

following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written and oral contracts; and (5) contractual liability covering the indemnities contained in Article 10 of the Security Instrument to the extent the same is available;

(iii) business interruption/loss of rents insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Section 6.1(a)(i); (C) in an amount equal to 100% of the projected gross income from the Property (on an actual loss sustained basis) for a period continuing until the Restoration of the Property is completed; the amount of such business interruption/loss of rents insurance shall be determined prior to the Closing Date and at least once each year thereafter based on the greatest of: (x) Borrower's reasonable estimate of the gross income from the Property and (y) the highest gross income received during the term of the Note for any full calendar year prior to the date the amount of such insurance is being determined, in each case for the succeeding eighteen (18) month period and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of eighteen (18) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; All insurance proceeds payable to Lender pursuant to this Section 6.1(a)(iii) shall be held by Lender and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note and this Agreement; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note and this Agreement except to the extent such amounts are actually paid out of the proceeds of such business interruption/loss of rents insurance.

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the insurance provided for in Section 6.1(c)(ii); and (B) the insurance provided for in Section 6.1(a)(i) shall be written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Section 6.1(a)(i), (3) shall include permission to occupy the Property, and (4) shall contain an agreed amount endorsement waiving co-insurance provisions;

(v) to the extent Borrower has any employees, workers' compensation, subject to the statutory limits of the State in which the Property is located, and employer's liability insurance with a limit of at least \$2,000,000.00 per accident and per disease per employee, and \$2,000,000.00 for disease aggregate in respect

of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under Section 6.1(a)(i);

(vii) if any portion of the Improvements is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law (the "Flood Insurance Acts"), flood hazard insurance of the following types and in the following amounts (A) coverage under Policies issued pursuant to the Flood Insurance Acts (the "Flood Insurance Policies") in an amount equal to the maximum limit of coverage available for the Property under the Flood Insurance Acts, subject only to customary deductibles under such Policies and (B) coverage under supplemental private Policies in an amount, which when added to the coverage provided under the Flood Act Policies, is not less than the Loan amount;

(viii) earthquake, and, if required by Lender sinkhole and mine subsidence insurance in amounts equal to one times (1x) the probable maximum loss of the Property as determined by Lender in its sole discretion and in form and substance satisfactory to Lender, provided that the insurance pursuant to this Section 6.1(a)(viii) hereof shall be on terms consistent with the all risk insurance policy required under Section 6.1(a)(i) hereof;

(ix) umbrella liability insurance in an amount not less than One Hundred Million And 00/100 Dollars (\$100,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under Section 6.1(a)(ii) hereof;

(x) [Intentionally Omitted]

(xi) [Intentionally Omitted]

(xii) such other insurance and in such amounts or as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Lender, issued by financially sound and responsible insurance companies authorized to do business in the State in which the Property is located and approved by Lender. The insurance companies must have a claims paying ability/financial strength rating of "A" (or its equivalent) or better by at least two (2) Rating Agencies (one of which will be

S&P if they are rating the Securities and one of which shall be Moody's if they are rating the Securities), or if only one Rating Agency is rating the Securities, then only by such Rating Agency (each such insurer shall be referred to below as a "Qualified Insurer"). Borrower will be required to maintain, at all times, insurance against terrorism, terrorist acts or similar acts of sabotage ("Terrorism Insurance") with amounts, terms and coverage consistent with those required under Sections 6.1(a)(i) and (iii) hereof (the "Terrorism Insurance Required Amount"). Notwithstanding the foregoing sentence, Borrower shall not be obligated to expend more than \$750,000 in any fiscal year on Insurance Premiums for Terrorism Insurance (the "Terrorism Insurance Cap") and if the cost of the Terrorism Insurance Required Amount exceeds the Terrorism Insurance Cap, Borrower shall purchase the maximum amount of Terrorism Insurance available with funds equal to the Terrorism Insurance Cap; provided, however, in the event such Terrorism Insurance is customarily maintained by owners of similar properties in the United States as part of the all risk coverage required pursuant to Section 6.1(a)(i) hereof, Borrower shall maintain such Terrorism Insurance as a part thereof, regardless of the cost of the related Insurance Premiums. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Section 6.1(a), Borrower shall deliver certified copies of the Policies marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums").

(c) Borrower shall not obtain (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender's interest is included therein as provided in this Agreement and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Section 6.1(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket policy, Borrower shall notify Lender of the same and shall cause certified copies of each Policy to be delivered as required in Section 6.1(a). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a). Notwithstanding Lender's approval of any umbrella or blanket liability or casualty Policy hereunder, Lender reserves the right, in its sole discretion, to require Borrower to obtain a separate Policy in compliance with this Section 6.1.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, except for the Policy referenced in Section 6.1(a)(v), shall name Lender and Borrower as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, shall contain a customary non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in Section 6.1(a) hereof shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

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

(iii) each Policy shall provide that the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and

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

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

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

(h) Borrower shall furnish to Lender; on or before thirty (30) days after the close of each of Borrower's fiscal years, a statement certified by Borrower or a Responsible Officer of Borrower of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance and, if requested by Lender, verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender.

Section 6.2 Casualty.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty (except in the event that such Restoration is physically not capable of being done for reason that Resort Borrower is not restoring the base of the Building or to the extent that the insurance

proceeds relating to such Casualty have not been made available to Borrower for application to such Restoration; provided, however, regardless of whether Lender has made the Net Proceeds available to Borrower for Restoration, Borrower shall promptly commence and diligently prosecute the removal and disposal of any debris, refuse or hazards resulting from the Casualty and insure that the Property is in a safe condition and otherwise in accordance with this Loan Agreement), with such alterations as may be reasonably approved by Lender, as are required pursuant to the Master REA and the Master Disbursement Agreement (for so long as the same remain in full force and effect) and otherwise in accordance with Section 6.4 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. No Prepayment Premium, Spread Maintenance Premium or Breakage Costs shall be payable in connection with any mandatory prepayment under Section 2.3.2 resulting from a Casualty.

Section 6.3 Condemnation.

Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of all or any part of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall, promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 6.4 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt. No Prepayment Premium, Spread Maintenance Premium or Breakage Costs shall be payable in connection with any mandatory prepayment under Section 2.3.2 resulting from a Condemnation.

Section 6.4 Restoration.

6.4.1 Restoration Pre-Completion of Future Improvements.

All Net Proceeds received prior to the termination of the Master Disbursement Agreement pursuant to Section 11.18 thereof, regardless of amount, shall be deposited in the Retail Loss Proceeds Account (as established pursuant to and defined in the Master Disbursement Agreement) and shall be made available for Restoration, in accordance

with the terms of the Master Disbursement Agreement, provided that each of the following conditions are met:

(A) the applicable conditions precedent set forth in Section 3.5 of the Master Disbursement Agreement have been satisfied;

(B) the Future Improvements can still be built in accordance with the Plans and Specifications in compliance with all Applicable Laws;

(C) Lender shall have been satisfied that the Opening Date will be achieved on or before the Completion Date;

(D) the Net Proceeds, together with any Cash or Cash Equivalent deposited by Borrower with Lender and any unfunded Future Advances, are sufficient in Lender's discretion to cover the cost of the construction of the Future Improvements and Restoration each to completion; and

(E) the Resort Lender is making all proceeds under the Resort Loan available for restoration of the Resort Property and such amounts, together with any unfunded future advances under the Resort Loan, are sufficient in Lender's discretion to cover the cost of the construction of the Project Future Improvements to completion.

6.4.2 Restoration Post-Completion of Future Improvements. Subject to the terms of the Master REA for so long as the same is in full force and effect, the following provisions shall apply in connection with the Restoration of the Property occurring after the termination of the Master Disbursement Agreement pursuant to Section 11.18 thereof (or at such other time when the Master Disbursement Agreement is no longer in full force and effect):

(a) If the Net Proceeds shall be less than Two Million Five Hundred Thousand And 00/100 Dollars (\$2,500,000.00) and the costs of completing the Restoration shall be less than Two Million Five Hundred Thousand And 00/100 Dollars (\$2,500,000.00), the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that no Event of Default exists and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than Two Million Five Hundred Thousand And 00/100 Dollars (\$2,500,000.00) or the costs of completing the Restoration is equal to or greater than Two Million Five Hundred Thousand And 00/100 Dollars (\$2,500,000.00), Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4.2. The term "Net Proceeds" shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1(a)(i), (iv), (vi), (vii), (viii) and (ix) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Insurance Proceeds"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses

(including, but not limited to, reasonable counsel fees), if any, in collecting same (“Condemnation Proceeds”), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions is met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than forty percent (40%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is located on such land;

(C) Leases demising in the aggregate a percentage amount equal to or greater than sixty-five percent (65%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower furnishes to Lender evidence satisfactory to Lender that all tenants under Major Leases shall continue to operate their respective space at the Property after the completion of the Restoration;

(D) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion in compliance with all Applicable Laws, including, without limitation, all applicable Environmental Laws;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(iii), if applicable, or (3) other funds of Borrower;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) twelve (12) months after the occurrence of such Casualty or Condemnation, or (3) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

(G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all Applicable Laws;

(H) Lender shall be satisfied that the Debt Service Coverage Ratio after the completion of the Restoration shall be equal to or greater than 1.05 to 1;

(I) such Casualty or Condemnation, as applicable, does not result in the total and permanent loss of access to the Real Property or the Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be reasonably acceptable to Lender;

(K) the Net Proceeds together with any Cash or Cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration;

(L) Reserved;

(M) any Management Agreement in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall (1) remain in full force and effect during the Restoration and shall not otherwise terminate as a result of the Casualty or Condemnation or the Restoration or (2) if terminated, shall have been replaced with a Replacement Management Agreement with a Qualified Manager, prior to the opening or reopening of the Property or any portion thereof for business with the public.

(N) the Resort Lender is making all proceeds under the Resort Loan available for restoration of the Resort Property and such amounts, together with any unfunded future advances under the Resort Loan and any Cash or Cash equivalent deposited by the Resort Borrower with the Resort Lender, are sufficient in Lender's reasonable discretion to cover the cost of the construction of the Resort Property to completion.

6.4.3 General Restoration Provisions.

(a) The Net Proceeds shall be held by Lender (unless otherwise required by the Master REA or Master Disbursement Agreement for so long as the same remain in full force and effect) in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.4.3, shall constitute additional security for the Debt and other obligations under the Loan Documents. Subject to the terms of the Master REA and the Master Disbursement Agreement for so long as the same remain in full force and effect the Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of

evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement or are not yet payable) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens or encumbrances of any nature whatsoever on the Real Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(b) All plans and specifications required in connection with the Restoration, the cost of which is greater than \$1,000,000.00, shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant") and reasonably acceptable to Borrower. Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration the cost of which is greater than \$1,000,000.00, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(c) Unless otherwise required by the Master REA or the Master Disbursement Agreement (for so long as the same remain in full force and effect) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to (i) ten percent (10%), of the costs actually incurred for work in place as part of the Restoration until fifty percent (50%) of the Restoration has been completed and (ii) five percent (5%) of the costs actually incurred for work in place as part of the Restoration after fifty percent (50%) of the Restoration has been completed until the Restoration has been completed, in each case as certified by the Casualty Consultant to Lender, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4 and that all approvals necessary for the re-occupancy and use of the Real Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all

work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy for the Property, and Lender receives an endorsement to such Title Insurance Policy insuring the continued priority of the Lien of the Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(d) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month unless otherwise required under the Master Disbursement Agreement (while in effect) or the Master REA.

(e) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, if any, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4 shall constitute additional security for the Debt and other obligations under the Loan Documents.

(f) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(g) All Net Proceeds not required (i) to be made available for the Restoration by Section 6.4.1 or 6.4.2 or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4.2 may be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion. If Lender shall receive and retain Net Proceeds, the Lien of the Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

VII. RESERVE FUNDS

Section 7.1 Reserved

Section 7.2 Tax and Insurance Escrow Fund.

Borrower shall pay to Lender on each Payment Date (a) if (1) a Separate Tax Lot Event has occurred or (2) the Property is not one or more separate tax lots and the Resort Lender is not budgeting loan proceeds for Taxes for both the Resort Property and the Property (or if Resort Lender is budgeting for the same, if Lender has a reasonable belief that Resort Lender has not paid or will not timely be able to pay or cause to be paid such Taxes with such budgeted proceeds), one-twelfth of the Taxes (the "Monthly Tax Deposit") that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates; and (b) at the option of Lender, if the liability or casualty Policy maintained by Borrower covering the Property shall not constitute an approved blanket or umbrella Policy pursuant to Section 6.1(c) hereof, or Lender shall require Borrower to obtain a separate Policy pursuant to Section 6.1(c) hereof, one-twelfth of the Insurance Premiums (the "Monthly Insurance Premium Deposit") that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "Tax and Insurance Escrow Fund"). In the event Lender shall elect to collect payments in escrow for Insurance Premiums pursuant to clause (b) above, Borrower shall pay to Lender an initial deposit to be determined by Lender, in its sole discretion, to increase the amounts in the Tax and Insurance Escrow Fund to an amount which, together with anticipated Monthly Insurance Premium Deposits, shall be sufficient to pay all Insurance Premiums as they become due. The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note and this Agreement, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 5.1.2 and 6.1, respectively, hereof. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 5.1.2 and 6.1, respectively, hereof. Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Property. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case

may be. Notwithstanding anything to the contrary contained in this Section 7.2, for so long as (i) the insurance required to be maintained under Section 6.1 is covered by a blanket Policy approved by Lender covering both the Resort Property and the Property and naming the Lender as an additional insured and (ii) Resort Lender is currently escrowing Insurance Premiums for such Policy covering both the Resort Property and the Property, Borrower shall not be required to make the Monthly Insurance Premium Deposits.

Section 7.3 Reserve Funds, Generally.

(a) Borrower grants to Lender a first priority perfected security interest in each of the Reserve Funds and the related Accounts and any and all monies now or hereafter deposited in each Reserve Fund and related Account as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds and the related Accounts shall constitute additional security for the Debt.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion.

(c) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(d) The Reserve Funds shall be held in interest bearing accounts and all earnings or interest on a Reserve Fund shall be added to and become a part of such Reserve Fund and shall be disbursed in the same manner as other monies deposited in such Reserve Fund, except that earnings or interest on the Tax and Insurance Escrow Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender, and Borrower shall not be responsible for taxes on such earnings or interest on the Tax and Insurance Escrow.

(e) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or related Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC 1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(f) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, damages (but not special, consequential or punitive damages), losses (other than diminution in value), obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the related Accounts or the performance of the obligations for which the Reserve Funds or the related Accounts were established, except to the extent arising from the gross negligence or willful misconduct of Lender, its agents or employees. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds or

the related Accounts; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

VIII. DEFAULTS

Section 8.1 Event of Default.

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

(i) if any portion of the Debt is not paid on or before the date which is five (5) Business Days after the same is due and payable;

(ii) subject to Borrower's right to contest in accordance with the terms of Section 5.1.2 hereof, if any of the Taxes or Other Charges are not paid on or before the date when the same are due and payable; provided, however, Borrower shall not be in default for failure to pay any Taxes so long as there is sufficient money in the Tax Account for payment of amounts then due and payable and Lender's access to such money has not been constrained or restricted in any manner due to any circumstance or event which is caused by or otherwise relates to any actions or omissions of Borrower or its Affiliates (including, without limitation, as a result of (x) any proceeding brought under any Creditors Rights Law concerning or relating to Borrower or any of its Affiliates or (y) any other litigation or proceeding concerning or relating to Borrower or any of its Affiliates);

(iii) if the Policies are not kept in full force and effect or if certified copies of the Policies are not delivered to Lender on request; provided, however, Borrower shall not be in default for failure to pay any insurance premiums so long as there is sufficient money in the Insurance Premium Account (allocable to the payment of insurance premiums) for payment of all insurance premiums then due and payable and Lender's access to such money has not been constrained or restricted in any manner due to any circumstance or event which is caused by or otherwise relates to any actions or omissions of Borrower or its Affiliates (including, without limitation, as a result of (x) any proceeding brought under any Creditors Rights Law concerning or relating to Borrower or any of its Affiliates or (y) any other litigation or proceeding concerning or relating to Borrower or any of its Affiliates);

(iv) if Borrower transfers or encumbers any portion of the Property in violation of the provisions of Section 5.2.10 hereof or Article 7 of the Security Instrument;

(v) if any representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to the Bankruptcy Code, or any similar federal or State law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its negative covenants contained in Section 5.2;

(x) if Borrower violates or does not comply with any of the provisions dealing with Major Leases in Section 5.1.17 hereof;

(xi) subject to the terms of Section 5.1.22, if the Property is not at any time managed by a Qualified Leasing Agent pursuant to the Leasing Agreement or a Replacement Leasing Agreement;

(xii) if Borrower violates or does not comply with any of the provisions of Section 4.1.35 hereof provided, however, that such violation or failure to comply shall not constitute an Event of Default if (A) such violation or failure to comply was inadvertent, immaterial and non-recurring, (B) such violation or failure to comply is curable and Borrower shall promptly cure such violation or failure to comply within thirty (30) calendar days Borrower's obtaining actual knowledge of such failure and (C) within thirty (30) calendar days of the request by Lender, Borrower causes its legal counsel to deliver (1) an Insolvency Opinion stating that such violation or failure would not result in a substantive consolidation of the assets and liabilities of Borrower and/or Principal with those of any other Person in a bankruptcy proceeding under the United States Bankruptcy Code (11 U.S.C. § 101, et seq.) or (2) if an Insolvency Opinion had previously been delivered to Lender, a revised or updated Insolvency Opinion to the effect that such violation or failure to comply shall not impair, negate or amend the opinions rendered in the Insolvency Opinion delivered in connection with the closing of the Loan, which opinion shall be acceptable to Lender in its reasonable discretion;

(xiii) subject to Borrower's right to contest set forth in Section 5.1.2 and Section 5.2.1 hereof, if the Property becomes subject to any mechanic's, materialman's or other Lien other than a Lien for local real estate taxes and assessments not then due and payable and the Lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(xiv) subject to Borrower's right to contest set forth in Section 5.1.2 and Section 5.2.1 hereof, if any federal tax Lien or state or local income tax Lien is filed against Borrower, any Guarantor, or the Property and same is not discharged of record within thirty (30) days after same is filed;

(xv) if (A) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 5.2.8 hereof, (B) Borrower is a Plan or its assets constitute Plan Assets; or (C) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under the Security Instrument, the Note, this Agreement or the other Loan Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a State statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA, the Code, a State statute or other similar law;

(xvi) if Borrower shall fail to deliver to Lender, within ten (10) days after request by Lender, the estoppel certificates required pursuant to the terms of Section 5.1.13(a) hereof;

(xvii) if any default occurs under any guaranty or indemnity executed in connection herewith (including, without limitation, the Guaranty and the Environmental Indemnity) and such default continues after the expiration of applicable grace periods, if any;

(xviii) if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to the Security Instrument;

(xix) if (i) the Interest Rate Cap Agreement is not executed and delivered when required hereunder or is terminated for any reason by Borrower or the Counterparty, or (ii) the Counterparty defaults in the performance of its monetary obligations under the Interest Rate Cap Agreement or (iii) the rating of the Counterparty is subject to any downgrade, withdrawal or qualification by a Rating Agency, and in any such case Borrower does not within ten (10) days (A) replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement in accordance with Section 2.4 hereof, and (B) deliver to Lender, in form and substance reasonably satisfactory to Lender (x) an Assignment of Interest Rate Cap Agreement (y) a recognition letter from the Counterparty thereto acknowledging the assignment of the Replacement Interest Rate Cap

Agreement and (z) any other opinions or documents required pursuant to Section 2.4 hereof;

(xx) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xxi) if Borrower shall fail to pay the Air Rights Rent or any additional rent or other charge mentioned in or made payable by the Air Rights Lease when said rent or other charge is due and payable;

(xxii) if there shall occur any default by Borrower, as tenant under the Air Rights Lease, in the observance or performance of any term, covenant or condition of the Air Rights Lease on the part of Borrower to be observed or performed and said default is not cured following the expiration of any applicable grace and notice periods therein provided, or if the leasehold estate created by the Air Rights Lease shall be surrendered or if the Air Rights Lease shall cease to be in full force and effect or the Air Rights Lease shall be terminated or canceled for any reason or under any circumstances whatsoever (other than in connection with a Fee Transfer Event), or if any of the terms, covenants or conditions of the Air Rights Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender;

(xxiii) if any of the assumptions contained in the Insolvency Opinion, or in any other "non-consolidation" opinion delivered to Lender in connection with the Loan, or in any other "non-consolidation" delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; provided, however, that any such violation shall not result in an Event of Default if (A) such violation was inadvertent, does not result in a reasonable likelihood that a substantive consolidation of the assets and liabilities of Borrower with those of any other Person in a bankruptcy proceeding under the Bankruptcy Code would occur, and is promptly corrected upon Borrower's obtaining knowledge of such failure (unless such failure to correct would not result in a future reasonable likelihood of substantive consolidation and the opinion required in the following clause (B) opines to the same) and (B) within fifteen (15) days of Lender's request, Borrower delivers to Lender an opinion of counsel to the effect that such breach shall not negate or impair the substance of the Insolvency Opinion delivered to Lender in connection with the closing of the Loan;"

(xxiv) if any Guarantor who is an individual dies or is incapacitated and Borrower fails to provide a substitute Guarantor satisfactory to Lender in accordance with Section 5.2.10(f) within thirty (30) days of such an event;

(xxv) subject to the terms of Section 5.1.18, if the Property is not at any time managed by a Qualified Manager pursuant to the Management Agreement or a Replacement Management Agreement;

(xxvi) prior to the date that both the Satisfactory DSCR Date and Completion Date (as defined in the Master Disbursement Agreement) have been achieved, upon the occurrence of a Resort Loan Event of Default;

(xxvii) upon the occurrence of an Event of Default under the Master Disbursement Agreement (except to the extent the same has been cured or waived in accordance with the terms of the Master Disbursement Agreement);

(xxviii) subject to the terms of Section 5.1.22, if the leasing duties with respect to Property is not at any time being handled by a Qualified Leasing Agent pursuant to the Leasing Agreement or a Replacement Leasing Agreement;

(xxix) prior to the Completion Date (as defined in the Master Disbursement Agreement), without the prior written consent of Lender, if Jeffrey Soffer fails to control Resort Borrower and own, directly or indirectly, at least a 20% interest in Resort Borrower;

(xxx) if any Letter of Credit is not renewed, replaced or substituted in accordance with the terms hereof twenty (20) days prior to the expiration date of such Letter of Credit (unless such expiration date shall occur at least two (2) Business Days after the Maturity Date);

(xxxi) in the event that the long term credit rating of the Issuing Bank falls below the Minimum L/C Rating and Borrower fails to deliver to Lender within ten (10) days thereof a Letter of Credit in an amount equal to the amount of the Letter of Credit being replaced from an Issuing Bank having a credit rating of no less than the Minimum L/C Rating, unless such Letter of Credit is replaced with cash in accordance with the terms hereof within such ten (10) day period;

(xxxii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxxi) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xxxiii) if there shall be a default under the Security Instrument or any of the other Loan Documents beyond any applicable notice and cure periods contained in such documents, whether as to Borrower or the Property, or if any other such event shall occur or condition shall exist, if the effect of such event or

condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and or any part of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property or any other Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by Applicable Law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by Applicable Law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, to the extent permitted by Applicable Law, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the other Collateral and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property or Collateral for the satisfaction of any of the Debt in preference or priority to any other Collateral, and Lender may seek satisfaction out of the Property or all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender

shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right, from time to time, to sever the Note and the other Loan Documents into one or more separate notes, Security Instruments, Mortgages and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Additional Construction Related Remedies. Upon the occurrence and during the continuance of an Event of Default, Lender may, at its election, but without any obligation to do so, without notice of any kind to Borrower, do any one or more of the following:

(i) terminate its commitment to lend and any obligation to make any further disbursements of the Loan;

(ii) set-off and apply, to the extent thereof and to the maximum extent permitted by law, any and all deposits, funds or assets at any time held and any and all indebtedness at any time owing by Lender to or for the credit or account of Borrower against any Debt;

(iii) exercise any and all rights and remedies afforded by the Guaranty, this Agreement or the other Loan Documents, at law, in equity or otherwise;

(iv) in its own name or in the name of Borrower, enter into possession of the Property, perform all work necessary to complete the construction of the Future Improvements (to the extent that the construction is being performed by Borrower or Borrower otherwise has the right to take such actions) substantially in accordance with the Plans and Specifications and Specifications (as modified as deemed necessary by Lender), Loan Documents and Applicable Laws, and continue to employ Architect, Engineer, General Contractor, and any contractor pursuant to the applicable contracts or otherwise; and

(v) after first having given written notice to Architect, Engineer or General Contractor that Borrower has no further rights with respect to the Construction Documents, Borrower's rights in and to any Construction Documents having been extinguished under the terms and conditions of the Loan Documents, to enjoy and enforce all of the rights of Borrower under the Architect's Contract, the Engineer's Contract, the Construction Contract, the Plans and Specifications or the Construction Documents (but in such event Lender does not assume responsibility to pay any amounts due by Borrower whether or not Lender takes possession of the Project).

Section 8.3 Remedies Cumulative; Waivers.

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one or more Defaults or Events of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

Section 8.4 Power of Attorney. Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact, with full power of substitution during the continuance of an Event of Default, to complete the Future Improvements in the name of Borrower (to the extent that the construction is being performed by Borrower or Borrower otherwise has the right to complete the same). Borrower hereby empowers said attorney as follows:

(a) to use any funds of Borrower, including any Loan proceeds which may remain undisbursed hereunder, for the purpose of completing the Future Improvements in the manner called for by the Plans and Specifications;

(b) to make such additions, changes, and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Future Improvements (to the extent that the construction is being performed by Borrower or Borrower otherwise has the right to take such actions);

(c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes;

(d) to pay, settle, or compromise all existing bills and claims which may be liens against the Future Improvements, or as may be necessary or desirable to Lender for the completion of the Future Improvements or for clearance of title;

(e) to take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Future Improvements;

(f) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;

(g) to prosecute and defend all actions or proceedings in connection with the Property, the Project or the construction of the Future Improvements and take such action and require such performance as Lender shall deem necessary under any performance or payment bond;

(h) to do any and every act with respect to construction or completion of the Future Improvements (to the extent that the construction of the same is being performed by Borrower or Borrower otherwise has the right to take such action) or the closing of any permanent financing which Borrower might do in its own behalf including execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of Borrower as may be necessary or desirable to Lender; and

(i) to enforce all rights of Borrower under any contract or with respect to the Plans and Specifications.

(j) It is further understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

IX. SPECIAL PROVISIONS

Section 9.1 Sale of Notes and Securitization.

Lender may, at any time, sell, transfer or assign the Note, this Agreement, the Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the "Securities") evidencing a beneficial interest in a rated or unrated public offering or private placement (a "Securitization"). Notwithstanding the foregoing, Lehman agrees to provide Borrower with no less than three (3) months prior written notice prior to any Securitization by Lehman pursuant to this Section 9.1. At the request of the holder of the Note and, to the extent not already required to be provided by Borrower under this Agreement, Borrower, and Sponsor at Borrower's and Sponsor's expense, shall satisfy the market standards to which the holder of the Note customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with a Securitization or the sale of the Note or the participations or Securities, including, without limitation, to:

(a) within fifteen (15) days after written request, (i) provide such financial and other information with respect to the Property, Borrower, Sponsor, Guarantor and Manager (if any), (ii) provide budgets relating to the Property and (iii) to perform or permit or cause to be performed or permitted such site inspection, appraisals, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or the Rating Agencies or as may be necessary or appropriate in connection with the Securitization (the "Provided Information"), together, if customary, with appropriate verification and/or consents of the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) if required by the Rating Agencies, deliver (i) a revised Insolvency Opinion, (ii) revised opinions of counsel as to due execution and enforceability with respect to the Property, Borrower, Guarantor and their respective Affiliates and the Loan Documents, and (iii) revised organizational documents for Borrower, Guarantor and their respective Affiliates (including, without limitation, such revisions as are necessary to comply with the provisions of Section 4.1.35 hereof), which counsel, opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(c) if required by the Rating Agencies, deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) execute such amendments to the Loan Documents and organizational documents as may be reasonably requested by the holder of the Note or the Rating Agencies or otherwise to effect the Securitization; provided, however, that Borrower shall not be required to modify or amend any Loan Document if such modification or amendment would (except for modifications and amendments required to be made pursuant to Section (e) and (f) below,) (i) change the interest rate, the stated maturity or the amortization of principal set forth in the Note, (ii) modify or amend any other material economic term of the Loan or (iii) materially lessen the rights of or materially increase the obligations or liabilities of Borrower or any Guarantor;

(e) if Lender elects, in its sole discretion, prior to or upon a Securitization, to split the Loan into two or more parts, or the Note into multiple component notes or tranches which may have different interest rates, amortization payments, principal amounts and payment priorities, Borrower and Sponsor agree to cooperate with Lender in connection with the foregoing and to execute the required modifications and amendments to the Note, this Agreement and the Loan Documents and to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rate spreads, so long as the initial weighted average of such interest rate spreads does not exceed the Applicable Interest Rate and the Maturity Date and other material economic terms remain unchanged; provided, however, that nothing in this subsection (e) shall limit Lender's right to apply (i) mandatory or involuntary prepayments to the Debt in such

order as Lender determines in its sole discretion and (ii) payments to the Debt in such order as Lender determines in its sole discretion during the continuance of an Event of Default, it being agreed that the weighted average interest rate spreads described above may subsequently change only as a result of a payment or application of principal made (x) in connection with a mandatory or involuntary prepayment and/or (y) during the continuance of an Event of Default. Notwithstanding anything to the contrary contained in this subsection (e), provided no Event of Default exists, all voluntary prepayments made pursuant to Section 2.3.1 above shall be applied pro rata among each component;

(f) execute modifications to the Loan Documents changing the interest rate and/or the amortization payments (if any) for the Loan, provided that the initial weighted average of the interest rate spreads for the Loan and the Mezzanine Loan after such modification shall not exceed the weighted average of the interest rate spreads for the Loan and the Mezzanine Loan immediately prior to such modification; provided, however, that nothing in this subsection (f) shall limit Lender's right to apply (i) mandatory or involuntary prepayments to the Debt in such order as Lender determines in its sole discretion and (ii) payments to the Debt in such order as Lender determines in its sole discretion during the continuance of an Event of Default, it being agreed that the weighted average interest rate spreads described above may subsequently change only as a result of a payment or application of principal made (x) in connection with a mandatory or involuntary prepayment and/or (y) during the continuance of an Event of Default. The Borrower and Sponsor shall also provide opinions and title insurance reasonably necessary to effectuate the same. Notwithstanding anything to the contrary contained in this subsection (f), all voluntary prepayments under the Loan shall require a corresponding pro rata voluntary prepayment under the Mezzanine Loan;

(g) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Sponsor and the Loan Documents as are customarily provided in securitization transactions and as may be reasonably requested by the holder of the Note or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents (or, to the extent such representations are not then true, indicating the exceptions thereto); and

(h) supply to Lender such documentation, financial statements and reports in form and substance required for Lender to comply with Regulations S-X and AB of the federal securities law, if applicable.

All reasonable third party costs and expenses incurred by Lender or Borrower or Sponsor in connection with Borrower's or Sponsor's complying with requests made under this Section 9.1 shall be paid by Borrower and Sponsor. Notwithstanding anything to the contrary contained herein, the Borrower's obligation with respect to the payment of Securitization costs to be paid by Borrower, Sponsor and their Affiliates under this Section 9.1 (excluding any in-house counsel fees, internal costs (copies, distributions and the like) and costs incurred in connection with the addition of any Independent Manager) shall not exceed \$50,000.00 in the aggregate.

Section 9.2 Securitization Indemnification.

(a) Borrower and Sponsor understand that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including, without limitation, a prospectus supplement, private placement memorandum, offering circular or other offering document (each a "Disclosure Document") and may also be included in filings (an "Exchange Act Filing") with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or provided or made available to Investors or prospective Investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower and Sponsor will cooperate with the holder of the Note in updating the Disclosure Document by providing (to the extent not in the possession of and readily accessible to Lender) all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) Borrower and Sponsor agree to provide in connection with each of (i) a preliminary and a final private placement memorandum or (ii) a preliminary and final prospectus or prospectus supplement, as applicable, an indemnification certificate (A) certifying that Borrower has carefully examined such memorandum or prospectus or term sheets, as applicable, including without limitation, the sections entitled "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager", "The Developer", "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and such sections (and any other sections reasonably requested) do not, to Borrower's knowledge after reasonably inquiry, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) indemnifying Lender (and for purposes of this Section 9.2, Lender hereunder shall include its officers and directors), the Affiliate of Lehman Brothers Inc. ("Lehman") that has filed the registration statement relating to the Securitization (the "Registration Statement"), each of its directors, each of its officers who have signed the Registration Statement and each Person who controls the Affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Lehman Group"), and Lehman, each of its directors and each Person who controls Lehman within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the "Underwriter Group") for any claims, damages (but not special, consequential or punitive damages), losses (other than diminution in value) or liabilities (collectively, the "Liabilities") to which Lender, the Lehman Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such sections described in clause (A) above insofar as they relate to the Borrower, its Affiliates, the Property or the Manager, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such sections or necessary in order to make the statements in such sections or in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse Lender, the Lehman Group and the Underwriter Group for any legal or other expenses reasonably incurred by Lender the Lehman Group and the Underwriter Group in connection with investigating or defending the Liabilities; provided, however, that

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Borrower will be liable in any such case under clauses (B) or (C) above only to the extent that any such Liability arises out of or is based upon any such untrue statement or omission made therein in reliance upon and in conformity with the Provided Information, information contained in such portions of the Disclosure Document examined and approved by Borrower or information otherwise furnished to Lender by or on behalf of Borrower in connection with the preparation of the memorandum or prospectus. This indemnification will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (B) and (C) above shall be effective whether or not an indemnification certificate described in (A) above is provided and shall be applicable based on information previously provided by Borrower or its Affiliates if Borrower does not provide the indemnification certificate.

(c) In connection with filings under the Exchange Act, Borrower and Sponsor agree to indemnify (i) Lender, the Lehman Group and the Underwriter Group for Liabilities to which Lender, the Lehman Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in light of the circumstances under which they were made not misleading and (ii) reimburse Lender, the Lehman Group or the Underwriter Group for any reasonable legal or other expenses actually incurred by Lender, the Lehman Group or the Underwriter Group in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an indemnified party under this Section 9.2 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 9.2, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 9.2 the indemnifying party shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party to parties. The indemnifying party shall not be liable for the expenses of more than one such separate counsel unless an indemnified party shall have reasonably

concluded that there may be legal defenses available to it that are different from or additional to those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnifications provided for in Section 9.2(b) or (c) is or are for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.2(b) or (c), the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof) to the extent permitted by Applicable Law; provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) Lehman's and Borrower's relative knowledge and access to information concerning the matter with respect to which claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender, Borrower, and Sponsor hereby agree that it would not be equitable if the amount of such contribution were determined solely by pro rata or per capita allocation.

(f) The liabilities and obligations of both Borrower, Sponsor and Lender under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

Section 9.3 Servicer.

At the option of Lender or Agent, the Loan may be serviced by a servicer/trustee (the "Servicer") selected by Lender or Agent and Lender or Agent may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender or Agent and Servicer. Borrower shall be responsible for payment of (i) any reasonable set-up fees or any other initial costs relating to or arising under the Servicing Agreement, (ii) all reasonable out-of-pocket costs and expenses of Servicer in connection with Designated Servicing Matters and (iii) an annual servicing fee (the "Servicing Fee") in an amount up to (as required by Lender) \$100,000 ; provided, however, Lender reserves the right upon agreement with the Mezzanine Lender (in accordance with the terms of the Intercreditor Agreement) to change the amount of the Servicing Fee provided that in no event shall the Servicing Fee, together with the Mezzanine Servicing Fee, exceed \$125,000.

Section 9.4 Exculpation.

(a) Except as otherwise provided herein, in the Security Instrument or in the other Loan Documents, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Agreement, the Note or the Security Instrument by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, action for

specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Agreement, the Note, the Security Instrument, the other Loan Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by this Agreement, the Note, the Security Instrument and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender. Lender, by accepting this Agreement, the Note and the Security Instrument, agrees that it shall not, except as otherwise provided herein or in the Security Instrument, sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding, under or by reason of or under or in connection with this Agreement, the Note, the Security Instrument or the other Loan Documents. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Agreement, the Note, the Security Instrument or the other Loan Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under the Security Instrument; (iii) affect the validity or enforceability of any indemnity (including, without limitation, the Environmental Indemnity), guaranty (including, without limitation, the Guaranty), master lease or similar instrument made in connection with this Agreement, the Note, the Security Instrument, or the other Loan Documents; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases; (vi) impair the right of Lender to enforce the provisions of Sections 9.9 and 10.2 of the Security Instrument or Sections 4.1.8, 4.1.28, 5.1.9 and 5.2.8 hereof; or (vii) impair the right of Lender to obtain a deficiency judgment or other judgment on the Note against Borrower if necessary to (A) preserve or enforce its rights and remedies against the Property or (B) obtain any Insurance Proceeds or Awards to which Lender would otherwise be entitled under the terms of this Agreement or the Security Instrument; provided however, Lender shall only enforce such judgment to the extent of the Insurance Proceeds and/or Awards.

(b) Notwithstanding the provisions of this Section 9.4 to the contrary, Borrower shall be personally liable to Lender for the Losses it actually incurs due to: (i) fraud or intentional misrepresentation in connection with the execution and the delivery of this Agreement, the Note, the Security Instrument, or the other Loan Documents; (ii) Borrower's misapplication or misappropriation of Rents received by Borrower after the occurrence of a Default or Event of Default; (iii) Borrower's misapplication or misappropriation of Security Deposits or Rents collected more than thirty (30) days in advance; (iv) Borrower's misapplication or the misappropriation of Insurance Proceeds or Awards; (v) Borrower's failure to pay Taxes or Other Charges (except to the extent that sums sufficient to pay such amounts have been deposited into a satisfactory escrow arrangement with Lender), charges for labor or materials or other charges that can create Liens on the Property; (vi) Borrower's failure to return or to reimburse Lender for all Personal Property taken from the Property by or on behalf of Borrower and not replaced with Personal Property of the same utility and of the same or greater value; (vii) any act of intentional waste or arson with respect to the Property (other than the disposal of Personal Property in the ordinary course of business) by Borrower or any Affiliate or thereof or by any Guarantor or Person providing an indemnity; (viii) any fees or

commissions paid by Borrower to any Affiliate of Borrower, or Guarantor in violation of the terms of this Agreement, the Note, the Security Instrument or the other Loan Documents; (ix) Borrower's failure to comply with the provisions of Sections 4.1.39, 5.1.10 and 5.1.19 of this Agreement, (x) any indemnity provided by Lender under any Control Agreements (as defined in the Master Disbursement Agreement) or (xi) the litigation described on Schedule II hereto.

(c) Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in Subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect (i) in the event of Borrower's default under Sections 4.1.35 (subject to the limitations set forth in Section 8.1(a)(xii)) or 5.2.10 hereof or Article 7 of the Security Instrument or (ii) if the Property or any part thereof shall become an asset in (A) a voluntary bankruptcy or insolvency proceeding or (B) an involuntary bankruptcy or insolvency proceeding commenced by any Person (other than Lender) and Borrower fails to use its best efforts to obtain a dismissal of such proceedings.

(d) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code to file a claim for the full amount of the indebtedness secured by the Security Instrument or to require that all collateral shall continue to secure all of the indebtedness owing to Lender in accordance with this Agreement, the Note, the Security Instrument and the other Loan Documents.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, damages (but not special, consequential or punitive damages), losses (other than diminution in value), obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with any indemnity provided by Lender under any Control Agreements (as defined in the Master Disbursement Agreement).

Section 9.5 Intentionally Omitted.

Section 9.6 Intentionally Omitted.

Section 9.7 Syndication

9.7.1 Syndication.

The provisions of this Section 9.7 shall only apply in the event that the Loan is syndicated in accordance with the provisions of this Section 9.7 set forth below.

9.7.2 Sale of Loan, Co-Lenders, Participations and Servicing.

(a) Lender and any Co-Lender may, at their option, without Borrower's consent (but with written notice to Borrower), sell with novation all or any part of their right, title and interest in, and to, and under the Loan (the "Syndication"), to one or more additional lenders (each a "Co-Lender"). Each additional Co-Lender shall enter into an

assignment and assumption agreement (the "Assignment and Assumption") assigning a portion of Lender's or Co-Lender's rights and obligations under the Loan, and pursuant to which the additional Co-Lender accepts such assignment and assumes the assigned obligations. From and after the effective date specified in the Assignment and Assumption (i) each Co-Lender shall be a party hereto to the extent of the applicable percentage or percentages set forth in the Assignment and Assumption and, except as specified otherwise herein, shall succeed to the rights and obligations of Lender and the Co-Lenders hereunder and under each other Loan Document in respect of the Loan, and (ii) Lender, as lender and each Co-Lender, as applicable, shall, to the extent such rights and obligations have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights and be released from its obligations hereunder and under the Loan Documents, except as specifically otherwise provided herein.

(b) The liabilities of Lender and each of the Co-Lenders shall be several and not joint, and Lender's and each Co-Lender's obligations to Borrower under this Agreement shall be reduced by the amount of each such Assignment and Assumption. Neither Lender nor any Co-Lender shall be responsible for the obligations of any other Co-Lender. Lender and each Co-Lender shall be liable to Borrower only for their respective proportionate shares of the Loan. If for any reason any of the Co-Lenders shall fail or refuse to abide by their obligations under this Agreement, Lender and the other Co-Lenders shall not be relieved of their obligations, if any, hereunder, including their obligations to make their pro rata share of any advance; notwithstanding the foregoing, Lender and the Co-Lenders shall have the right, but not the obligation, at their sole option, to make the defaulting Co-Lender's pro rata share of such advance pursuant to the Co-Lending Agreement.

(c) Borrower agrees that it shall, in connection with any sale of all or any portion of the Loan, whether in whole or to an additional Co-Lender or Participant, within ten (10) Business Days after requested by Agent, furnish Agent with the certificates required under Sections 5.1.10 and 5.1.13 hereof and such other information as reasonably requested by any additional Co-Lender or Participant in performing its due diligence in connection with its purchase of an interest in the Loan.

(d) Lender (or an Affiliate of Lender) shall act as administrative agent for itself and the Co-Lenders (together with any successor administrative agent, the "Agent") pursuant to this Section 9.7. Borrower acknowledges that Lender, as Agent, shall have the sole and exclusive authority to execute and perform this Agreement and each Loan Document on behalf of itself, as Lender and as agent for itself and the Co-Lenders subject to the terms of the Co-Lending Agreement. Lender acknowledges that Lender, as Agent, shall retain the exclusive right to grant approvals and give consents with respect to the operating budgets required to be delivered hereunder and with respect to matters concerning the establishment and administration of any Accounts. Except as otherwise provided herein, Borrower shall have no obligation to recognize or deal directly with any Co-Lender, and no Co-Lender shall have any right to deal directly with Borrower with respect to the rights, benefits and obligations of Borrower under this Agreement, the Loan Documents or any one or more documents or instruments in respect thereof. Borrower may rely conclusively on the actions of Lender as Agent to bind Lender and the

Co-Lenders, notwithstanding that the particular action in question may, pursuant to this Agreement or the Co-Lending Agreement be subject to the consent or direction of some or all of the Co-Lenders. Lender may resign as Agent of the Co-Lenders, in its sole discretion or if required to by the Co-Lenders in accordance with the term of the Co-Lending Agreement, in each case without the consent of Borrower. Upon any such resignation, a successor Agent shall be determined pursuant to the terms of the Co-Lending Agreement. The term Agent shall mean any successor Agent.

(e) Notwithstanding any provision to the contrary in this Agreement, the Agent shall not have any duties or responsibilities except those expressly set forth herein (and in any other Loan Document and the Co-Lending Agreement) and no covenants, functions, responsibilities, duties, obligations or liabilities of Agent shall be implied by or inferred from this Agreement, the Co-Lending Agreement, or any other Loan Document, or otherwise exist against Agent.

(f) Except to the extent its obligations hereunder and its interest in the Loan have been assigned pursuant to one or more Assignments and Assumption, Lender, as Agent, shall have the same rights and powers under this Agreement as any other Co-Lender and may exercise the same as though it were not Agent, respectively. The term "Co-Lender" or "Co-Lenders" shall, unless otherwise expressly indicated, include Lender in its individual capacity. Lender and the other Co-Lenders and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, Borrower, or any Affiliate of Borrower and any Person who may do business with or own securities of Borrower or any Affiliate of Borrower, all as if they were not serving in such capacities hereunder and without any duty to account therefor to each other.

(g) If required by any Co-Lender, each Borrower hereby agrees to execute supplemental notes in the principal amount of such Co-Lender's pro rata share of the Loan substantially in the form of the Note, and such supplemental note shall (i) be payable to order of such Co-Lender, (ii) be dated as of the Closing Date (or, if requested by Lender, dated the date of assignment to such Co-Lender of such pro rata share), and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing Debt hereunder and under the Note and not any new or additional Debt of Borrower. In connection with any such supplemental note, Lender and each Co-Lender agree, at the request of Borrower, to surrender any previously delivered notes, provided that Borrower delivers replacement notes totaling the Maximum Loan Amount (less any prepayments of principal made prior to such date in accordance with the terms of this Agreement). The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes.

(h) Lender, as Agent, shall maintain at its domestic lending office or at such other location as Lender, as Agent, shall designate in writing to each Co-Lender and Borrower a copy of each Assignment and Assumption delivered to and accepted by it and a register for the recordation of the names and addresses of the Co-Lenders, the amount of each Co-Lender's proportionate share of the Loan and the name and address of each Co-Lender's agent for service of process (the "Register"). The entries in the Register

shall be conclusive and binding for all purposes, absent manifest error, and Borrower, Lender, as Agent, and the Co-Lenders may treat each Person whose name is recorded in the Register as a Co-Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection and copying by Borrower or any Co-Lender during normal business hours upon reasonable prior notice to the Agent. A Co-Lender may change its address and its agent for service of process upon written notice to Lender, as Agent, which notice shall only be effective upon actual receipt by Lender, as Agent, which receipt will be acknowledged by Lender, as Agent, upon request.

(i) Notwithstanding anything herein to the contrary, any financial institution or other entity may be sold a participation interest in the Loan by Lender or any Co-Lender without Borrower's consent (such financial institution or entity, a "Participant") (x) if such sale is without novation and (y) if the other conditions set forth in this paragraph are met. No Participant shall be considered a Co-Lender hereunder or under the Note or the Loan Documents. No Participant shall have any rights under this Agreement, the Note or any of the Loan Documents and the Participant's rights in respect of such participation shall be solely against Lender or Co-Lender, as the case may be, as set forth in the participation agreement executed by and between Lender or Co-Lender, as the case may be, and such Participant. No participation shall relieve Lender or Co-Lender, as the case may be, from its obligations hereunder or under the Note or the Loan Documents and Lender or Co-Lender, as the case may be, shall remain solely responsible for the performance of its obligations hereunder.

(j) Notwithstanding any other provision set forth in this Agreement, Lender or any Co-Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including, without limitation, amounts owing to it in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System), provided that no such security interest or the exercise by the secured party of any of its rights thereunder shall release Lender or Co-Lender from its funding obligations hereunder.

(k) Notwithstanding any other provision of this Agreement, provided that no Event of Default has occurred and is continuing, Borrower shall have the right to require (a) any Co-Lender that is entitled to and has demanded compensation or other amounts pursuant to Sections 2.2.3(b), 2.2.3(c) or 2.2.8 hereof or (b) any Co-Lender that is a Defaulting Lender provided such Defaulting Lender has failed to cure the default as a result of which it has become a Defaulting Lender (and to the extent such default was a Lender Default, none of the other Co-Lenders have exercised their right to make the Defaulting Co-Lender's pro rata share of such advance pursuant to the Co-Lending Agreement) within ten (10) Business Days after Borrower's request that it cure such default (such Co-Lender under (a) or (b), an "Affected Co-Lender"), to assign in full its rights and obligations under this Agreement to one or more additional Co-Lenders designated by Borrower which (i) are reasonably acceptable to Lender and the other Co-Lenders, and (ii) which agree to assume all of such rights and obligations arising as of and after the date of the assumption (a "Replacement Co-Lender"), provided that (A) such assignment and assumption is otherwise in compliance with this Section 9.7, (B) Borrower pays any fees payable in connection with such assignment and (C) such

Affected Co-Lender receives payment in full of the principal amount of the Loan owing to such Affected Co-Lender, together with accrued and unpaid interest thereon to the date of such payment of principal and all other amounts payable to such Affected Co-Lender under this Agreement. Any rights of a Affected Co-Lender to indemnification hereunder shall survive as to such Affected Co-Lender.

9.7.3 Cooperation in Syndication.

(a) Borrower and Sponsor agree to assist Lender in completing a Syndication satisfactory to Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Co-Lenders, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with Lender, of one or more meetings of prospective Co-Lenders or with the Rating Agencies, (iv) the delivery of appraisals reasonably satisfactory to Lender if required, and (v) working with Lender to procure a rating for the Loan by the Rating Agencies.

(b) Lender shall manage all aspects of the Syndication of the Loan, including decisions as to the selection of institutions to be approached and when they will be approached, when their commitments will be accepted, which institutions will participate, the allocations of the commitments among the Co-Lenders and the amount and distribution of fees among the Co-Lenders. To assist Lender in its Syndication efforts, Borrower and Sponsor agree promptly to prepare and provide to Lender all information with respect to Borrower, Manager (if any), Developer (if any), Sponsor, Guarantor and the Property contemplated hereby, including all financial information and projections (the "Projections"), as Lender may reasonably request in connection with the Syndication of the Loan. Borrower hereby represents and covenants that (i) all information other than the Projections (the "Information") that has been or will be made available to Lender by Borrower or any of their representatives is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made and (ii) the Projections that have been or will be made available to Lender by Borrower or any of their representatives have been or will be prepared in good faith based upon reasonable assumptions. Borrower understands that in arranging and syndicating the Loan, Lender, the Co-Lenders and, if applicable, the Rating Agencies, may use and rely on the Information and Projections without independent verification thereof.

(c) If required in connection with the Syndication, Borrower and Sponsor hereby agree to:

- (i) amend the Loan Documents to give Lender the right, at Borrower's sole cost and expense, to have the Property reappraised on an annual basis;
- (ii) deliver updated financial and operating statements and other information reasonably required by Lender to facilitate the Syndication;

(iii) deliver reliance letters reasonably satisfactory to Lender with respect to the environmental assessments and reports delivered to Lender prior to the Closing Date, which will run to Lender and its successors and assigns; and

(iv) execute modifications to the Loan Documents reasonably required by the Co-Lenders, provided that such modification will not (except as set forth in (v) and (vi) below) change any material or economic terms of the Loan Documents, or otherwise materially increase the obligations or materially decrease the rights of Borrower pursuant to the Loan Documents;

(v) if Lender elects, in its sole discretion, prior to or upon a Syndication, to split the Loan into two or more parts, or the Note into multiple component notes or tranches which may have different interest rates, principal amounts and payment priorities, Borrower agrees to cooperate with Lender in connection with the foregoing and to execute the required modifications and amendments to the Note, this Agreement and the Loan Documents and to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the initial weighted average spread of such interest rates does not exceed the Applicable Interest Rate; provided, however, that nothing in this subsection (v) shall limit Lender's right to apply (A) mandatory or involuntary prepayments to the Debt in such order as Lender determines in its sole discretion and (B) payments to the Debt in such order as Lender determines in its sole discretion during the continuance of an Event of Default, it being agreed that the weighted average interest rate spreads described above may subsequently change only as a result of a payment or application of principal made (x) in connection with a mandatory or involuntary prepayment and/or (y) during the continuance of an Event of Default. Notwithstanding anything to the contrary contained in this subsection (v), provided no Event of Default exists, all voluntary prepayments made pursuant to Section 2.3.1 above shall be applied pro rata among each component; and

(vi) execute modifications to the Loan Documents changing the interest rate for the Loan, provided that the initial weighted average of the interest rate spreads for the Loan and the Mezzanine Loan after such modification shall not exceed the weighted average of the interest rate spreads for the Loan and the Mezzanine Loan immediately prior to such modification; provided, however, that nothing in this subsection (vi) shall limit Lender's right to apply (A) mandatory or involuntary prepayments to the Debt in such order as Lender determines in its sole discretion and (B) payments to the Debt in such order as Lender determines in its sole discretion during the continuance of an Event of Default, it being agreed that the weighted average interest rate spreads described above may subsequently change only as a result of a payment or application of principal made (x) in connection with a mandatory or involuntary prepayment and/or (y) during the continuance of an Event of Default. The Borrower shall also provide opinions reasonably necessary to effectuate the same. Notwithstanding anything to the contrary contained in this subsection (vi), all voluntary prepayments under