Requisition and no disbursement requested hereunder has been the basis for any prior disbursement of the Loan;
 - (h) There are no liens outstanding against the subject project or its equipment except for Lender's liens and security interests as agreed upon in the Construction Loan Agreement;
 - (i) The amount of undisbursed Loan proceeds and/or approved equity requirement remaining is sufficient to pay the cost of completing the Project in accordance with the Plans and Specifications and Budget approved by Lender as modified by Lender in approved Changed Orders;
 - (j) All representations and warranties contained in the Construction Loan Agreement are true and correct as of the date hereof.
 - (k) The undersigned understands that this certification is made for the purpose of inducing Lender to make a disbursement to Borrower and that, in making such disbursement, Lender will rely upon the accuracy of the matters stated in this Certificate.
5. Disbursement of the loan proceeds hereby requested are subject to the receipt by Lender, in those states where applicable, of a certificate from the issuing title company stating that no claims have been filed of record which adversely affects the title of Borrower to the Project, subsequent to the filing of the Lender's Mortgage.

6. The terms used in this Borrower's Certificate have the same meaning and definitions as those set forth in the Loan Agreement.
7. The Borrower, or authorized signer, certifies that the statements made in this Borrower's Certificate and any documents submitted herewith and identified herein are true and has duly caused this Borrower's Certificate to be signed on its behalf by the undersigned Authorized Representative.

DATE: _____

BORROWER:

_____,
a Delaware limited liability company

By: _____, a
Delaware limited liability company,
its Manager

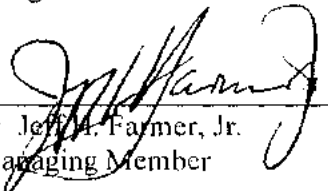
By: 
Name: Jeff M. Farmer, Jr.
Its: Managing Member

EXHIBIT G

Soft And Hard Cost Requisition Form

EXHIBIT H

Certificate of Compliance

KeyBank National Association
580 Walnut Street
2nd Floor
Cincinnati, Ohio 45202

Re: Construction Loan Agreement dated as of _____, 200__ (as amended, modified, supplemented, restated, or renewed, from time to time, the "Agreement"), between _____ LLC (the "Borrower"), and **KEYBANK NATIONAL ASSOCIATION** ("Lender").

Reference is made to the Agreement. Capitalized terms used in this Certificate (including schedules and other attachments hereto, this "Certificate") without definition have the meanings specified in the Agreement.

Pursuant to applicable provisions of the Agreement, the undersigned, being the Authorized Representative designated in the Agreement, hereby certifies to the Lender that the information furnished in the attached schedules, including, without limitation, each of the calculations listed below are true, correct and complete in all material respects as of the last day of the fiscal periods subject to the financial statements and associated covenants being delivered to the Lender pursuant to the Agreement together with this Certificate (such statements the "Financial Statements" and the periods covered thereby the "reporting period") and for such reporting periods.

The undersigned hereby further certifies to the Lender that:

I. Compliance with Financial Covenants. As shown below, the Borrower is in full compliance with the Financial Covenants contained in the Agreement.

A. Covenant: Jeff H. Farmer, Jr. shall, as a continuing obligation throughout the term of the Loan: (i) maintain, on an ongoing basis, a minimum net worth of \$10,000,000.00 and a minimum net cash flow of \$1,000,000.00; and (ii) maintain a minimum liquidity level of 1,500,000.00.

Calculation: Guarantor Net Worth = Total Assets – Total Liabilities

Note: Potentially listed on guarantor financial statement as Net Worth, Shareholder Equity, Retained Earnings or Member Equity.

See attached financial statement

Compliance? (Yes or No) _____

2. Review of Condition. The undersigned has reviewed the terms of the Agreement, including, but not limited to, the representations and warranties of the Borrower and Guarantors set forth in the Agreement and the covenants of the Borrower set forth in the Agreement, and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the Borrower and Guarantors through the reporting periods.

3. Representations and Warranties. To the undersigned's actual knowledge, the representations and warranties of the Borrower and Guarantors contained in the Project Documents, including those contained in the Agreement, are true and accurate in all material respects as of the date hereof and were true and accurate in all material respects at all times during the reporting period except as expressly noted on Schedule A hereto.

4. Covenants. To the undersigned's actual knowledge, during the reporting period, the Borrower observed and performed all of the respective covenants and other agreements under the Agreement and the Project Documents, and satisfied each of the conditions contained therein to be observed, performed or satisfied by the Borrower, except as expressly noted on Schedule A hereto.

5. No Event of Default. To the undersigned's actual knowledge, no Event of Default exists as of the date hereof or existed at any time during the reporting period, except as expressly noted on Schedule A hereto.

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this ____ day of _____, 200__.

a Delaware limited liability company

By: JHF Property Holdings LLC, a
Delaware limited liability company,
its Manager

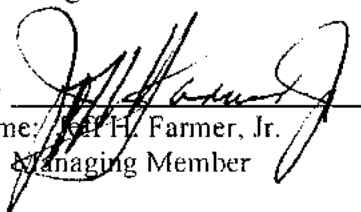
By: 
Name: Jeff H. Farmer, Jr.
Its: Managing Member

EXHIBIT I

PROJECT AGREEMENT

THIS PROJECT AGREEMENT is made as of _____, 200__ by and among SPECTRA GROUP, INC., a Delaware corporation and JEFF H. FARMER, JR., jointly and severally ("Developer"), KEYBANK NATIONAL ASSOCIATION, a national banking association ("Lender"), and _____, a limited liability company ("Borrower").

RECITALS

A. Lender and Developer entered into a certain Master Construction Loan Agreement, dated as of September _____, 2005 (the "Master Loan Agreement"), pursuant to which Lender agreed to make credit available, not exceeding the principal amount specified in Section 4.1 thereof, to certain entities designated by the Developer (such credit facility being referred to in the Master Loan Agreement and this Agreement as the "Loan").

B. Borrower is contemporaneously acquiring approximately _____ acres of real estate located in _____ County, State of _____, which real estate is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (for the purposes of the Master Loan Agreement and this Project Agreement (the "Project Site").

C. Borrower intends to construct a _____ square foot retail shopping center with _____ parking spaces known as _____ upon the Project Site (the "Improvements") (for the purposes of the Master Loan Agreement and this Project Agreement, the Project Site, all easements benefiting the Project Site and all Improvements located or to be located thereon, being sometimes hereinafter collectively referred to as the "Project").

D. Borrower desires to arrange the financing which will enable it to acquire the Project Site and to construct the Improvements.

E. Borrower has been designated by the Developer as "Borrower" under the terms of the Master Loan Agreement.

F. Lender is willing to make _____ Dollars (\$ _____) of the Loan available to Borrower (for the purposes of the Master Loan Agreement and this Project Agreement, the amount of the Loan being made available to Borrower hereunder being referred to as the "Project Loan"), all subject to the terms, provisions and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the several covenants and conditions herein contained, Developer, Borrower and Lender agree as follows:

1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings ascribed thereto in the Master Loan Agreement.

2. Budget; Required Leases. The Borrower and the Lender agree that the Budget for the Project is attached hereto as **Exhibit B** and made a part hereof, which sets forth the Borrower's equity (\$ _____) and Borrower's developer's fee (\$ _____). For purposes of the Master Loan Agreement, the Required Leases are set forth on **Exhibit C** attached hereto and made a part hereof.

3. Project Loan. The Developer hereby designates the Borrower as a "Borrower" under the Master Loan Agreement. Lender agrees to make credit available to Borrower in the principal amount of the Project Loan pursuant to the terms of the Master Loan Agreement, which Master Loan Agreement by reference thereto is hereby deemed to be fully incorporated herein. The Borrower agrees to be subject to and comply with all terms, conditions and provisions of the Master Loan Agreement governing or applicable to a Project Loan.

4. Completion Date. The Completion Date for the Project shall be no later than _____, 200__.


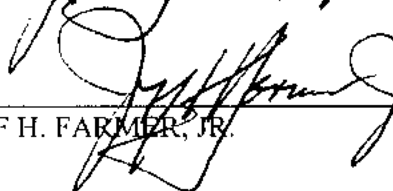
5. Initial Advance. The initial Advance of the Project Loan (the "Initial Advance") shall be limited to funds in the amount of \$ _____ for the purchase of the Project Site and soft costs (including the reimbursement of the Borrower of \$ _____ previously expended for the purchase of a portion of the Project Site).

6. Conditions to Advances. Lender's obligation to advance any amounts under the Project Loan shall be subject to satisfaction of all conditions for advances under the Master Loan Agreement.

KEYBANK NATIONAL ASSOCIATION

SPECTRA GROUP, INC., a Delaware corporation

By: _____
Name: _____
Its: _____

By: 
JEFF H. FARMER, JR., President


JEFF H. FARMER, JR.

By: _____
Its: _____
Name: _____

EXHIBIT B

Budget

EXHIBIT C
Required Leases

S47514 3

PROJECT AGREEMENT

THIS PROJECT AGREEMENT is made as of August 4, 2006 by and among SPECTRA GROUP, INC., a Delaware corporation and JEFF H. FARMER, JR., jointly and severally ("Developer"), KEYBANK NATIONAL ASSOCIATION, a national banking association ("Lender"), and CEDARTOWN LLC, a Delaware limited liability company ("Borrower").

RECITALS

A. Lender and Developer entered into a certain Master Construction Loan Agreement, dated as of December 8, 2005, as amended (the "Master Loan Agreement"), pursuant to which Lender agreed to make credit available, not exceeding the principal amount specified in Section 4.1 thereof, to certain entities designated by the Developer (such credit facility being referred to in the Master Loan Agreement and this Agreement as the "Loan").

B. Borrower has acquired 7.62 acres of real estate located in Polk County, Georgia, which real estate is more particularly described in Exhibit A attached hereto and incorporated herein by reference (for the purposes of the Master Loan Agreement and this Project Agreement (the "Project Site")).

C. Borrower intends to construct a 30,600 square foot retail shopping center known as Cedartown Shopping Center upon the Project Site (the "Improvements") (for the purposes of the Master Loan Agreement and this Project Agreement, the Project Site, all easements benefiting the Project Site and all Improvements located or to be located thereon, being sometimes hereinafter collectively referred to as the "Project").

D. Borrower desires to arrange the financing which will enable it to acquire the Project Site and to construct the Improvements.

E. Borrower has been designated by the Developer as "Borrower" under the terms of the Master Loan Agreement.

F. Lender is willing to make Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) of the Loan available to Borrower (for the purposes of the Master Loan Agreement and this Project Agreement, the amount of the Loan being made available to Borrower hereunder being referred to as the "Project Loan"), which shall be evidenced by two promissory notes: (i) a \$3,590,000.00 note (the "A Note") and (ii) a \$210,000.00 note (the "B Note"), all subject to the terms, provisions and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the several covenants and conditions herein contained, Developer, Borrower and Lender agree as follows:

1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings ascribed thereto in the Master Loan Agreement.

EXHIBIT 2

2. Budget; Required Leases. The Borrower and the Lender agree that the Budget for the Project is attached hereto as Exhibit B and made a part hereof, which sets forth the Borrower's equity (\$837,568.00), an interest reserve (\$115,000.00) and Borrower's developer's fee (\$100,000.00). For purposes of the Master Loan Agreement, the Required Leases are set forth on Exhibit C attached hereto and made a part hereof.

3. Project Loan. The Developer hereby designates the Borrower as a "Borrower" under the Master Loan Agreement. Lender agrees to make credit available to Borrower in the principal amount of the Project Loan pursuant to the terms of the Master Loan Agreement, which Master Loan Agreement by reference thereto is hereby deemed to be fully incorporated herein. The Borrower agrees to be subject to and comply with all terms, conditions and provisions of the Master Loan Agreement governing or applicable to a Project Loan.

4. Completion Date. The Completion Date for the Project shall be no later than twelve (12) months after the date of this Project Agreement.

5. Conditions to Advances. Lender's obligation to advance any amounts under the Project Loan shall be subject to satisfaction of all conditions for advances under the Master Loan Agreement.

6. Project Loan. Notwithstanding anything contained in such documents to the contrary, the term "Loan" used in the following documents executed in connection with the Project, the Project Loan and this Project Agreement shall be deemed to mean and solely refer to the Project Loan defined in Recital F of this Project Agreement: The A Note, the B Note, the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Assignment of Leases and Rents, the Performance and Completion Guaranty, the Guaranty by Jeff H. Farmer, Jr., the Guaranty by The Spectra Group, Inc., the Conditional Assignment of Architect's Contract, the Assignment of Management and Leasing Agreement, the Environmental and Hazardous Substances Indemnity Agreement and the Conditional Assignment of Contractor Contract and Subcontract.

7. Loan Agreement. Notwithstanding anything contained in such documents to the contrary, the term "Loan Agreement", "Construction Loan Agreement" and the phrase "Construction Loan Agreement of even date herewith" and "Loan Agreement of even date herewith" used in the following documents executed in connection with the Project, the Project Loan and this Project Agreement shall be deemed to mean and solely refer to this Project Agreement and the Master Loan Agreement: The A Note, the B Note, the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Assignment of Leases and Rents, the Performance and Completion Guaranty, the Guaranty by Jeff H. Farmer, Jr., the Guaranty by The Spectra Group, Inc., the Conditional Assignment of Architect's Contract, the Assignment of Management and Leasing Agreement, the Environmental and Hazardous Substances Indemnity Agreement and the Conditional Assignment of Contractor Contract and Subcontract.

8. Loan Documents. Notwithstanding anything contained in such documents to the contrary, the term "Loan Documents" used in the following documents executed in connection with the Project, the Project Loan and this Project Agreement shall be deemed to mean and

solely refer to "Project Documents" as such term is defined in the Master Loan Agreement: The A Note, the B Note, the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Assignment of Leases and Rents, the Performance and Completion Guaranty, the Guaranty by Jeff H. Farmer, Jr., the Guaranty by The Spectra Group, Inc., the Conditional Assignment of Architect's Contract, the Assignment of Management and Leasing Agreement, the Environmental and Hazardous Substances Indemnity Agreement and the Conditional Assignment of Contractor Contract and Subcontract.

9. Applicable Rate and Term. This Paragraph 9 has been included solely for the purpose of administrative convenience and is not intended to in any way amend or modify the terms of the Master Loan Agreement. In the event of a conflict between the provisions of this Paragraph 9 and the provisions of the Master Loan Agreement, the Master Loan Agreement shall control.

(i) The Project Loan will bear interest at the Applicable Rate, unless the Default Rate is applicable. The Adjusted Prime Rate shall be the "Applicable Rate", except that the Adjusted LIBOR Rate shall be the "Applicable Rate" with respect to portions of the Project Loan as to which a LIBOR Rate Option is then in effect.

(ii) The "Adjusted Prime Rate" means: A rate per annum equal to the sum of (a) the Prime Rate Margin and (b) the greater of (i) the Prime Rate or (ii) zero percent (0%) in excess of the Federal Funds Effective Rate. Any change in the Adjusted Prime Rate shall be effective immediately from and after such change in the Adjusted Prime Rate.

(iii) The "Adjusted LIBOR Rate" means: For any LIBOR Rate Interest Period, an interest rate per annum equal to the sum of (A) the rate obtained by dividing (x) the LIBOR Rate for such LIBOR Rate Interest Period by (y) a percentage equal to one hundred percent (100%) minus the Reserve Percentage for such LIBOR Rate Interest Period and (B) the LIBOR Rate Margin.

(iv) The "LIBOR Rate" means: For any LIBOR Rate Interest Period, the average rate (rounded upwards to the nearest 1/16th) as shown in Dow Jones Markets (formerly Telerate) (Page 3750) at which deposits in U.S. dollars are offered by first class banks in the London Interbank Market at approximately 11:00 a.m. (London time) on the day that is two (2) LIBOR Business Days prior to the first day of such LIBOR Rate Interest Period with a maturity approximately equal to such LIBOR Rate Interest Period and in an amount approximately equal to the amount to which such LIBOR Rate Interest Period relates, adjusted for reserves and taxes if required by future regulations. If Dow Jones Markets no longer reports such rate or Lender determines in good faith that the rate so reported no longer accurately reflects the rate available to Lender in the London Interbank Market, Lender may select a replacement index.

(v) The "LIBOR Rate Interest Period" means: With respect to each amount bearing interest at a LIBOR based rate, a period of one, two or three months, to the extent deposits with such maturities are available to Lender, commencing on a LIBOR Business Day, as selected by Borrower provided, however, that (i) any LIBOR Rate Interest Period which would otherwise end on a day which is not a LIBOR Business Day shall continue to and end on the next succeeding LIBOR Business Day, unless the result would be that such LIBOR Rate Interest

Period would be extended to the next succeeding calendar month, in which case such LIBOR Rate Interest Period shall end on the next preceding LIBOR Business Day and (ii) any LIBOR Rate Interest Period which begins on a day for which there is no numerically corresponding date in the calendar month in which such LIBOR Rate Interest Period would otherwise end shall instead end on the last LIBOR Business Day of such calendar month.

(vi) The "LIBOR Rate Margin" means: (a) For Project Loans (except as hereinafter described in (b) of this definition) 1.75 percent (175 basis points) per annum, provided that if an Interest Rate Agreement in form and substance acceptable to Lender in its sole discretion is in effect with respect to all Project Loans outstanding hereunder and no Event of Default has occurred and is continuing, then 1.65 percent (165 basis points) per annum; and (b) for those portions of Project Loans designated an Outlot Loan, 2.25 percent (225 basis points) per annum provided that if an Interest Rate Agreement in form and substance acceptable to Lender in its sole discretion is in effect with respect to all Project Loans outstanding hereunder and no Event of Default has occurred and is continuing, then 2.15 percent (215 basis points) per annum.

(vii) The "Prime Rate" means: That interest rate established from time to time by Lender as Lender's Prime Rate, whether or not such rate is publicly announced; the Prime Rate may not be the lowest interest rate charged by Lender for commercial or other extensions of credit;

(viii) The "Prime Rate Margin" means: 0% (0 basis points) per annum, except for an Outlot Loan, .50% (50 basis points) per annum.

(ix) The Initial Term of this Loan is eighteen (18) months.

10. Repayment of Outlot Loans. Notwithstanding anything contained in the Master Loan Agreement, the Note or Notes, or any of the Loan Documents to the contrary, if this Project Loan includes an Outlot Loan, the following repayment limitations shall apply. All principal payments made by Borrower towards the Project Loan shall first be applied to reduce the principal under any promissory note evidencing any Outlot Loan. Only after the entire principal accruing under any promissory note evidencing an Outlot Loan has been repaid in full will any principal payments made by Borrower be applied towards promissory notes evidencing any other portion of the Project Loan.

11. Tax-Deferred Exchange Provisions. If this Project is part of a tax-deferred exchange benefiting the Developer, then notwithstanding anything in the Master Loan Agreement to the contrary, so long as the Borrower under any Project Loan is Building Exchange Properties I, LP, a Virginia limited partnership, Building Exchange Properties II, LLC, a Virginia limited liability company, or Building Exchange Company, a Virginia corporation, or a limited liability owned entirely by any of the foregoing, then Jeff H. Farmer, Jr. shall not be required to control at least 50% of the membership in the Borrower or control the managing member or general partner of the Borrower, but there shall be a management agreement in place between an entity controlled by Jeff H. Farmer, Jr. and such exchange entity. Building Exchange Properties I, LP, Building Exchange Properties II, LLC, and Building Exchange Company agree that they shall not invest in or hold any assets or property that is not related to Developer's 1031

exchange activities and shall not engage in any transactions or business that is not related to Developer's 1031 exchange activities.

12. Holdback. Notwithstanding anything in the Loan Documents to the contrary, the Lender shall be permitted to holdback, and not obligated to disburse, any portion of the Loan to the extent the Debt Service Coverage Ratio set forth in Section 4.2(c) of the Loan Agreement is not met. In the event the Debt Service Coverage Ratio set forth in Section 4.2(c) of the Loan Agreement is not met, and the entire Project Loan is not in balance, on the date of substantial completion of the shell of the Improvements, Borrower shall deposit an amount with the Lender to be treated as equity for the Loan in order that such Debt Service Coverage Ratio is met and the Loan is in balance.

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BORROWER:
CEDARTOWN LLC,
a Delaware limited liability company,

By: Building Exchange Company,
a Virginia corporation

Its: Sole Member

By: 

Carla Polkinhorn

Its: Vice President

DEVELOPER:
THE SPECTRA GROUP, INC.,
a Tennessee corporation

By: _____
Jeff H. Farmer, III

Its: President

Address: 5851 Ridge Bend Road
Memphis, Tennessee 38120

LENDER:
KEYBANK NATIONAL ASSOCIATION

By: _____

Name: _____

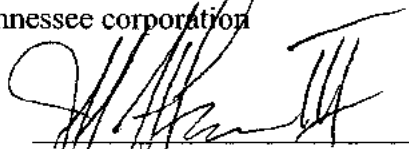
Its: _____

BORROWER:
CEDARTOWN LLC,
a Delaware limited liability company,

By: Building Exchange Company,
a Virginia corporation
Its: Sole Member

By: _____
Carla Polkinhorn
Its: Vice President

DEVELOPER:
THE SPECTRA GROUP, INC.,
a Tennessee corporation

By:  _____
Jeff H. Farmer, III
Its: President
Address: 5851 Ridge Bend Road
Memphis, Tennessee 38120

LENDER:
KEYBANK NATIONAL ASSOCIATION


By:  _____
Name: Janet Beatsch
Its: Vice President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT SITE

All that tract or parcel of land lying and being in Land Lots 1075 and 1086 of the 2nd District, 4th Section, Polk County, Georgia, and being more particularly described as follows:

Commencing at the northwest corner of Land Lot 1075, said corner being common to Land Lots 1013, 1014, 1075 and 1076; thence along the westerly land lot line of Land Lot 1075 the following courses and distances South 00 degrees 27 minutes 05 seconds West, 99.88 feet to a point; South 00 degrees 40 minutes 37 seconds West, 112.89 feet to a point; South 01 degrees 41 minutes 15 seconds West, 617.55 feet to a 5/8" capped rebar found, said point being the TRUE POINT OF BEGINNING; thence leaving said westerly land lot line South 73 degrees 13 minutes 13 seconds East, 89.54 feet to a 5/8" capped rebar found; thence North 16 degrees 45 minutes 46 seconds East, 46.21 feet to a 5/8" capped rebar found; thence South 73 degrees 17 minutes 27 seconds East, 71.38 feet to a 5/8" capped rebar found; thence along a curve to the left, an arc distance of 122.11 feet, said curve having a radius of 76.50 feet and being subtended by a chord of 109.55 feet, at North 61 degrees 10 minutes 20 seconds East, to a 5/8" capped rebar found; thence North 17 degrees 09 minutes 12 seconds East, 19.32 feet to a 5/8" capped rebar found; thence along a curve to the right, an arc distance of 107.60 feet, said curve having a radius of 68.50 feet and being subtended by a chord of 96.87 feet, at North 61 degrees 50 minutes 01 seconds East, to a 5/8" capped rebar found; thence South 73 degrees 09 minutes 17 seconds East, 605.78 feet to a 5/8" capped rebar found; thence South 16 degrees 51 minutes 11 seconds West, 29.38 feet to a 5/8" capped rebar found; thence South 73 degrees 10 minutes 30 seconds East, 140.35 feet to a 5/8" capped rebar found; thence South 18 degrees 41 minutes 23 seconds West, 149.68 feet to a 5/8" capped rebar found; thence South 64 degrees 46 minutes 57 seconds East, 208.97 feet to a 5/8" capped rebar found on the westerly right-of-way of U.S. Highway 27 (variable right-of-way); thence along said westerly right-of-way and a curve to the right, an arc distance of 148.67 feet, said curve having a radius of 4842.60 feet and being subtended by a chord of 148.67 feet, at South 28 degrees 40 minutes 10 seconds West, to a 5/8" capped rebar found; thence leaving said westerly right-of-way North 60 degrees 30 minutes 25 seconds West, 84.67 feet to a 5/8" capped rebar found; thence North 73 degrees 10 minutes 24 seconds West, 1107.27 feet to a 5/8" capped rebar found on the westerly land lot line of Land Lot 1075; thence along said westerly land lot line North 01 degrees 38 minutes 29 seconds East, 128.51 feet to a 5/8" capped rebar found, said point being the TRUE POINT OF BEGINNING;

Said tract or parcel of land contains 7.620 acres and is more accurately depicted on a plat of survey prepared by GeoSurvey, Ltd., dated January 31, 2006, job number 20052638.

EXHIBIT B

BUDGET

EXHIBIT C

REQUIRED LEASES

Tenant	Square Feet
Dollar Tree	8,000
Cato	3,900
Shoe Show	3,500
Los Arcos	4,000
Nail Salon	1,200
Cingular Wireless	1,200
VACANT	8,800
TOTAL	30,600
Total Leased	21,800
Vacant	8,800
TOTAL PROJECT	30,600

PROMISSORY NOTE
("A Note")

U.S. \$3,590,000.00

As of August 4, 2006

FOR VALUE RECEIVED, CEDARTOWN LLC, a Delaware limited liability company, having an address at 5851 Ridge Bend Road, Memphis, Tennessee 38120 ("Maker"), hereby promises to pay to the order of KEYBANK NATIONAL ASSOCIATION, a national banking association ("Payee"), having an address at 580 Walnut Street, 2nd Floor, Cincinnati, Ohio 45202, the principal sum of Three Million Five Hundred Ninety Thousand and 00/100 Dollars (\$3,590,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This note (the "A Note") is issued by Maker pursuant to that certain Project Agreement of even date herewith (the "Loan Agreement") entered into between Payee and Maker. This A Note, together with the B Note, evidences the Loan (as defined in the Loan Agreement). Payment of this A Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. **Interest.** The principal amount hereof outstanding from time to time shall bear interest until paid in full at the Applicable Rate.

2. **Monthly Payments.** Interest only shall be payable in arrears on the first (1st) day of each calendar month after the date hereof commencing on the first day of the second calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. Notwithstanding the foregoing, in the event the Extension Option is exercised, during the Extension Term, on the first (1st) day of every calendar month Borrower shall make monthly principal and interest payments based on a term of thirty (30) years and the assumed interest rate used in determining the Debt Service Coverage Ratio in connection with the exercise of the Extension Option. All payments on account of the indebtedness evidenced by this A Note shall be made to Payee not later than 11:00 a.m. Cincinnati, Ohio time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this A Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. **Maturity Date.** The indebtedness evidenced hereby shall mature on the Maturity Date. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this A Note, shall, if not sooner paid, become due and payable.

4. **General Provisions.**

(a) Regardless of whether an Adjusted LIBOR Rate would otherwise then be in effect, in the event (i) the principal balance hereof is not paid when due whether by

acceleration or upon the Maturity Date or (ii) an Event of Default exists, then the principal balance hereof shall bear interest from and after the Default Rate. In addition, for any installment (exclusive of the payment due upon the Maturity Date) which is not paid within ten (10) days after the due date thereof a late charge equal to the greater of (a) ten percent (10%) of the amount of such installment or (b) \$25 shall be due and payable to the holder of this A Note on demand to cover the extra expense involved in handling delinquent payments.

(b) Maker agrees that the obligation evidenced by this A Note is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. § 1601, et seq.

(c) The parties hereto intend and believe that each provision in this A Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this A Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this A Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this A Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this A Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(d) This A Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this A Note.

(e) Time is of the essence as to all dates set forth herein.

(f) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to

by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this A Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(g) Maker hereby waives and renounces for itself, its successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, or exemption and homestead laws now provided, or which may hereafter be provided, by the laws of the United States and of any state thereof against the enforcement and collection of the obligations evidenced by this A Note.

(h) If this A Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this A Note, including all reasonable attorneys' fees and disbursements.

(i) All parties now or hereafter liable with respect to this A Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this A Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this A Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this A Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any Laws. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(j) Maker hereby expressly acknowledges that the loan evidenced by this A Note is a "business loan" within the meaning of Chapter 1343 of the Ohio Revised Code.

(k) With respect to any agreement by Borrower in this A Note or in any other Loan Document to pay Payee's attorneys' fees and disbursements incurred in connection with the Loan, Borrower agrees that each Loan Document is a "contract of indebtedness" and that the attorneys' fees and disbursements referenced are those which are a reasonable amount, all as contemplated by Ohio Revised Code Section 1301.21, as such Section may hereafter be amended. Borrower further agrees that the indebtedness incurred in connection with the Loan is not incurred for purposes that are primarily personal, family or household and confirms that the total amount owed on the contract of indebtedness exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00).

(l) THIS A NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OHIO AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(m) MAKER AND PAYEE EACH WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS A NOTE AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS A NOTE AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

5. **Tax-Deferred Exchange Provisions.** This is a nonrecourse note and the Maker assumes no personal liability for the payment of any sums due hereunder. The holder, by acceptance of this note, waives any such personal liability and agrees to look solely to the foreclosure of the Mortgage and enforcement of its security interest in any property securing this note and any third party guaranties for payment for such sums. At such time as the Borrower transfers its interest in the Property to any of the Guarantors or to an entity that is an "affiliate" of any of the Guarantors, the provisions of this Section 5 shall become null and void and of no further force and effect. As used in this Section 5, the term "affiliate" shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with, or otherwise directly or indirectly under common ownership or otherwise related to any of the Guarantors.

Maker has delivered this A Note as of the day and year first set forth above.

MAKER:

Cedartown LLC,
a Delaware limited liability company

By: Building Exchange Company
a Virginia corporation

Its: Sole Member

By: 
Carla Polkinhorn

Its: Vice President

PROMISSORY NOTE
("B Note")

U.S. \$210,000.00

As of August 4, 2006

FOR VALUE RECEIVED, CEDARTOWN LLC, a Delaware limited liability company, having an address at 5851 Ridge Bend Road, Memphis, Tennessee 38120 ("Maker"), hereby promises to pay to the order of KEYBANK NATIONAL ASSOCIATION, a national banking association ("Payee"), having an address at 580 Walnut Street, 2nd Floor, Cincinnati, Ohio 45202, the principal sum of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This note (the "B Note") is issued by Maker pursuant to that certain Project Agreement of even date herewith (the "Loan Agreement") entered into between Payee and Maker. This B Note, together with the A Note, evidences the Loan (as defined in the Loan Agreement). Payment of this B Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. **Interest.** The principal amount hereof outstanding from time to time shall bear interest until paid in full at the Applicable Rate.

2. **Monthly Payments.** Interest only shall be payable in arrears on the first (1st) day of each calendar month after the date hereof commencing on the first day of the second calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. All payments on account of the indebtedness evidenced by this B Note shall be made to Payee not later than 11:00 a.m. Cincinnati, Ohio time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this B Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. **Maturity Date.** The indebtedness evidenced hereby shall mature on the Maturity Date. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this B Note, shall, if not sooner paid, become due and payable.

4. **General Provisions.**

(a) Regardless of whether an Adjusted LIBOR Rate would otherwise then be in effect, in the event (i) the principal balance hereof is not paid when due whether by acceleration or upon the Maturity Date or (ii) an Event of Default exists, then the principal balance hereof shall bear interest from and after the Default Rate. In addition, for any installment (exclusive of the payment due upon the Maturity Date) which is not paid within ten (10) days after the due date thereof a late charge equal to the greater of

(a) ten percent (10%) of the amount of such installment or (b) \$25 shall be due and payable to the holder of this B Note on demand to cover the extra expense involved in handling delinquent payments.

(b) Maker agrees that the obligation evidenced by this B Note is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. § 1601, et seq.

(c) The parties hereto intend and believe that each provision in this B Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this B Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this B Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this B Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this B Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(d) This B Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this B Note.

(e) Time is of the essence as to all dates set forth herein.

(f) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this B Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or

release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(g) Maker hereby waives and renounces for itself, its successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, or exemption and homestead laws now provided, or which may hereafter be provided, by the laws of the United States and of any state thereof against the enforcement and collection of the obligations evidenced by this B Note.

(h) If this B Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this B Note, including all reasonable attorneys' fees and disbursements.

(i) All parties now or hereafter liable with respect to this B Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this B Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this B Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this B Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any Laws. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(j) Maker hereby expressly acknowledges that the loan evidenced by this B Note is a "business loan" within the meaning of Chapter 1343 of the Ohio Revised Code.

(k) With respect to any agreement by Borrower in this B Note or in any other Loan Document to pay Payee's attorneys' fees and disbursements incurred in connection with the Loan, Borrower agrees that each Loan Document is a "contract of indebtedness" and that the attorneys' fees and disbursements referenced are those which are a reasonable amount, all as contemplated by Ohio Revised Code Section 1301.21, as such Section may hereafter be amended. Borrower further agrees that the indebtedness incurred in connection with the Loan is not incurred for purposes that are primarily personal, family or household and confirms that the total amount owed on the contract of indebtedness exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00).

(l) THIS B NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OHIO AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(m) MAKER AND PAYEE EACH WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS B NOTE AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS B NOTE AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

5. **Tax-Deferred Exchange Provisions.** This is a nonrecourse note and the Maker assumes no personal liability for the payment of any sums due hereunder. The holder, by acceptance of this note, waives any such personal liability and agrees to look solely to the foreclosure of the Mortgage and enforcement of its security interest in any property securing this note and any third party guaranties for payment for such sums. At such time as the Borrower transfers its interest in the Property to any of the Guarantors or to an entity that is an "affiliate" of any of the Guarantors, the provisions of this Section 5 shall become null and void and of no further force and effect. As used in this Section 5, the term "affiliate" shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with, or otherwise directly or indirectly under common ownership or otherwise related to any of the Guarantors.

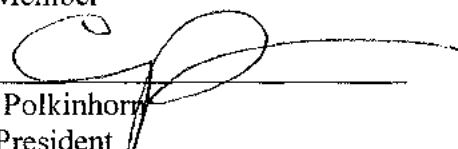
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Maker has delivered the B Note as of the day and year first set forth above.

MAKER:
CEDARTOWN LLC,
a Delaware limited liability company

By: Building Exchange Company
a Virginia corporation

Its: Sole Member

By: 
Carla Polkinhorn

Its: Vice President

REC: 13893
DATE: 8-9-06
CHECK: 0376
TT:
PT:

Prepared by: Tracy L. Hawkins, Esq., Thompson Hine LLP, 312 Walnut Street, 14th Floor, Cincinnati, OH 45202, Ph 513-352-6644

NOTICE: This Mortgage secures credit in the amount of \$3,800,000.00. Loans and advances up to the amount, together with interest, are senior to indebtedness to other creditors under subsequently, recorded or filed mortgages and liens.

This mortgage encumbers both real and personal property, contains an after-acquired property clause and secures present and future loans and advances.

MORTGAGE
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING

MADE BY

CEDARTOWN LLC, A DELAWARE LIMITED LIABILITY COMPANY

AFTER RECORDING RETURN TO
GEORGE C. CALLOWAY, Esq.
SPECIALIZED TITLE SERVICES, INC.
8133 PEACHTREE DUNWOODY ROAD, NE
ATLANTA, GA 30328
(770) 394-7000 STS FILE NO. 1172.379

as Mortgagor

to

KEYBANK NATIONAL ASSOCIATION

as Mortgagee

Dated as of: August 4, 2006

Maturity Date: August 3, 2008

**MORTGAGE
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

**Project Common Known As
"Cedartown Shopping Center"**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 4 day of August, 2006, by CEDARTOWN LLC, a Delaware limited liability company ("Mortgagor"), whose address is 5851 Ridge Bend Road, Memphis, Tennessee 38120, in favor of KEYBANK NATIONAL ASSOCIATION, its successors and assigns ("Mortgagee"), whose address is 580 Walnut Street, Second Floor, Cincinnati, Ohio 45202.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY GRANTS, BARGAINS, SELLS, CONVEYS, MORTGAGES AND WARRANTS TO MORTGAGEE, WITH POWER OF SALE AND WITH RIGHT OF ENTRY AND POSSESSION, ALL ESTATE, RIGHT, TITLE AND INTEREST WHICH MORTGAGOR NOW HAS OR MAY LATER ACQUIRE IN AND TO THE FOLLOWING PROPERTY (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in the City Of Cedartown, County of Polk, State of Georgia, as described in Exhibits A, A-1 and A-2, together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other supporting obligations or other agreements relating to or made in connection with any of such leases; together with

with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in and to all Interest Rate Agreements;

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(iii) below.

1.2 Secured Obligations.

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under two promissory notes evidencing the loan in the amount of Three Million Eight Hundred Thousand and 00/100 Dollars \$3,800,000.00 (the "Project Loan"), bearing even date herewith, payable by Mortgagor as maker to the order of Mortgagee which mature on the Maturity Date of August 3, 2008, as defined in the Loan Agreement (one note being in the stated principal amount of Three Million Five Hundred Ninety Thousand and 00/100 Dollars (\$3,590,000.00) (the "A Note"), and the other note being in the stated principal amount of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000.00) (the "B Note")). Collectively the A Note and B Note are hereinafter referred to as the "Note" or "Notes."

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage; and

(iii) Payment and performance of all obligations of Mortgagor under a Construction Loan Agreement bearing even date herewith between Mortgagor as "Borrower" and Mortgagee as "Lender" (the "Loan Agreement"); and

(iv) Payment and performance of any obligations of Mortgagor under any Loan Documents which are executed by Mortgagor; and

(v) Payment and performance of all obligations of Mortgagor arising from any Interest Rate Agreements. Interest Rate Agreements shall mean an interest rate hedging program through the purchase by Mortgagor from Mortgagee of an interest rate swap, cap or such other interest rate protection product with respect to the Notes; and

(vi) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and

(viii) Payment of any and all amounts advanced by Mortgagee with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property, together with interest at the Default Rate.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Notes or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2 above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or

- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the mere recordation of the assignment granted herein entitles Mortgagee immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.3(c). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Mortgagor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Mortgagee's prior written consent. Mortgagor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all of Mortgagor's right, title and interest in all such Property and Rents, whether now owned or existing or hereafter acquired, to secure payment and performance

of the Secured Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents.

3.2 Financing Statements. Mortgagor' shall execute, or in the alternative, hereby authorizes Mortgagee to file, on behalf of Mortgagor and without its signature, one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.9 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact which power of attorney is coupled with an interest to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

4. **Fixture Filing.**

This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. The description of the Property in this Mortgage includes goods which are or are to become fixtures on the Premises and/or Improvements of which Mortgagor is the record owner. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party from which information concerning the security interest may be obtained, are as set forth in the preambles of this Mortgage.

5. **Rights and Duties of the Parties.**

5.1 Representations and Warranties. Mortgagor represents and warrants that:

(a) Mortgagor lawfully possesses and holds fee simple title to all of the Premises and Improvements and has not encumbered or assigned any of its business interests and rights under, in and to the Premises and Improvements;

(b) Mortgagor has or will have good title, and is and will be the sole owner of, all Property other than the Premises and Improvements;

(c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Mortgage creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(g) Mortgagor is a limited liability company formed under the laws of the State of Delaware and will not change the state of its formation or transfer the Collateral, or any portion thereof (except as permitted by Section 6.1(b)), to an entity formed in another state. Mortgagor's exact legal name is as shown in this Mortgage and Mortgagor will not change its legal name. Mortgagor's organization number is 4063171 and Mortgagor will not change its organization number.

5.2 Taxes, and Assessments. Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments, in accordance with Section 15.1(h) of the Loan Agreement.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing in accordance with the terms of Section 15.1(c) of the Loan Agreement.

5.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the provisions of Article 16 of the Loan Agreement shall govern.

5.6 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Mortgagee agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under Article 16 of the Loan Agreement.

(d) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any

insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(e) Mortgagor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property; or

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

5.8 Release. When all of the Secured Obligations relating to the B Note have been paid in full and all fees and other sums relating to the B Note and owed by Mortgagor under this Mortgage and the other Loan Documents have been received, Mortgagee shall partially release this Mortgage, but only with respect to the portion of the real property described on Exhibit A-2 attached hereto. When all of the Secured Obligations (whether relating to the A Note or the B Note) have been paid in full and all fees and other sums relating to the A Note and the B Note and owed by Mortgagor under this Mortgage and the other Loan Documents have been received, Mortgagee shall release this Mortgage with respect to the real property described on Exhibit A-1 attached hereto, the lien created by this Mortgage and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of preparation and recordation of such releases.

5.9 Compensation, Exculpation, Indemnification.

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 above. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, including the fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) Because of any failure of Mortgagor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.12 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name or business structure. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any Transfer not expressly permitted under Article 17 of the Loan Agreement.

(b) Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by Section 6.3 of this Mortgage.

6.2 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default").

(a) Failure of Mortgagor (i) (x) to pay any of the principal of the Loan when due, (y) to pay interest within ten (10) days after the date when due or (z) to observe or perform any of the other covenants or conditions by Mortgagor to be performed under the terms of this Mortgage or any of the other Loan Documents concerning the payment of money for a period of ten (10) days after written notice from Mortgagee that the same is due and payable; or (ii) for a period of thirty (30) days after written notice from Mortgagee, to observe or perform any non-monetary covenant or condition contained in this Mortgage or any of the other Loan Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Mortgagor shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Mortgagor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Mortgagee's notice, and (y) the existence of such uncured default will not result in any tenant under a Lease having the right to terminate such Lease due to such uncured default; and provided further that if a different notice or grace period is specified under Article 19 of the Loan Agreement (or elsewhere in this Mortgage or the Loan Agreement) in which such particular breach will become an Event of Default, the specific provision shall control; or

(b) An "Event of Default" occurs under the Loan Agreement or any other Loan Document.

6.3 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, or the existence or waiver of any deficiency, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments. Mortgagee's power of attorney shall be coupled with an interest.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Subsection 6.3(d) shall be secured by this Mortgage.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law, including without limitation, judicial proceedings with or without redemption or by non-judicial proceedings. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the

Secured Obligations, or on Mortgagee's judgment thereon. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.3(a), upon, or at any time after the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

(g) Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Without limiting any other provisions of this Mortgage, Mortgagee shall have the right to conduct any such sale on Mortgagor's Property, and Mortgagee shall have such right of possession of the Property as shall be necessary or convenient for such purpose or any other purpose under this Section 6.3. Mortgagee may sell the Property without giving any warranties relating to title, possession, quiet enjoyment, merchantability, fitness or the like as to the Property and may specifically disclaim any warranties, which shall not be considered to adversely affect the commercial reasonableness of any sale of the Property. Mortgagee has no obligation to clean up or otherwise prepare the Property for sale.

Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests, to the extent allowed by law (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests, if and to the extent allowed by law. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been the subject of a foreclosure proceeding under this mortgage, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.9 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.9 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the

exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5 above.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.7 or Subsection 6.3(d) of this Mortgage, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage, or whether any deficiency exists or has been waived.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies

created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

7.6 Applicable Law. The creation, perfection and enforcement of the lien and security interest of this Mortgage shall be governed by the law of the state in which the Property is located, except to the extent that the Uniform Commercial Code provides for the application of the law of another state. Subject to the foregoing, in all other respects, this Mortgage shall be governed by the substantive laws of the State of Ohio.

7.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 6.1 above.

7.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.9 In-House Counsel Fees. Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

7.10 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.11 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.12 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Mortgagor: Cedartown, LLC
 5851 Ridge Bend Road
 Memphis, Tennessee 38120
 Attention: Jeff Frazier
 Telephone 901 685 2300
 Facsimile 901 685 2354

With a copy to: Richard Raines, Esq
Wyatt Tarrant & Combs
1715 Aaron Brewer Drive, Memphis, Tenn
 Telephone 901 537 1020 38120
 Facsimile 901 537 1610

Mortgagee: KeyBank National Association
 580 Walnut Street, 2nd Floor
 Cincinnati, Ohio 45202
 Attention: Kurt Reiber
 Telephone (513) 762-8215
 Facsimile (513) 762-8450

With a copy to: Thompson Hine LLP
 312 Walnut Street
 14th Floor
 Cincinnati, Ohio 45202
 Attention: Stephen M. King, Esq.
 Telephone (513) 352-6746
 Facsimile (513) 241-4771

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Mortgagor shall constitute notice or demand duly delivered to Mortgagor, even if delivery is refused.

7.13 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Bank may, but shall not be obligated to, make under this Mortgage, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) plus interest thereon, and any disbursements made for the enforcement of this Mortgage and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Mortgagee pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

7.14 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby. For purposes hereof, all obligations of Mortgagor to Mortgagee under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Mortgagor secured hereby.

7.15 WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTES, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE

MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

7.16 Inconsistencies.

In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

7.17 Further Assurances. From time to time, as requested by Mortgagee, Mortgagor shall take such other action and execute and deliver to Mortgagee all other instruments, supplements, further assurances and security or other agreements as may be required or requested by Mortgagee in order to perfect and continue Mortgagee's lien and interest in the Property. Mortgagor hereby irrevocably appoints Mortgagee as its agent and attorney-in-fact to sign all such instruments, supplements, further assurances and security and other agreements.

7.18 State Specific Provisions. The terms and conditions set forth in Schedule B attached hereto and made a part hereof are incorporated into this Mortgage by reference. In the event of any conflict or inconsistency between the terms and conditions of Schedule B and any other provisions of this Mortgage, the terms and conditions of Schedule B shall govern.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

Signed and acknowledged before:

[Signature]
(Witness)

[Signature]
(Witness)

MORTGAGOR:

Cedartown LLC,
a Delaware limited liability company

By: Building Exchange Company,
a Virginia corporation

Its: Sole Member

By: [Signature]
Carla Polkinhorn

Its: Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of August, 2006, by Carla Polkinhorn, the Vice President of Building Exchange Company, a Virginia corporation, the Sole Member of Cedartown LLC, a Delaware limited liability company, on behalf of said company.

Notary Public

Printed: _____

(SEAL)

My Commission Expires: _____

My County of Residence: _____

Georgia, Polk County
Filed in Office this 1 day of Aug
2006, at 11:00 Recorder's Office
Book 1172 Page 1

Sheila Wells Clerk

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of Los Angeles)

On August 2, 2010 before me, Karla Torres, Notary Public
(here insert name and title of the officer)

personally appeared Carla Polkinhorn

personally known to me (~~or 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.

Karla Torres
Signature of Notary Public



(Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

Mortgage Assignment of Rents
(Title or description of attached document)

Security Agreement and Fixture Filing
(Title or description of attached document continued)

Number of Pages 26 Document Date No Date Yet

Spectra Exchange
(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer
V.P.
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

JURAT

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 2nd day of August, 2006,

by Carla Polkinhorn

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature Karla Torres

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

All that tract or parcel of land lying and being in Land Lots 1075 and 1086 of the 2nd District, 4th Section, Polk County, Georgia, and being more particularly described as follows:

Commencing at the northwest corner of Land Lot 1075, said corner being common to Land Lots 1013, 1014, 1075 and 1076; thence along the westerly land lot line of Land Lot 1075 the following courses and distances South 00 degrees 27 minutes 05 seconds West, 99.88 feet to a point; South 00 degrees 40 minutes 37 seconds West, 112.89 feet to a point; South 01 degrees 41 minutes 15 seconds West, 617.55 feet to a 5/8" capped rebar found, said point being the TRUE POINT OF BEGINNING; thence leaving said westerly land lot line South 73 degrees 13 minutes 13 seconds East, 89.54 feet to a 5/8" capped rebar found; thence North 16 degrees 45 minutes 46 seconds East, 46.21 feet to a 5/8" capped rebar found; thence South 73 degrees 17 minutes 27 seconds East, 71.38 feet to a 5/8" capped rebar found; thence along a curve to the left, an arc distance of 122.11 feet, said curve having a radius of 76.50 feet and being subtended by a chord of 109.55 feet, at North 61 degrees 10 minutes 20 seconds East, to a 5/8" capped rebar found; thence North 17 degrees 09 minutes 12 seconds East, 19.32 feet to a 5/8" capped rebar found; thence along a curve to the right, an arc distance of 107.60 feet, said curve having a radius of 68.50 feet and being subtended by a chord of 96.87 feet, at North 61 degrees 50 minutes 01 seconds East, to a 5/8" capped rebar found; thence South 73 degrees 09 minutes 17 seconds East, 605.78 feet to a 5/8" capped rebar found; thence South 16 degrees 51 minutes 11 seconds West, 29.38 feet to a 5/8" capped rebar found; thence South 73 degrees 10 minutes 30 seconds East, 140.35 feet to a 5/8" capped rebar found; thence South 18 degrees 41 minutes 23 seconds West, 149.68 feet to a 5/8" capped rebar found; thence South 64 degrees 46 minutes 57 seconds East, 208.97 feet to a 5/8" capped rebar found on the westerly right-of-way of U.S. Highway 27 (variable right-of-way); thence along said westerly right-of-way and a curve to the right, an arc distance of 148.67 feet, said curve having a radius of 4842.60 feet and being subtended by a chord of 148.67 feet, at South 28 degrees 40 minutes 10 seconds West, to a 5/8" capped rebar found; thence leaving said westerly right-of-way North 60 degrees 30 minutes 25 seconds West, 84.67 feet to a 5/8" capped rebar found; thence North 73 degrees 10 minutes 24 seconds West, 1107.27 feet to a 5/8" capped rebar found on the westerly land lot line of Land Lot 1075; thence along said westerly land lot line North 01 degrees 38 minutes 29 seconds East, 128.51 feet to a 5/8" capped rebar found, said point being the TRUE POINT OF BEGINNING;

Said tract or parcel of land contains 7.620 acres and is more accurately depicted on a plat of survey prepared by GeoSurvey, Ltd., dated January 31, 2006, job number 20052638.

EXHIBIT A-1

DESCRIPTION OF THE PREMISES
(Shopping Center Parcel)

Approximately 6.61 acres of the land described on Exhibit A, the legal description for which shall be provided by the Mortgagor in form and substance satisfactory to the Mortgagee in its sole discretion.

EXHIBIT A-2

DESCRIPTION OF THE PREMISES
(*Outlot Parcel*)

Approximately 1.01 acres of the land described on Exhibit A, the legal description for which shall be provided by the Mortgagor in form and substance satisfactory to the Mortgagee, in its sole discretion.

Georgia, Polk County
Filed in Office this 9 day of Aug,
2006, at 11:00 Recorded in Deed
Book 1172 Page 1

BOOK 1172 PAGE 0029

SCHEDULE B

Sheila Wells, Clerk STATE SPECIFIC PROVISIONS

The following provisions shall govern and control in the event of a conflict with any of the other provisions of the Mortgage to which this Schedule B is attached.

In case the debt hereby secured shall not be paid when it becomes due by maturity in due course, or by reason of any Event of Default as herein provided, Grantor hereby grants to Grantee and assigns, the following irrevocable power of attorney: To sell the said property or any part thereof at auction, at the usual place for conducting sales at the Court House in the County where the land or any part thereof lies, in said State, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in a newspaper published in the County where the land lies, or in the paper in which the Sheriff's advertisements for such County are published, all other notice being hereby waived by Grantor, and Grantee or any person on behalf of Grantee, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a sufficient conveyance of said premises in fee simple, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends, and Grantor hereby constitutes and appoints Grantee and assigns, the agent and attorney in fact of Grantor to make such recitals, and hereby covenants and agrees that the recitals so to be made by Grantee, or assigns, shall be binding and conclusive upon Grantor, and the heirs, executors, administrators and assigns of Grantor, and that the conveyance to be made by Grantee or assigns, shall be effectual to bar all equity of redemption of Grantor, or the successors in interest of Grantor, in and to said premises, and Grantee or assigns, shall collect the proceeds of such sale, and after reserving therefrom the entire amount of principal and interest due, together with the amount of any taxes, assessments and premiums of insurance or other payments theretofore paid by Grantee, together with all costs and expenses of sale and 15 per centum of the aggregate amount due for attorney's fees, shall pay any over-plus to Grantor, or to the heirs or assigns of Grantor as provided by law.

The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

Grantor hereby waives for itself, its successors and assigns, any rights of homestead against Grantee, its successors and assigns, and further covenants that it will not avail itself of any rights of exemption, valuation, stay, marshalling, redemption, appraisal, or moratorium now or hereafter in force, and acknowledges that it makes this waiver as a material inducement to Grantee to lend funds to Grantor, and further acknowledges that it has made this waiver knowingly, intelligently, and after consultation with counsel of its choice.

This deed is intended to be, and should be construed as, a deed passing legal title under the laws of the State of Georgia regarding conveyances to secure debt, and not as a mortgage, and is intended as security for the payment of all sums secured hereby.

This deed and the Note or Notes hereby secured shall be deemed and construed to be contracts executed and to be performed in Georgia.

This document prepared by
after recording return to:

Tracy L. Hawkins, Esq.
Thompson Hine LLP
312 Walnut Street
14th Floor
Cincinnati, Ohio 45202

REC: 13893
DATE: 8-9-06
CHECK: 0376
TT:
PT:

RECORDING REPORT
GEORGE C. CALLOWAY, ESQ.
SPECIALIZED TITLE SERVICES, INC.
6133 PEACHTREE DUNWOODY ROAD, NE
ATLANTA, GA 30328
(770) 394-7000 STS FILE NO. 1172.329

ASSIGNMENT OF LEASES AND RENTS

Project Commonly Known As
"CEDARTOWN SHOPPING CENTER"

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 4th day of August, 2006, is by CEDARTOWN LLC, a Delaware limited liability company, having an office at 5851 Ridge Bend Road, Memphis, Tennessee 38120 ("Assignor"), in favor of KEYBANK NATIONAL ASSOCIATION, a national banking association, having an office at 580 Walnut Street, 2nd Floor, Cincinnati, Ohio 45202 its successors and assigns ("Assignee").

RECITALS

A. On or about the date hereof, Assignor and Assignee entered into that certain Construction Loan Agreement ("Loan Agreement") whereby Assignee agreed to make a secured construction loan (the "Loan") available to Assignor in the maximum aggregate amount at any time outstanding not to exceed the sum of Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00), to finance the development and construction of a 30,600 square foot shadow anchored strip Shopping Center with seven (7) proposed retail spaces (the "Project"). The Project is legally described in Exhibit A attached hereto and made a part hereof. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Assignor has executed and delivered the A Note and B Note (collectively the "Note" or "Notes") in favor of Assignee of even date herewith which, in the aggregate, are for the principal amount of the Loan, payment of which is secured by (i) a Mortgage made by Assignor in favor of Assignee on the Project, and (ii) the other Loan Documents.

C. Assignor is desirous of further securing to Assignee the performance of the terms, covenants and agreements hereof and of the Note, the Mortgage and the Loan Documents.

AGREEMENTS

NOW, THEREFORE, in consideration of the making of the Loan evidenced by the Note by Assignee to Assignor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby irrevocably, absolutely and

unconditionally transfer, sell, assign, pledge and convey to Assignee, its successors and assigns, all of the right, title and interest of Assignor in and to:

(a) any and all leases, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Project and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the "Leases"); and

(b) all issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Project, including, without limitation, minimum rents, additional rents, termination payments, bankruptcy claims, forfeited security deposits, damages following default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Project, together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due, and together with all rights and claims of any kind that Assignor may have against any Tenant, lessee or licensee under the Leases or against any other occupant of the Project (collectively, the "Rents").

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns.

IT IS AGREED that, notwithstanding that this instrument is a present, absolute and executed assignment of the Rents and of the Leases and a present, absolute and executed grant of the powers herein granted to Assignee, Assignor is hereby permitted, at the sufferance of Assignee and at its discretion, and is hereby granted a license by Assignee, to retain possession of the Leases and to collect and retain the Rents unless and until there shall be an "Event of Default" (as defined herein) under the terms of this Assignment or any of the other Loan Documents. Upon an Event of Default, the aforementioned license granted to Assignor shall automatically terminate without notice to Assignor, and Assignee may thereafter, without taking possession of the Project, take possession of the Leases and collect the Rents. Further, from and after such termination, Assignor shall be the agent of Assignee in collection of the Rents, and any Rents so collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee and Assignor shall, within one (1) business day after receipt of any Rents, pay the same to Assignee to be applied by Assignee as hereinafter set forth. Furthermore, from and after such Event of Default and termination of the aforementioned license, Assignee shall have the right and authority, without any notice whatsoever to Assignor and without regard to the adequacy of the security therefor, to: (a) make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Project, as particularly set forth in the Mortgage; (b) manage and operate the Project, with full power to employ agents to manage the same; (c) demand, collect, receive and sue for the Rents, including those past due and unpaid; and (d) do all acts relating to such management of the Project, including, but not limited to, negotiation of new Leases, making adjustments of existing Leases, contracting and paying for repairs and replacements to the Improvements and to the fixtures, equipment and personal property located in the Improvements or used in any way in the operation, use and occupancy of the Project as in the sole subjective judgment and discretion of Assignee may be necessary to maintain the same in a tenantable condition, purchasing and paying for such additional furniture and equipment as in the sole subjective judgment of Assignee may be necessary to maintain a proper rental income from the Project, employing necessary managers and other employees,

purchasing fuel, providing utilities and paying for all other expenses incurred in the operation of the Project, maintaining adequate insurance coverage over hazards customarily insured against and paying the premiums therefor. Assignee shall apply the Rents received by Assignor from the Project, after deducting the costs of collection thereof, including, without limitation, attorneys' fees and a management fee for any management agent so employed, against amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Assignee incurs in connection with the operation of the Project and against interest, principal, required escrow deposits and other sums which have or which may become due, from time to time, under the terms of the Loan Documents, in such order or priority as to any of the items so mentioned as Assignee, in its sole subjective discretion, may determine. The exercise by Assignee of the rights granted Assignee in this paragraph, and the collection of, the Rents and the application thereof as herein provided, shall not be considered a waiver by Assignee of any Event of Default under the Loan Documents or prevent foreclosure of any liens on the Project nor shall such exercise make Assignee liable under any of the Leases, Assignee hereby expressly reserving all of its rights and privileges under the Mortgage and the other Loan Documents as fully as though this Assignment had not been entered into.

Without limiting the rights granted hereinabove, in the event Assignor shall fail to make any payment or to perform any act required under the terms hereof and such failure shall not be cured within any applicable grace or cure period, then Assignee may, but shall not be obligated to, without prior notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, make or perform the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, performing or discharging any obligation, covenant or agreement of Assignor under any of the Leases, and, in exercising any of such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees. Any sum advanced or paid by Assignee for any such purpose, including, without limitation, attorneys' fees, together with interest thereon at the Default Rate from the date paid or advanced by Assignee until repaid by Assignor, shall immediately be due and payable to Assignee by Assignor on demand and shall be secured by the Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Notes.

IT IS FURTHER AGREED that this Assignment is made upon the following terms, covenants and conditions:

1. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Project upon Assignee, nor for the performance of any of the terms and conditions of any of the Leases, nor shall it operate to make Assignee responsible or liable for any waste committed on the Project by any Tenant or any other party or for any dangerous or defective condition of the Project or for any negligence in the management, upkeep, repair or control of the Project. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Project or from any other act or omission of Assignee in managing the Project. Assignor shall and does hereby indemnify and hold Assignee harmless from and against any and all liability, loss, claim, demand or damage which may or might be incurred by reason of this Assignment, including, without limitation, claims or demands for security deposits from Tenants deposited with Assignor, and from and against any and all claims

and demands whatsoever which may be asserted against Assignee 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 of the Leases. Should Assignee incur any liability by reason of this Assignment or in defense of any claim or demand for loss or damage as provided above, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereof at the Default Rate from the date paid or incurred by Assignee until repaid by Assignor, shall be immediately due and payable to Assignee by Assignor upon demand and shall be secured by the Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Notes.

2. This Assignment shall not be construed as making Assignee a mortgagee in possession.

3. Assignee is obligated to account to Assignor only for such Rents as are actually collected or received by Assignee.

4. Assignor hereby further presently and absolutely assigns to Assignee subject to the terms and provisions of this Assignment: (a) any award or other payment which Assignor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant under such Leases; and (b) any and all payments made by or on behalf of any Tenant of any part of the Project in lieu of Rent. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact to appear in any such proceeding and to collect any such award or payment, which power of attorney is coupled with an interest by virtue of this Assignment and is irrevocable so long as any sums are outstanding under the loan evidenced by the Note. All awards or payments so collected shall be applied to the indebtedness secured hereby in such order as Assignee shall elect.

5. Assignor represents, warrants and covenants to and for the benefit of Assignee: (a) that Assignor now is (or with respect to any Leases not yet in existence, will be immediately upon the execution thereof) the absolute owner of the landlord's interest in the Leases, with full right and title to assign the same and the Rents due or to become due thereunder; (b) that, other than this Assignment and any assignment to Assignee pursuant to the Mortgage there are no outstanding assignments of the Leases or Rents; (c) that no Rents have been anticipated, discounted, released, waived, compromised or otherwise discharged except for prepayment of rent of not more than one (1) month prior to the accrual thereof; (d) that there are no material defaults now existing under any of the Leases by the landlord or any Tenant, and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases by the landlord or any Tenant, except as disclosed in writing to Assignee; (e) that Assignor has and shall duly and punctually observe and perform all covenants, conditions and agreements in the Leases on the part of the landlord to be observed and performed thereunder and (f) the Leases are in full force and effect and are the valid and binding obligations of Assignor, and, to the knowledge of Assignor, are the valid and binding obligations of each Tenant thereto.

6. Assignor covenants and agrees that Assignor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any Tenant thereunder, and shall pay on demand all costs and expenses, including, without limitation, attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Assignee until repaid by Assignor.

7. At any time, Assignee may, at its option, notify any Tenant or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct each and every present and future tenant, lessee and licensee of the whole or any part of the Project to pay all unpaid and future Rents to Assignee upon receipt of demand from Assignee to so pay the same and Assignor hereby agrees that each such present and future Tenant, lessee and licensee may rely upon such written demand from Assignee to so pay said Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Assignee is otherwise entitled to said Rents. Assignor hereby waives any right, claim or demand which Assignor may now or hereafter have against any present or future tenant, lessee or licensee by reason of such payment of Rents to Assignee, and any such payment shall discharge such tenant's, lessee's or licensee's obligation to make such payment to Assignor.

8. Assignee may take or release any security for the indebtedness evidenced by the Notes, may release any party primarily or secondarily liable for the indebtedness evidenced by the Note, may grant extensions, renewals or indulgences with respect to the indebtedness evidenced by the Notes and may apply any other security therefor held by it to the satisfaction of any indebtedness evidenced by the Notes without prejudice to any of its rights hereunder.

9. The acceptance of this Assignment and the collection of the Rents in the event Assignor's license is terminated, as referred to above, shall be without prejudice to Assignee. The rights of Assignee hereunder are cumulative and concurrent, may be pursued separately, successively or together and may be exercised as often as occasion therefor shall arise, it being agreed by Assignor that the exercise of any one or more of the rights provided for herein shall not be construed as a waiver of any of the other rights or remedies of Assignee, at law or in equity or otherwise, so long as any obligation under the Loan Documents remains unsatisfied.

10. All rights of Assignee hereunder shall inure to the benefit of its successors and assigns, and all obligations of Assignor shall bind its successors and assigns and any subsequent owner of the Project. All rights of Assignee in, to and under this Assignment shall pass to and may be exercised by any assignee of such rights of Assignee. Assignor hereby agrees that if Assignee gives notice to Assignor of an assignment of said rights, upon such notice the liability of Assignor to the assignee of the Assignee shall be immediate and absolute. Assignor will not set up any claim against Assignee or any intervening assignee as a defense, counterclaim or setoff to any action brought by Assignee or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases or the Rents.

11. It shall be an "Event of Default" hereunder (a) if any representation or warranty made herein by Assignor is determined by Assignee to have been false or misleading in any material respect at the time made, or (b) upon any failure by Assignor in the performance or

observance of any other covenant or condition hereof and the continuance of such failure for thirty (30) days after written notice thereof from Assignee to Assignor; provided, however, that if such failure is susceptible of cure but cannot reasonably be accomplished within said thirty (30) day period, then Assignor shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as Assignor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Assignee's notice. Any such default not so cured shall be an "Event of Default" under each of the other Loan Documents, entitling Assignee to exercise any or all rights and remedies available to Assignee under the terms hereof or of any or all of the other Loan Documents, and any Event of Default under the other Loan Documents, or any default under any other Loan Document which is not cured within any applicable grace or cure period, shall be deemed an Event of Default hereunder subject to no grace or cure period, entitling Assignee to exercise any or all rights provided for herein.

12. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any default hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion. No collection by Assignee of any Rents pursuant to this Assignment shall constitute or result in a waiver of any default then existing hereunder or under any of the other Loan Documents.

13. If any provision under this Assignment or the application thereof to any entity, person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Assignment and the application of the provisions hereof to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

14. This Assignment may not be amended, modified or otherwise changed except by a written instrument duly executed by Assignor and Assignee.

15. This Assignment shall be in full force and effect continuously from the date hereof to and until the payment, discharge, and performance of any and all indebtedness and obligations evidenced by the Notes or secured or guaranteed by any of the Loan Documents, and the release of the Mortgage shall, for all purposes, automatically terminate this Assignment and render this Assignment null and void and of no effect whatsoever. Any partial release of the Mortgage shall, for all purposes, automatically terminate this Assignment only with respect to those portions of real property covered by such partial release.

16. In case of a conflict between any provision of this Assignment and any provision of the other Loan Documents, the provision selected by Assignee in its sole subjective discretion shall prevail and be controlling.

17. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be given and become effective as provided in the Loan Agreement.