

PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica, Boulevard, 11th Floor
Los Angeles, California 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
James I. Stang, Esq. (admitted *pro hac vice*)

-and-

780 Third Avenue, 36th Floor
New York, New York 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Ilan D. Scharf, Esq.

Proposed Counsel for the Official Committee of
Unsecured Creditors of The Christian Brothers'
Institute and The Christian Brothers of Ireland, Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE CHRISTIAN BROTHERS' INSTITUTE, *et al.*,

Debtors.

Chapter 11

Case No. 11-22820 (RDD)

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO THE CHRISTIAN BROTHERS' INSTITUTE'S
MOTION FOR APPROVAL OF STIPULATION AUTHORIZING
USE OF CASH COLLATERAL OF COUNTRY BANK AND
PROVIDING ADEQUATE PROTECTION**

TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned cases (collectively, the "Cases") of The Christian Brothers' Institute ("CBI") and The Christian Brothers of Ireland, Inc. ("CBOI" and, collectively with CBI, the "Debtors") under chapter 11 of Title 11 of the United States Code (as amended, the "Bankruptcy Code"), by

and through its undersigned proposed counsel, hereby objects (the “Objection”) to *The Christian Brothers’ Institute’s Motion* (the “Motion”) for *Approval of Stipulation Authorizing Use of Cash Collateral of Country Bank and Providing Adequate Protection* [Docket No. 16]. In support of its Objection, the Committee respectfully states as follows:

Preliminary Statement

1. CBI seeks to use Country Bank’s alleged cash collateral in order to provide adequate protection to Country Bank by (a) authorizing Country Bank to draw interest payments due to Country Bank on account of a \$5 million loan from Country Bank to CBI and (b) granting replacement liens to Country Bank for any diminution in value of its collateral. CBI asserts that Country Bank’s loan is secured by, among other things, mortgages on three Properties (as defined below), assignments of leases and rents for the Properties, certain personalty on the Properties, and CBI’s accounts. CBI further asserts that Country Bank is oversecured.

2. The Committee believes that CBI must make additional disclosures and clarifications in order to meet its burden to establish a basis for providing adequate protection to Country Bank. The Committee has engaged in informal due diligence with the Debtor and, to date, has discovered that many of the facts represented in the Motion are inaccurate and that CBI’s representations are inadequate. CBI has not provided all of the documents requested by the Committee, and such additional documents may give rise to additional questions. Based on the information CBI has provided to date, the Motion does not provide adequate disclosure of information critical to the Court’s approval of the Motion, including the following:

- a Confirmation that the Properties are property of CBI’s estate without restriction as to use and/or not held in trust;
- b The basis for the Debtors’ assertion that Country Bank is oversecured;

- c Which of CBI's bank accounts are subject to a security interest asserted by Country Bank;
- d Whether the Properties generate any rental or other income and, if they are being used and occupied by non-debtors, the terms and conditions for such use;
- e The uses of the loan proceeds and the proposed uses of the cash collateral pursuant to the Stipulation;
- f The uses of the Properties and whether the Debtor operates and manages the Properties; and
- g The source of cash used to fund the existing interest reserve account.

3. The proposed Stipulation should also clarify ambiguous provisions in order to avoid any future disputes that may arise out of the terms of the Stipulation. Specifically, the Stipulation should provide that (a) the Stipulation is without prejudice to the Debtors' rights to surcharge the Properties or proceeds thereof pursuant to section 506(c) of the Bankruptcy Code, (b) any replacement liens will only attach to Country Bank's existing collateral and not to unencumbered assets, and (c) the Stipulation is without prejudice to the Committee's rights to object to any claims asserted by Country Bank and seek avoidance of any payments made to Country Bank by the Debtors.

Relevant Facts

A. Background

4. On April 28, 2011 (the "Petition Date"), each of the Debtors commenced their Cases by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate as debtors in possession.

5. CBI alleges that it is a domestic not-for-profit 501(c)(3) corporation organized under § 102(a)(5) of the New York Not-for-Profit Corporation Law. CBOI alleges

that it is a domestic not-for-profit 501(c)(3) corporation organized under the Not-for-Profit Corporation Law of the State of Illinois. The Debtors allege that they were formed for the purposes of establishing, conducting and supporting Catholic schools. The Debtors state that their “immediate need for relief before this court stems from the fact that the [Debtors] have been named in numerous sexual abuse lawsuits where are alleged to have occurred between approximately 30 to 50 years ago primarily in Washington State and St. John’s Newfoundland, Canada.” *Local rule 1007-2 Affidavit* of Brother Kevin Griffith dated April 28, 2011 [Docket No. 2] at ¶ 5.

6. On May 2, 2011, the Court entered an order consolidating the Debtors’ Cases for administrative purposes only [Docket No. 8]. No trustee or examiner has been appointed in the Debtors’ Cases.

7. On May 11, 2011 the United States Trustee for Region 2 (the “U.S. Trustee”) appointed six members to the Committee. On May 23, 2011, the U.S. Trustee appointed a seventh member to the Committee. The Committee is comprised of seven individuals who are plaintiffs in sexual abuse cases pending against at least one of the Debtors in either Washington State or Canada.

8. The Debtors have not filed their Schedules of Assets and Liabilities or Statements of Financial Affairs, (the “Schedules and SOFAs”). The Debtors’ schedules and SOFAs are due on June 13, 2011.

B. The Loan

9. CBI is a borrower under a loan agreement (the “Loan Agreement”) dated November 25, 2008 with Country Bank as lender. A true and correct copy of the Loan Agreement is attached hereto as **Exhibit A**. The Loan Agreement provides for a \$5 million loan (the “Loan”) from Country Bank to CBI. The Loan is an interest only loan with a non-default

rate of 6% per annum. The maturity date of the Loan Agreement has been extended to December 1, 2012. CBI maintains a reserve account (the “Debt Service Reserve”) at Country Bank to fund interest payments under the Loan Agreement. Currently, the Debtors report that the Debt Service Reserve holds approximately \$533,000 of CBI’s funds.¹

10. In connection with the Loan Agreement, CBI asserts that it granted Country Bank a security interest in, among other things, properties located at (i) 74 West 124th Street, New York, New York, (ii) 1850 Broadway, Town of Esopus, New York and (iii) 260 Wilmont Road, New Rochelle, New York (collectively, the “Properties”).

Objection

A. Applicable Law

11. The Bankruptcy Code requires debtors to provide a secured creditor with adequate protection to the extent that the automatic stay, the debtors’ use of property, or a priming lien “results in a decrease in the value of such entity’s interest in such property.” 11 U.S.C. § 361(1). The Bankruptcy Code introduces the concept of adequate protection with the goal of “safeguard[ing] the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization.” *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

12. Determinations regarding adequate protection are fact-specific. *See In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *Mbank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978). The focus of the requirement is to protect a secured creditor from diminution in the value of its collateral during the use period.

¹ Motion at ¶ 14.

United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 368, 108 S.Ct. 626, 629, 98 L.Ed.2d 740 (1988). *See also Matter of Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Association and Federal Land Bank (In re Delbridge)*, 104 B.R. 824 (E.D. Mich. 1989); *In re Beker Industries Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

13. Section 361 of the Bankruptcy Code provides that periodic cash payments, replacement liens, or relief constituting the “indubitable equivalent” of the creditor’s interest may provide adequate protection. Provision of a replacement lien in property equal to the value of the cash collateral used specifically complies with Section 361(2) and provides adequate protection within the meaning of Section 363(e) of the Bankruptcy Code. *See, e.g., In re O'Connor*, 808 F.2d at 1398; *In re Dynaco Corp.*, 162 B.R. 389, 393-95 (Bankr. D. N.H. 1993); *In re T.H.B. Corp.*, 85 B.R. 192, 195 (Bankr. D. Mass. 1988).

14. Where the lenders’ collateral is not diminishing as a result of its use, nothing further is required for adequate protection. *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 716 (Bankr. D. Del. 1996) (approving use of cash collateral where debtor agreed to grant creditor replacement lien and there had been no diminution in the value of the collateral); *In T.H.B. Corp.*, 85 B.R. at 194; *In re Dynaco Corp.*, 162 B.R. at 394-95. “If the debtors make a solid showing that their continued operation of their business during the relevant period will pose no serious danger of such a decline, there is no need for any additional adequate protection” *Id.* at 394.

15. Section 506(b) of the Bankruptcy Code allows holders of an oversecured claim “interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose,” but only “[t]o the extent that an

allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim . . .” 11 U.S.C. § 506(b). It is black letter law that, under section 506(b), only oversecured creditors are entitled to payment of interest and fees. Undersecured creditors are not entitled to receive any additional compensation, directly or indirectly. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 108 S. Ct. at 629-30.

B. CBI Should Clarify Certain Provisions of the Proposed Stipulation²

1. CBI Should Clarify That The Properties Are Property of Debtor CBI

16. Clearly, the Debtors should not provide adequate protection to preserve a non-debtor’s interest in property. CBI must establish that the Properties are property of CBI’s estate and that CBI (and its creditors) will benefit from any adequate protection to be provided to Country Bank. As such, the Committee proposes that the Stipulation clearly state that the Properties are property of CBI’s estate without restriction as to use and are not held in trust for the benefit of a non-debtor. In the alternative, CBI should disclose any restrictions as to use or cloud against title to the Properties so that the Committee and the Court can effectively assess the merits of CBI’s request to provide adequate protection to Country Bank.

17. Notably, the Loan Agreement provides that CBI “has good and marketable title to real property comprising the [Properties], **subject only to those matters expressly listed as exceptions to title or subordinate matters in the title insurance policy or title insurance policies accepted by [Country Bank]**....”³ The Loan Agreement also states that “[n]o tenant, person, party, firm, corporation or other entity has an option, right of first offer, or right of

² As noted above, the Committee requested information from the Debtors in connection with the Motion. The Debtors have provided some, but not all, of the information requested by the Committee. In addition, the Committee proposed certain revisions to the proposed Stipulation. As of the date hereof, the Debtors have to some, but not all the Committee’s proposed revisions. As such, the Committee is filing this objection to preserve its rights, but expect to continue working with the Debtors to resolve the Committee’s concerns.

³ Exh. A, Loan Agreement at Section 3.11 (emphasis supplied).

refusal, to purchase the [Properties], any portion thereof or any interest therein, **except as specifically described in the Title Insurance Policy.**”⁴ The Committee requested a copy of any title insurance policy or policies accepted by Country Bank in connection with the Loan Documents (as defined in the Motion). However, the Debtors have neither produced the title insurance policies nor disclosed any exceptions to title or subordinate matters described in any title insurance policy or policies. Moreover, CBI has refused to state that the Properties are property of the estate without restriction as to use. Such disclosure is critical in a case where the debtor is a charitable organization in order to address any concerns that property may have been conveyed to the debtor with restrictions as to use or may only be held in trust by the debtor.

18. Here, CBI should be required to disclose whether and to what extent there are any clouds as to title so that CBI does not expend limited estate resources preserving the value of property that may not benefit CBI’s unsecured creditors.

2. CBI Should Clarify the Basis for Asserting that County Bank is Oversecured

19. CBI asserts that “Country Bank **appears** to be oversecured...”.⁵ Notably, payment of postpetition interest should be made only by a secured lender who is **actually** oversecured as opposed to one who **appears** to be oversecured. Moreover, the Debtors have not disclosed to the Court the estimated value of the Properties or provided any basis, other than mere conjecture, to support their assertion that Country Bank is oversecured.

20. The Committee requested, among other things, recent appraisals of the Properties. The Committee further asked that CBI disclose in the Stipulation, the estimated value of each of the Properties. The Debtors provided appraisals of the Properties to the

⁴ Exh. A, Loan Agreement at Section 3.30.

⁵ Motion at ¶16; Stipulation at Recital L.

Committee. While some of the appraisals appear to be dated, they do show that Country Bank is oversecured. However, the Debtors have not disclosed the values of the Properties in the Stipulation. The Debtors must sustain their burden of showing that Country Bank is oversecured and must do so using evidence rather than mere assertions. Moreover, the Debtors will be required to disclose the value of the Properties in their Schedule and SOFAs, which are due to be filed in less than two weeks. As such, Debtors should disclose the Properties' estimated values in the proposed Stipulation.

3. CBI Should Clarify That It Is Not Granting Security Interests in Previously Unencumbered Assets

21. CBI asserts that it granted Country Bank security interests in, among other things, (i) the Properties, (ii) furniture, fixtures and equipment on the Properties, (iii) leases and rents from the Properties, and (iv) "all accounts, including reserves, escrows, and deposit accounts maintained by CBI..."⁶

22. Thus, the Motion and the recitals in the Stipulation imply that CBI granted a security interest to Country Bank in all of CBI's accounts. **However, this is not correct.** The Security Agreement provides that CBI only granted a security interest in "[A]ll reserves, escrows, and deposit accounts maintained by [CBI] with respect to the Property...."⁷ A true and correct copy of one of the Security Agreements is attached hereto as **Exhibit B**.⁸ The Debtors have disclosed that they maintain accounts at other financial institutions, including an operating account and a payroll account at JPMorgan Chase Bank, N.A.⁹ Thus, the Debtors

⁶ Motion at ¶ 11; Stipulation at ¶ I(f).

⁷ Mortgage, Assignment of Leases and Rents and Security Agreement at Section 1.1(m) (emphasis supplied).

⁸ The Security Agreement for each of the Properties are substantially similar and thus the Committee did not burden the Court with extra exhibits.

⁹ See Debtors' Motion for Order Granting Authority to (i) Maintain Existing Bank Accounts; (ii) Continue to Use Existing Business Forms; and (iii) Granting Related Relief [Docket No. 12] at Exh. A.

should clarify that they are not seeking to grant Country Bank a security interest in any property of the Debtors in which Country Bank does not already have a security interest, including the Debtors' bank accounts that are not held at Country Bank.

4. The Debtors Should Clarify How They Used the Proceeds of the Loan and How They Intend to Use Cash Collateral Pursuant to the Stipulation

23. CBI states that it entered into the Loan Agreement “to provide cash flow for, among other things, (a) funding its operating expenses in connection with the ownership and operation of certain real properties located in New York City, Ulster County, and Westchester County, and (b) funding any working capital requirements of these properties.”¹⁰ CBI further states that it “wishes to continue using Country Bank’s cash collateral for those purposes during the Chapter 11 Case...”¹¹

24. **However, this is not correct.** The Debtors recently disclosed to the Committee that the proceeds of the loan were used only to pay settlements and legal fees in abuse cases asserted in Washington State and, contrary to the representations in the Motion, the proceeds of the Loan were not used to fund operating expenses or working capital for the Properties. Assuming that the Debtors’ recent disclosure is correct, the Debtors should disclose whether the proceeds were used to settle claims solely against CBI or whether other defendants benefitted from the Debtors’ payment of proceeds to settle the claims.

25. The Debtors also recently disclosed to the Committee that the only intended use for cash collateral under the proposed Stipulation is to make adequate protection payments to Country Bank. The Debtors should clarify that they do not intend to use any of the cash collateral for operating expenses or working capital pursuant to the Stipulation.

¹⁰ Motion at ¶ 2.

¹¹ Motion at ¶ 2.

5. The Debtors Should Clarify Their Use of the Properties

26. The Debtors should clarify their use of the Properties, including the identity of the parties that maintain, insure, operate or manage the Properties, as well as whether the Debtors receive any rental or other income from the Properties. This is particularly important in these Cases because it is not clear that the Debtors operate or benefit from the Properties. For example, the New York City property is home to a high school, and the Debtors should disclose whether and to what extent they operate the high school, maintain the property, manage the property, or insure the property. When the Committee asked the Debtors for this information, their initial response was “The entities responsible for maintaining and operating the properties are the individual tenants at each of the properties.” Since the Debtors have not filed their Schedules and SOFAs, this response amounts to a “non-answer” and the absence of any additional information belies the impression that the facts behind this Motion are as simple as they appear on the face of the Motion. The Debtors have since agreed to make additional disclosures regarding the identities of the parties that operate, maintain and insure the Properties, including disclosing that the New York City Property is operated by Rice High School. However, the Committee requested additional disclosure such as whether Rice High School is a separate legal entity¹² and the high school’s relationship with the Debtors. This issue is critical to allay any concerns that a third party might claim an interest in the Properties at a later date after CBI has expended valuable estate assets to maintain the Properties.

¹² Disclosure of the identity of Rice High School and its legal entity, if any, is critical to the Committee’s understanding of whether and to what extent the Debtor is responsible for, and can benefit from, the New York City Property. A search for “Rice High School” on the website for the New York Department of State Division of Corporation and Business Records Entity Database on June 3, 2011 showed no result. As such, the Debtors should provide full and complete disclosure of the entity operating the high school.

6. The Debtors Should Disclose the Source of Cash Used To Fund The Debt Service Reserve

27. The Debt Service Reserve is funded with \$533,000. The Debt Service was funded on or about November 22, 2010 in connection with the extension of the maturity date of the Loan Agreement. The Committee has asked the Debtors to disclose the source of funds used to establish the Debt Service Reserve. Clearly, the Debtors should disclose details regarding this substantial prepetition cash transfer to Country Bank.

C. The Debtors Should Clearly State That They Are Not Waiving Their Rights Under Section 506(c) of the Bankruptcy Code

28. The Debtors assert that Country Bank is oversecured. Moreover, Country Bank is not providing any “new money” to the Debtors pursuant to the Stipulation. As such, the Debtors should expressly state that they are not granting Country Bank a waiver of the Debtors’ rights under section 506(c) of the Bankruptcy Code.

D. The Debtors Should Clearly State That Replacement Liens Will Attach Solely to Prepetition Collateral and Not to Any Other Assets of the Debtors

29. The Debtors propose to grant replacement liens to Country Bank. Based on the Debtors’ representation, Country Bank is already secured and is adequately protected by a large equity cushion. The Debtors should not grant Country Bank a replacement lien in unencumbered assets. The Debtors should state that the replacement liens to be granted to Country Bank will not extend to previously unencumbered assets in order to avoid any issues that may arise at a later date.

E. The Stipulation Should Be Without Prejudice to the Committee’s Rights

30. Country Bank’s claims should be subject to a challenge from the Committee. The Committee will need to evaluate Country Bank’s claims and lien position. The Committee proposes that the Stipulation include the following provision:

Nothing in this Stipulation and Order, including without limitation, any findings or admissions by the Debtors, if any, contained in the Recitals of this Stipulation and Order shall limit or affect the rights or ability of the Committee or any subsequently appointed or elected trustee(s) in these Cases or on successor cases under Chapter 7 of the Code from seeking to disallow Country Bank's claims against Debtors in respect of the Loan Documents, pursuing any claims against Country Bank in connection with the Loan Documents or avoiding all or substantially all of the security interests or liens or right of Country Bank in the Property, (as defined in the Security Agreements) or in any other asset or property of Debtors in which the Country Bank claims an interest, including, without limitation, any claim, action or proceeding against Country Bank that requires Country Bank to give up its Replacement Liens, to disgorge adequate protection interest payments received, or to disgorge any amounts paid to Country Bank as a result of any of Country Bank's claims against the Debtors or liens upon and security interests in the assets and properties of the Debtors (including the Property) being invalidated, avoided, subordinated, impaired or compromised in any way, either by an order of this Court (or other court of competent jurisdiction) or by settlement.

Conclusion

31. CBI must provide clear disclosure and clarification regarding the terms of the Stipulation in order to meet their burden of establishing that the relief requested is appropriate under the circumstances. CBI should provide proper and appropriate disclosures, including but not limited to the circumstances under which the debt to Country Bank was incurred, the proposed uses of cash collateral, the Debtors' (or other parties') uses of the Properties, and the adequate protection to be provided to Country Bank. Finally, proposed Stipulation contains ambiguity regarding (a) whether other accounts of the Debtors will be subject to the Stipulation, (b) whether the replacement liens will attach to unencumbered assets,, (c) whether the Debtors are waiving any claim under section 506(c) of the Bankruptcy Code, and (d) whether the Committee's rights to review and challenge Country Bank's liens and claims will be preserved. The Debtors should clarify these ambiguities as discussed above.

WHEREFORE, the Committee requests that this Court enter an order approving the Stipulation only to the extent the Stipulation is modified to address the issues raised by the Committee in this Objection.

Dated: New York, New York
June 3, 2011

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Ilan D. Scharf

Ilan D. Scharf, Esq.
780 Third Avenue, 36th Floor
New York, NY 10017-2024
Telephone: (212) 561-7700
Facsimile: (212) 561-7777

-and-

James I. Stang (admitted *pro hac vice*)
10100 Santa Monica Blvd., Suite 1100
Los Angeles, California 90067-4100
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

Proposed Counsel for the Official Committee of
Unsecured Creditors of The Christian Brothers'
Institute and The Christian Brothers of Ireland, Inc.

Exhibit A
(Loan Agreement)

LOAN AGREEMENT

Dated as of November 25, 2008

Among

**THE CHRISTIAN BROTHERS' INSTITUTE,
as Borrower**

and

**COUNTRY BANK,
as Lender**

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| ARTICLE 1. - DEFINITIONS; PRINCIPLES OF CONSTRUCTION..... | 1 |
| Section 1.1. Definitions | 1 |
| Section 1.2. Principles of Construction | 10 |
| ARTICLE 2. - GENERAL TERMS | 11 |
| Section 2.1. Loan Commitment; Disbursement to Borrower | 11 |
| Section 2.2. Interest Rate | 11 |
| Section 2.3. Loan Payments | 11 |
| Section 2.4. Late Payment Charge..... | 13 |
| Section 2.5. Default Rate | 13 |
| Section 2.6. Prepayment | 13 |
| Section 2.7. Usury Savings | 13 |
| ARTICLE 3. - REPRESENTATIONS AND WARRANTIES | 13 |
| Section 3.1. Organization and Existence | 14 |
| Section 3.2. Authorization | 14 |
| Section 3.3. Valid Execution and Delivery of Documents | 14 |
| Section 3.4. Enforceability | 14 |
| Section 3.5. No Defenses | 14 |
| Section 3.6. Defense of Usury | 14 |
| Section 3.7. No Conflict/Violation of Law | 15 |
| Section 3.8. Consents Obtained | 15 |
| Section 3.9. No Litigation | 15 |
| Section 3.10. Compliance with Legal Requirements and Regulations | 15 |
| Section 3.11. Title | 15 |
| Section 3.12. Permitted Exceptions | 16 |
| Section 3.13. First Lien | 16 |
| Section 3.14. ERISA | 16 |
| Section 3.15. Contingent Liabilities | 16 |
| Section 3.16. No Other Obligations | 16 |
| Section 3.17. No Fraudulent Conveyance | 16 |
| Section 3.18. Investment Company Act | 17 |
| Section 3.19. Access/Utilities/Parking | 17 |
| Section 3.20. Taxes Paid | 17 |
| Section 3.21. Single Tax Lot | 17 |
| Section 3.22. Special Assessments | 17 |
| Section 3.23. Flood Zone | 18 |
| Section 3.24. Seismic Exposure | 18 |
| Section 3.25. Misstatements of Fact | 18 |
| Section 3.26. Condition of Improvements | 18 |
| Section 3.27. No Insolvency or Judgment | 18 |
| Section 3.28. No Condemnation | 19 |

| | | |
|---------------|---|----|
| Section 3.29. | No Labor or Materialmen Claims..... | 19 |
| Section 3.30. | No Purchase Options..... | 19 |
| Section 3.31. | Leases..... | 19 |
| Section 3.32. | Appraisal..... | 19 |
| Section 3.33. | Boundary Lines..... | 19 |
| Section 3.34. | Survey..... | 19 |
| Section 3.35. | Forfeiture..... | 19 |
| Section 3.36. | No Broker..... | 20 |
| Section 3.37. | Conviction of Criminal Acts..... | 20 |
| Section 3.38. | Security Agreements..... | 20 |
| Section 3.39. | Homestead..... | 20 |
| Section 3.40. | Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering | 20 |
| Laws | | |
| Section 3.41. | Not a Foreign Person..... | 21 |
| Section 3.42. | Business Purposes..... | 21 |
| Section 3.43. | Insurance..... | 21 |
| Section 3.44. | Use of Property..... | 21 |
| Section 3.45. | Filing and Recording Taxes..... | 21 |
| Section 3.46. | Management Agreement..... | 21 |
| Section 3.47. | Personal Property..... | 22 |
| Section 3.48. | Taxes..... | 22 |
| Section 3.49. | Federal Reserve Regulations..... | 22 |
| Section 3.50. | Intellectual Property..... | 22 |
| Section 3.51. | Survival..... | 22 |

| | |
|---|----|
| ARTICLE 4. - BORROWER COVENANTS | 22 |
| Section 4.1. Existence; Compliance with Legal Requirements | 22 |
| Section 4.2. Maintenance and Use of Property | 23 |
| Section 4.3. Zoning/Use | 23 |
| Section 4.4. Taxes and Other Charges..... | 23 |
| Section 4.5. Litigation | 24 |
| Section 4.6. Access to Property | 24 |
| Section 4.7. Notice of Default | 24 |
| Section 4.8. Cooperate in Legal Proceedings | 24 |
| Section 4.9. Performance by Borrower | 24 |
| Section 4.10. Awards; Insurance Proceeds..... | 25 |
| Section 4.11. Financial Statements, Books and Records and Informational Reporting | 25 |
| Section 4.12. Further Documentation..... | 26 |
| Section 4.13. Leasing Matters | 26 |
| Section 4.14. Property Management..... | 27 |
| Section 4.15. Liens | 28 |
| Section 4.16. Debt Cancellation | 28 |
| Section 4.17. ERISA..... | 28 |
| Section 4.18. No Joint Assessment..... | 29 |
| Section 4.19. Patriot Act..... | 29 |
| Section 4.20. Defense of Title | 29 |
| Section 4.21. Use of Rents..... | 29 |

| | | |
|---|--|----|
| Section 4.22. | Easements and Rights-of-Way | 30 |
| Section 4.23. | Leasing Costs..... | 30 |
| Section 4.24. | Repairs | 30 |
| Section 4.25. | Survey Reserve Release Conditions | 30 |
| ARTICLE 5. - INTENTIONALLY OMITTED | | 30 |
| ARTICLE 6. ALIENATION AND FURTHER ENCUMBRANCES | | 30 |
| ARTICLE 7. - INSURANCE; CASUALTY; CONDEMNATION; RESTORATION | | 31 |
| Section 7.1. | Insurance..... | 31 |
| Section 7.2. | Casualty/ Condemnation and Restoration | 34 |
| ARTICLE 8. - RESERVE FUNDS | | 35 |
| Section 8.1. | Tax and Insurance Reserve Funds | 35 |
| Section 8.2. | Debt Service Reserve..... | 37 |
| Section 8.3. | Survey Reserve | 37 |
| Section 8.4. | Interest Bearing Reserves/Security Interest..... | 38 |
| ARTICLE 9. CROSS-COLLATERALIZATION..... | | 38 |
| ARTICLE 10. - EVENTS OF DEFAULT; REMEDIES | | 39 |
| Section 10.1. | Event of Default..... | 39 |
| Section 10.2. | Remedies | 41 |
| ARTICLE 11. - ENVIRONMENTAL PROVISIONS..... | | 42 |
| Section 11.1. | Environmental Representations, Warranties and Covenants..... | 42 |
| ARTICLE 12. - SECONDARY MARKET | | 44 |
| Section 12.1. | Cooperation | 44 |
| Section 12.2. | Disclosure; Indemnification. | 44 |
| Section 12.3. | Securitization Documents..... | 45 |
| ARTICLE 13. - INDEMNIFICATIONS | | 45 |
| Section 13.1. | General Indemnification | 45 |
| Section 13.2. | Mortgage and Intangible Tax Indemnification..... | 45 |
| Section 13.3. | ERISA Indemnification | 46 |
| Section 13.4. | Intentionally Omitted..... | 46 |
| Section 13.5. | Survival | 46 |
| ARTICLE 14. - RECOURSE | | 46 |
| ARTICLE 15. - NOTICES | | 46 |
| Section 15.1. | Notices | 46 |
| ARTICLE 16. - FURTHER ASSURANCES..... | | 47 |
| Section 16.1. | Replacement Documents | 47 |
| Section 16.2. | Recording of Mortgage, Etc. | 47 |

| | | |
|---|--|-----------|
| Section 16.3. | Further Acts, Etc..... | 48 |
| Section 16.4. | Changes in Tax, Debt, Credit and Documentary Stamp Laws..... | 48 |
| Section 16.5. | Expenses | 48 |
| ARTICLE 17. - WAIVERS..... | | 49 |
| Section 17.1. | Remedies Cumulative; Waivers | 49 |
| Section 17.2. | Modification, Waiver in Writing | 49 |
| Section 17.3. | Delay Not a Waiver | 49 |
| Section 17.4. | Trial by Jury..... | 50 |
| Section 17.5. | Waiver of Notice | 50 |
| Section 17.6. | Remedies of Borrower..... | 50 |
| Section 17.7. | Waiver of Marshalling of Assets | 50 |
| Section 17.8. | Intentionally Omitted..... | 51 |
| Section 17.9. | Waiver of Counterclaim | 51 |
| Section 17.10. | Subrogation..... | 51 |
| ARTICLE 18. - GOVERNING LAW | | 51 |
| Section 18.1. | Governing Law | 51 |
| Section 18.2. | Severability | 52 |
| Section 18.3. | Preferences..... | 52 |
| ARTICLE 19. - MISCELLANEOUS..... | | 53 |
| Section 19.1. | Survival..... | 53 |
| Section 19.2. | Lender's Discretion | 53 |
| Section 19.3. | Headings | 53 |
| Section 19.4. | Schedules and Exhibits Incorporated | 53 |
| Section 19.5. | Offsets, Counterclaims and Defenses | 53 |
| Section 19.6. | No Joint Venture or Partnership; No Third Party Beneficiaries..... | 53 |
| Section 19.7. | Publicity..... | 54 |
| Section 19.8. | Conflict; Construction of Documents; Reliance..... | 55 |
| Section 19.9. | Duplicate Originals; Counterparts | 55 |
| Section 19.10. | Entire Agreement..... | 55 |
| Section 19.11. | Joint and Several Liability | 55 |
| ARTICLE 20. RIGHT OF SETOFF..... | | 55 |
| ARTICLE 21. PARTIAL RELEASE PROVISIONS | | 56 |
| Section 21.1. | Partial Release | 56 |
| Section 21.2. | No Release for Environmental Matters | 56 |
| Section 21.3. | Cooperation | 56 |

Exhibit A – Survey Requirements

LOAN AGREEMENT

THIS LOAN AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), dated as of November __, 2008, among COUNTRY BANK, a New York banking corporation having an address at 200 East 42nd Street, 9th Floor, New York, New York 10017 (together with its successors and/or assigns, "Lender") and THE CHRISTIAN BROTHERS' INSTITUTE, a New York not-for-profit corporation, having an address at 33 Pryer Terrace, New Rochelle, New York 10804 ("Borrower").

RECITALS:

Borrower desires to obtain the Loan (defined below) from Lender.

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

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

ARTICLE 1. - DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"ACMs" shall have the meaning set forth in Section 11.1(b) hereof.

"Affiliate" shall mean any Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified Person. For purposes of the definition of "Affiliate", the terms "control", "controlled", or "controlling" with respect to a specified Person shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such Person, as the case may be, directly or indirectly, or acting through one or more Persons, (ii) the control in any manner over the general partner(s) or the election of more than one director or trustee (or persons exercising similar functions) of such Person, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such Person.

"Appraisal" shall mean an appraisal of the Property performed by the Appraiser, at Borrower's sole cost and expense, which shall be in form and substance satisfactory to Lender and prepared using a methodology reasonably satisfactory to Lender in conformity with FIRREA regulations, as any of the same may be updated by recertification from time to time by the Appraiser performing such Appraisal.

"Appraiser" shall mean a senior commercial appraiser of the American Appraisal Institute, qualified under any applicable requirements of FIRREA or the regulations promulgated thereunder, as shall be reasonably acceptable to Lender.

"Assignment of Leases and Rents" shall collectively mean (i) the New York County Assignment of Leases and Rents, (ii) the Ulster County Assignment of Leases and Rents and (iii) the

Westchester County Assignment of Leases and Rents, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Award" shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

"Board" shall mean the Board of Governors of the Federal Reserve System, and any successor thereof.

"Business Day" shall mean any day other than Saturday, Sunday, any other day on which banks are required or authorized to close in New York, New York, or the place of business of any servicer servicing the Loan.

"Casualty" shall mean the occurrence of any casualty, damage, destruction or injury, by fire or otherwise, to the Property or any part thereof.

"Closing Date" shall mean the date of this Agreement.

"Control" or **"control"** shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended.

"Condemnation" shall mean a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Condemnation Proceeds" shall have the meaning set forth in Section 7.2(a) hereof.

"Constituent Entity" shall mean, with respect to any entity, (i) with respect to any limited partnership, (x) any general partner of such limited partnership and (y) any limited partner of such partnership which owns (or is owned by any person or entity owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such partnership; (ii) with respect to any general partnership or joint venture, any partner or venturer in such general partnership or joint venture; (iii) with respect to any corporation, (x) any officer or director of such corporation, and (y) any person or entity which owns or controls 50% or more of any class of stock of such corporation; (iv) with respect to any limited liability company, (x) any manager of such limited liability company; (y) any managing member of such limited liability company, or the sole member of any limited liability company having only one (1) member, and (z) any non-managing member of such limited liability company which owns (or is owned by any person or entity owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such limited liability company; (v) any person or entity which controls any entity described in any of clauses (i) through (iv) of this definition; and (vi) any entity which is a "Constituent Entity" with respect to an entity which is a "Constituent Entity" of the subject entity. For the purposes of clause (vi) of the definition of Constituent Entity, if entity "B" is a Constituent Entity of entity "A", then any Constituent Entity of "B" shall be deemed to be a Constituent Entity of any entity of which "A" is a Constituent Entity.

"Contracts" shall collectively mean all contracts and agreements now or hereafter entered into relating to the ownership or operation or management of the Property or any portion of either of them including, without limitation, management agreements, franchise agreements, co-tenancy agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or

documents relating to construction on any part of the Property (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Property and any and all warranties and guaranties relating to the Property or any fixtures, equipment or personal property owned by Borrower and located on and/or used in connection with the Property, together with all revenue, income and other benefits thereof and all claims, judgments, awards and settlements arising thereunder.

"Creditors Rights Laws" shall mean with respect to any Person, any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, assignment for the benefit of creditors, composition or other relief with respect to its debts or debtors.

"Debt" shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums (including any prepayment fees, if applicable) due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

"Debt Service Reserve" shall have the meaning set forth in Section 8.2 hereof.

"Debt Service Reserve Deposit Amount" shall have the meaning set forth in Section 8.2 hereof.

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

"Default Rate" shall mean a rate per annum equal to the lesser of (a) twenty-four percent (24%) and (b) the Maximum Legal Rate.

"Environmental Law" shall mean any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies, orders and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment.

"Environmental Liens" shall mean all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person.

"Environmental Report" shall have the meaning set forth in Section 11.1(a) hereof.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statutes thereto and the regulations promulgated and the rulings issued thereunder.

"Event of Default" shall have the meaning set forth in Section 10.1 hereof.

"Extended Maturity Date" shall mean December 1, 2012, or such other date on which the final payment of the principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"Extension" shall have the meaning in Section 2.3(g) hereof.

"Extension Notice" shall have the meaning in Section 2.3(g) hereof.

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

"General Intangibles" shall collectively mean all present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Property, all names by which the Property may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Property) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Property.

"Gross Sales Price" means the value of all consideration received by Borrower or any principal or owner of Borrower in connection with the sale of an Individual Property, including, without limitation, cash, notes, assumed indebtedness, deferred payments (contingent or otherwise), prepaid expenses and non-customary prorrations in favor of the seller.

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

"Hazardous Materials" shall mean any petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; toxic mold; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Environmental Law.

"Improvements" shall collectively mean (i) the New York County Improvements, (ii) the Ulster County Improvements and (iii) the Westchester County Improvements.

"Indemnified Liabilities" shall have the meaning set forth in Section 13.1 hereof.

"Indemnified Parties" shall mean (a) Lender, (b) any prior owner or holder of the Loan or Investors in the Loan, (c) any person or entity in whose name the encumbrance created by the Security Instrument is or will have been recorded, (d) any servicer or prior servicer of the Loan, (e) any Investor or any prior Investor, (f) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (g) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (h) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (i) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business).

"Individual Property" shall individually mean each of (i) the New York County Property, (ii) the Ulster County Property and (iii) the Westchester County Property.

"Initial Maturity Date" shall mean December 1, 2010, or such other date on which the final payment of the principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"Insurance Conditions Precedent" shall have the meaning set forth in Section 8.1(b) hereof.

"Insurance Premiums" shall have the meaning set forth in Section 8.1(a) hereof.

"Insurance Proceeds" shall have the meaning set forth in Section 7.2(a) hereof.

"Interest-Bearing Reserve" shall have the meaning set forth in Section 8.3 hereof.

"Interest Rate" shall mean an interest rate equal to Six and 00/100 percent (6.00%) per annum.

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

"Investor" shall mean any actual purchaser, transferee, assignee, servicer, participant or investor in a Secondary Market Transaction.

"Lease" shall have the meaning set forth in the Security Instrument.

"Leasing Commissions" shall have the meaning set forth in Section 4.23 hereof.

"Leasing Costs" shall have the meaning set forth in Section 4.23 hereof.

"Legal Requirements" shall mean all applicable statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"Lien" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

"Loan" shall mean the loan made by Lender to Borrower pursuant to this Agreement.

"Loan Application" shall have the meaning set forth in Section 3.28 hereof.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases and Rents and any and all other documents, agreements and certificates
(00554302;3)

executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

"Maturity Date" shall mean means the Initial Maturity Date or, if the Extension shall have been properly effected pursuant to and in strict accordance with the terms of Section 2.3(g) hereof, the Extended Maturity Date or such other date on which the final payment of the principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"Maximum Legal Rate" shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Monthly Payment Amount" shall have the meaning set forth in Section 2.3(a)(ii) hereof.

"Moody's" shall mean Moody's Investors Service, Inc.

"New York County Assignment of Leases and Rents" shall mean that certain assignment of leases and rents, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the New York County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"New York County Improvements" shall mean "the Improvements" as such term is defined in the granting clause of the New York County Security Instrument.

"New York County Property" shall mean the parcel of real property, the New York County Improvements thereon and all Personal Property owned by Borrower and encumbered by the New York County Security Instrument, together with all rights pertaining to such property and New York County Improvements, as more particularly described in the granting clause of the New York County Security Instrument and referred to therein as the "Property".

"New York County Property Partial Release Price" shall mean an amount equal to the entire Debt.

"New York County Security Instrument" shall mean that certain first priority mortgage, assignment of leases and rents and security agreement, dated the date hereof, executed and delivered by New York County to Lender as security for the Loan and encumbering the New York County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Non-Bona-fide Sale" shall mean any Sale which (i) is to an Affiliate, (ii) is not pursuant to an arm's length transaction, and/or (iii) is not for commercially reasonable consideration, in Lender's reasonable judgment.

"Note" shall mean that certain promissory note of even date herewith in the principal amount of \$5,000,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"OFAC List" shall have the meaning set forth in Section 3.40 hereof.

"Other Charges" shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

"Parent" shall mean, with respect to Lender, any person controlling Lender.

"Partial Release" shall have the meaning set forth in Section 21.1 hereof.

"Partial Release Price" shall mean (i) the New York County Property Partial Release Price with respect to the New York County Property, (ii) the Ulster County Property Partial Release Price with respect to the Ulster County Property and (iii) the Westchester County Property Partial Release Price with respect to the Westchester County Property.

"Payment Date" shall mean the first (1st) day of each month, or if such day is not a Business Day, the immediately preceding Business Day.

"Patriot Act" shall have the meaning set forth in Section 3.40 hereof.

"Permitted Exceptions" shall have the meaning set forth in Section 3.11 hereof.

"Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Personal Property" shall mean collectively the "Personal Property" as such term is defined in the granting clause of each of the New York County Security Instrument, the Ulster County Security Instrument and the Westchester County Security Instrument.

"Policy" shall have the meaning set forth in Section 7.1(b) hereof.

"Policies" shall have the meaning set forth in Section 7.1(b) hereof.

"Prohibited Person" shall have the meaning set forth in Section 3.40 hereof.

"Prohibited Use" shall mean (1) operation of a dry-cleaning business, except for a dry-cleaning business at which no on-site cleaning operations of any sort are undertaken (i.e., a so-called drop-off station); (2) operation of a gasoline station or automobile service or maintenance facility; (3) operation of a car wash; (4) operation of any other business that, in the ordinary course of operation, would be likely to result in the release of Hazardous Materials; (5) the sale or display of obscene or pornographic material, the conduct of obscene, nude or semi-nude live performances, or similar purposes; and (6) the operation of a cabaret, dance hall or similar venue.

"Property" shall collectively mean (i) the New York County Property, (ii) the Ulster County Property and (iii) the Westchester County Property.

"Rating Agencies" shall mean each of S&P, Moody's and Fitch, and any other nationally-recognized statistical rating agency which has been approved by Lender and has rated the securities in connection with a Secondary Market Transaction involving the Loan.

"Release" shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

"Release Property" shall have the meaning set forth in Section 21.1 hereof.

"Rent Roll" shall have the meaning set forth in Section 3.31 hereof.

"Rents" shall mean collectively the "Rents" as such term is defined in the granting clause of each of the New York County Security Instrument, Ulster County Security Instrument and the Westchester County Security Instrument.

"Required Financial Item" shall have the meaning set forth in Section 4.11 hereof.

"Repair" shall mean repairs and replacements at the Property which, under GAAP, are categorized as capital expenses and not as operating expense.

"Reporting Failure" shall have the meaning set forth in Section 4.11 hereof.

"Reserve Accounts" shall mean the Tax and Insurance Reserve, the Debt Service Reserve, the Survey Reserve or any other escrow account or reserve account established by the Loan Documents.

"Reserve Funds" shall mean all funds now or hereafter on deposit in any of the Reserve Accounts.

"Restoration" shall have the meaning set forth in Section 7.2(a) hereof.

"Sale" shall mean any of the following: any sale, assignment, transfer, exchange or other disposition of the Property or an Individual Property or all of the direct or indirect ownership interests in Borrower, other than a Non-Bonafide Sale, including, without limitation, any merger, consolidation, recapitalization or reorganization of Borrower.

"Secondary Market Transaction" shall mean (1) any sale of the Security Instrument, the Note and other the Loan Documents to one or more investors as a whole loan, (2) a participation of the Debt to one or more investors, (3) a securitization of the Loan, (4) any other sale or transfer of the Debt or any interest therein to one or more investors.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Instrument" shall collectively mean (i) the New York County Security Instrument, (ii) the Ulster County Security Instrument and (iii) the Westchester County Security Instrument.

"Servicer" shall mean the entity or entities appointed by Lender from time to time to serve as servicer and/or special servicer of the Loan. If at any time no entity shall be so appointed, the term "Servicer" shall be deemed to refer to Lender.

(00554302;3)

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Survey" shall have the meaning set forth in Section 3.34 hereof.

"Survey Requirements" shall mean an "as-built" property survey for the Property that (i) is performed by a duly New York State licensed and reputable land surveyor, (ii) is reasonably satisfactory to Lender and its counsel and (iii) satisfies the survey requirements set forth on Exhibit A attached hereto and made a part hereof.

"Survey Reserve" shall have the meaning set forth in Section 8.3 hereof.

"Survey Reserve Deposit Amount" shall have the meaning set forth in Section 8.3 hereof.

"Survey Reserve Release Conditions" shall have the meaning set forth in Section 8.3 hereof.

"Tax and Insurance Reserve" shall have the meaning set forth in Section 8.1 hereof.

"Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

"Tax Conditions Precedent" shall have the meaning set forth in Section 8.1(c) hereof.

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Borrower.

"Tenant Allowances" shall have the meaning set forth in Section 4.23 hereof.

"Tenant Improvements" shall have the meaning set forth in Section 4.23 hereof.

"Title Insurance Policy" shall have the meaning set forth in Section 3.11 hereof.

"Transfer" shall have the meaning set forth in Section 6 hereof.

"UCC" or "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in the State where the applicable Property is located.

"Ulster County Assignment of Leases and Rents" shall mean that certain assignment of leases and rents, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Ulster County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Ulster County Improvements" shall mean "the Improvements" as such term is defined in the granting clause of the Ulster County Security Instrument.

"Ulster County Property" shall mean the parcel of real property, the Ulster County Improvements thereon and all Personal Property owned by Borrower and encumbered by the Ulster County Security Instrument, together with all rights pertaining to such property and Ulster County Improvements, as more particularly described in the granting clause of the Ulster County Security Instrument and referred to therein as the "Property".

"Ulster County Property Partial Release Price" shall mean an amount equal to the greater of (i) 85% of the Gross Sales Price for a Sale of the Ulster County Property and (ii) \$500,000.00.

"Ulster County Security Instrument" shall mean that certain first priority mortgage, assignment of leases and rents and security agreement, dated the date hereof, executed and delivered by Ulster County to Lender as security for the Loan and encumbering the Ulster County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Unscheduled Payments" shall mean (a) all Condemnation and Insurance Proceeds that Borrower is required to apply to the repayment of the Debt pursuant to the Note, this Agreement, the Security Instrument or any other Loan Documents, (b) any funds representing a voluntary or involuntary principal prepayment, and (c) any net proceeds obtained by Lender from the exercise of remedies under the Note, the Security Instrument or the other Loan Documents after the occurrence of an Event of Default.

"Westchester County Assignment of Leases and Rents" shall mean that certain assignment of leases and rents, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Westchester County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Westchester County Improvements" shall mean "the Improvements" as such term is defined in the granting clause of the Westchester County Security Instrument.

"Westchester County Property" shall mean the parcel of real property, the Westchester County Improvements thereon and all Personal Property owned by Borrower and encumbered by the Westchester County Security Instrument, together with all rights pertaining to such property and Westchester County Improvements, as more particularly described in the granting clause of the Westchester County Security Instrument and referred to therein as the **"Property"**.

"Westchester County Property Partial Release Price" shall mean an amount equal to the greater of (i) 85% of the Gross Sales Price for the Sale of the Westchester County Property and (ii) \$1,500,000.00.

"Westchester County Security Instrument" shall mean that certain first priority mortgage, assignment of leases and rents and security agreement, dated the date hereof, executed and delivered by Westchester County to Lender as security for the Loan and encumbering the Westchester County Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"U.S. Bankruptcy Code" shall mean Title 11 U.S.C. § 101 *et seq.*, and the regulations adopted and promulgated pursuant thereto (as the same may be amended from time to time).

Section 1.2 Principles of Construction

All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All references to "Borrower" in this Agreement shall be deemed to refer to one or more

Individual Borrowers, as the context requires. All references to "Property" in this Agreement shall be deemed to refer to one or more of the Individual Properties, as the context requires.

ARTICLE 2. - GENERAL TERMS

Section 2.1. Loan Commitment; Disbursement to Borrower

(a) Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

(b) Borrower may request and receive only one borrowing in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be reborrowed.

(c) The Loan shall be evidenced by the Note and secured by the Security Instrument and the other Loan Documents.

(d) Borrower shall use the proceeds of the Loan to (i) pay for operating expenses in connection with the ownership and operation of its properties including the Property, (ii) make deposits into the Reserve Accounts on the Closing Date in the amounts provided herein, (iii) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender and (iv) fund any working capital requirements of the Property.

Section 2.2. Interest Rate

(a) Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate or as otherwise set forth in this Agreement from (and including) the Closing Date to but excluding the Maturity Date.

(b) Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a 360 day year by (c) the outstanding principal balance. Borrower understands and acknowledges that such interest accrual requirement results in more interest accruing on the Loan than if either a 30 day month and a 360 day year or the actual number of days and a 365 day year were used to compute the accrual of interest on the Loan. Borrower recognizes that such interest accrual requirement will not fully amortize the Loan within the amortization period set forth in the application for the Loan.

Section 2.3. Loan Payments

(a) Monthly Payments. Borrower shall pay to Lender monthly debt service payments as follows:

(i) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from the Closing Date up to and including November 30, 2008; and

(ii) on January 1, 2008 and on each Payment Date thereafter, Borrower shall make a payment to Lender of interest only, at the Interest Rate, based on the actual number of days in the previous calendar month, which payments shall be applied first to accrued and unpaid interest and the balance to principal.

(b) Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents.

(c) Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating interest accrual periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date.

(d) Defenses. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

(e) Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 1:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(f) Application of Payments. Prior to the occurrence of an Event of Default, all monthly payments made as scheduled under this Agreement and the Note shall be applied first to the payment of interest computed at the Interest Rate, and the balance toward the reduction of the principal amount of the Note. All voluntary and involuntary prepayments on the Note shall be applied, to the extent thereof, to accrued but unpaid interest on the amount prepaid, to the remaining principal amount, and any other sums due and unpaid to Lender in connection with the Loan, in such manner and order as Lender may elect in its sole and absolute discretion, including, but not limited to, application to principal installments in inverse order of maturity. Following the occurrence and during the continuance of an Event of Default, any payment made on the Note shall be applied to accrued but unpaid interest, late charges, accrued fees, the unpaid principal amount of the Note, and any other sums due and unpaid to Lender in connection with the Loan, in such manner and order as Lender may elect in its sole and absolute discretion.

(g) Extension. Provided that the following conditions (i) through (vii) are satisfied, Borrower may extend (the "Extension") the Initial Maturity Date to the Extended Maturity Date: (i) there shall exist no Default or Event of Default when the Extension Notice (as hereinafter defined) is given or on the Initial Maturity Date, (ii) the loan to value ratio (as determined by Lender in its sole and absolute discretion) for the Property is equal to or less than such ratio on the date of this Agreement as reasonably determined by Lender, (iii) the debt service coverage ratio (as determined by Lender in its sole and absolute discretion) for the 12 calendar months immediately preceding the Initial Maturity Date shall be equal to or greater than such ratio on the date of this Agreement, (iv) Borrower shall have replenished and funded the Debt Service Reserve with funds in an amount reasonably determined by Lender to be sufficient to discharge the regularly scheduled monthly installments of interest due on each Payment Date, (v) Borrower shall have elected to extend the Initial Maturity Date by written notice (the "Extension Notice") to Lender delivered not less than thirty (30) days or greater than sixty (60) days prior to the Initial Maturity Date, (vi) the physical condition of the Property is acceptable to Lender, (vii) the existing Title Insurance Policy in favor of Lender shall have been updated and/or modified, as the case may be, to insure Lender's continued security interest under the Security Instrument as a first mortgage lien notwithstanding any modification to the terms of this Note or the Security Instrument and (viii)

Borrower shall pay all reasonable costs and expenses in connection with the Extension (including, without limitation, Lender's reasonable legal fees).

Section 2.4. Late Payment Charge

If any principal, interest or any other sums due under the Loan Documents (excluding the amounts due on the Maturity Date) are not paid by Borrower within ten (10) calendar days after the date on which it is due (including, without limitation, any balloon payment of principal that becomes due on the Maturity Date (whether by acceleration or otherwise)), Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents to the extent permitted by applicable law.

Section 2.5. Default Rate

In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due or other obligation was to be performed without regard to any grace or cure periods contained herein or in the Loan Documents.

Section 2.6. Prepayment

Provided that no Default shall have occurred hereunder or under the Note, the Security Instrument or any other Loan Documents, the Note shall be prepayable, in whole or in part, without premium or penalty, on any interest payment date upon (a) the delivery of thirty (30) days' prior written notice to the Lender, and (b) the payment of all interest accrued on the amount so prepaid up to and including the date of such prepayment. Prepayments shall be applied against the outstanding principal balance of the Note and shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the Lender shall agree otherwise in writing. Lender may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments which would be applicable to principal.

Section 2.7. Usury Savings

This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

ARTICLE 3. - REPRESENTATIONS AND WARRANTIES

Borrower, for itself and its successors and assigns, does hereby represent and warrant to and with Lender, its successors and assigns, as of the date hereof, that:

Section 3.1. Organization and Existence

Borrower is duly organized and validly existing as a not-for-profit corporation in good standing under the laws of New York and is qualified to do business in the state of New York and in all other jurisdictions in which Borrower is transacting business. Borrower's United States taxpayer identification number is 13-1740153.

Section 3.2. Authorization

Borrower has the power and authority to execute, deliver and perform the obligations imposed on it under this Agreement and the other Loan Documents and to consummate the transactions contemplated by this Agreement and the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners or members of Borrower whose approval is required by the terms of Borrower's organizational documents have duly approved the transactions contemplated by this Agreement and the other Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Borrower's knowledge, information and belief, after due and diligent inquiry and investigation and following consultation and advice from Borrower's legal counsel, no other consent by any local, state or federal agency is required in connection with the execution and delivery of this Agreement or any of the other Loan Documents.

Section 3.3. Valid Execution and Delivery of Documents

All of the Loan Documents requiring execution by Borrower have been duly and validly executed and delivered by Borrower.

Section 3.4. Enforceability

All of the Loan Documents constitute valid, legal and binding obligations of Borrower and are fully enforceable against Borrower in accordance with their terms, subject only to bankruptcy laws and general principles of equity.

Section 3.5. No Defenses

This Agreement, the Note, the Security Instrument and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor would the operation of any of the terms of this Agreement, the Note, the Security Instrument or any of the other Loan Documents, or the exercise of any right thereunder, render this Agreement, the Note, the Security Instrument or any of the other Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 3.6. Defense of Usury

Borrower knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, this Agreement, the Note and the other Loan Documents.

Section 3.7. No Conflict/Violation of Law

The execution, delivery and performance of the Loan Documents by the Borrower will not cause or constitute a default under or conflict with the organizational documents of Borrower or any Constituent Entity of either of them. The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower or any Constituent Entity of either of them to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Borrower or any Constituent Entity of either of them is a party or by which Borrower or any Constituent Entity of either of them is bound.

Section 3.8. Consents Obtained

All consents, approvals, authorizations, orders or filings with any court or governmental agency or body, if any, required for the execution, delivery and performance of the Loan Documents by Borrower have been obtained or made.

Section 3.9. No Litigation

There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Borrower or any Constituent Entity of Borrower, whether pursuant to the Loan Documents or otherwise, (i) except as previously fully disclosed in writing by Borrower to Lender prior to the date hereof; and (ii) an adverse outcome of which would not affect in any respect the value of the Property or the Borrower's performance under the Note, this Agreement, the Security Instrument or the other Loan Documents.

Section 3.10. Compliance with Legal Requirements and Regulations

All of the Improvements and the use of the Property by the Borrower comply with all applicable Legal Requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, without limitation, all applicable health, fire and building codes, and all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, environmental protection, zoning and land use. There is no evidence of any illegal activities relating to controlled substances on the Property. All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property for the use currently being made thereof have been obtained and are in full force and effect. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

Section 3.11. Title

The Borrower has good and marketable fee simple title to real property comprising the Property, subject only to those matters expressly listed as exceptions to title or subordinate matters in the title insurance policy or title insurance policies accepted by Lender in connection with the Security Instrument (collectively, the "Title Insurance Policy"), excepting therefrom all preprinted and/or standard exceptions (the "Permitted Exceptions"). The possession of the Property has been peaceful and undisturbed and title thereto has not been disputed or questioned to the best of Borrower's knowledge. Further, Borrower has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form of the Security Instrument. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created by the Security Instrument against the claims of all persons and parties

whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of the Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure.

Section 3.12. Permitted Exceptions

The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of the Borrower to pay in full the principal and interest on the Note in a timely manner or (2) the use of the Property for the use currently being made thereof, the operation of the Property as currently being operated or the value of the Property.

Section 3.13. First Lien

Upon the execution by the Borrower and the recording of the Security Instrument, and upon the filing of UCC-1 financing statements or amendments thereto, the Lender will have a valid first lien on the Property and a valid security interest in all Personal Property encumbered by the Security Instrument and the other Loan Documents, subject to no Liens, charges or encumbrances other than the Permitted Exceptions.

Section 3.14. ERISA

The Borrower has made and shall continue to make all required contributions to all employee benefit plans and multi-employer plans, if any, and the Borrower has no knowledge of any material liability which has been incurred by the Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi-employer plan. Each such plan has been administered in compliance with its terms and the applicable provisions of the ERISA and any other federal or state law and shall continue to be qualified and tax-exempt to the greatest extent permitted thereunder. Other than with respect to any such plans, Borrower is not an entity subject to regulation or restriction under ERISA, and no assets of Borrower are "plan assets" (as defined in ERISA).

Section 3.15. Contingent Liabilities

Borrower has no known material contingent liabilities, except for (i) contingent liabilities of Borrower explicitly set forth on the financial statements of Borrower that were delivered to Lender in connection with the Loan, and (ii) pending litigation as previously fully disclosed in writing by Borrower to Lender prior to the date hereof, an adverse outcome of which would not affect in any respect the value of the Property or the Borrower's performance under the Note, this Agreement, the Security Instrument or the other Loan Documents.

Section 3.16. No Other Obligations

The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Property is otherwise bound, other than (i) obligations incurred in the ordinary course of the operations of Borrower's properties, (ii) the Debt and (iii) matters arising under Section 3.15 above.

Section 3.17. No Fraudulent Conveyance

The Borrower (1) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan contemplated by the Loan Documents,

the fair saleable value of the Borrower's assets exceed and will, immediately following the execution and delivery of the Loan Documents, exceed the Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

Section 3.18. Investment Company Act

Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (2) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 3.19. Access/Utilities/Parking

The Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in the public right-of-way abutting the Property, or enter the Property via permanent easements not subject to termination except with the consent of Borrower, and all such utilities are connected so as to serve the Property without passing over other property. All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Borrower or Tenant. The Property has, or is served by, parking to the extent required to comply with all Legal Requirements.

Section 3.20. Taxes Paid

Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower. Borrower has no knowledge of any basis for additional assessment with respect to such Taxes and Other Charges. Further, the Property is free from delinquent Taxes and Other Charges.

Section 3.21. Single Tax Lot

The Property consists of a single lot or multiple tax lots; no portion of said tax lot(s) covers property other than the Property or a portion of the Property and no portion of the Property lies in any other tax lot. Each Individual Property is a separate legally subdivided parcel of land.

Section 3.22. Special Assessments

Except as disclosed in the Title Insurance Policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Property that may result in such special or other assessments.

Section 3.23. Flood Zone

To the best of Borrower's knowledge, information and belief after due and diligent inquiry and investigation, the Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

Section 3.24. Seismic Exposure

To the best of Borrower's knowledge, information and belief after due and diligent inquiry and investigation, the Property is not located in Zone 3 or Zone 4 of the "Seismic Zone Map of the U.S."

Section 3.25. Misstatements of Fact

No certification, representation or statement of fact made in this Agreement or the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to the Borrower or any Constituent Entity of Borrower which has not been disclosed which adversely affects, or in the judgment of a reasonable person might adversely affect, the business, operations or condition (financial or otherwise) of the representing party. Further, and in clarification of the foregoing, all reports, certificates, affidavits, representations, statements and other data furnished by or on behalf of Borrower and each Constituent Entity of each of them to Lender, or their respective agents, in connection with the Loan are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading.

Section 3.26. Condition of Improvements

The Property and the Improvements have not been damaged by fire, water, wind or other cause of loss since the earlier to occur of the initial visit to or inspection of the Property by Lender or its agents in connection with the Loan. To the best of Borrower's knowledge, information and belief after due and diligent inquiry and investigation, the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. To the best of Borrower's knowledge, information and belief after due and diligent inquiry and investigation, all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

Section 3.27. No Insolvency or Judgment

None of Borrower or any Constituent Entity of Borrower, (a) has been or is currently the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) is currently the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render the Borrower or any general partner or member of Borrower insolvent. As used in this Agreement, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.

Section 3.28. No Condemnation

No part of any property subject to the Security Instrument has been taken in Condemnation or other like proceeding to an extent which would impair the value of the Property, the Security Instrument or the Loan or the usefulness of such property for the purposes contemplated by the loan application relating to the Loan (the "Loan Application"), nor is any proceeding pending, threatened or known by Borrower to be contemplated for the partial or total Condemnation. No Condemnation or other proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

Section 3.29. No Labor or Materialmen Claims

All parties furnishing labor and materials to Borrower (or any predecessor-in-title) or the Property have been paid in full and, except for such Liens or claims expressly disclosed in, and insured against by, the Title Insurance Policy, there are no Liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Security Instrument.

Section 3.30. No Purchase Options

No Tenant, Person, party, firm, corporation or other entity has an option, right of first offer, or right of first refusal, to purchase the Property, any portion thereof or any interest therein, except as specifically described in the Title Insurance Policy.

Section 3.31. Leases

The Property is not subject to any leases, subleases, licenses, concessions or other agreements related to the leasing or renting of the Property or any portion thereof.

Section 3.32. Appraisal

To the best of Borrower's knowledge, all information provided by or on behalf of Borrower to the appraiser in connection therewith was true, correct and complete in all material respects.

Section 3.33. Boundary Lines

All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and except as specifically described in the Title Insurance Policy, no improvements on adjoining properties encroach upon the Property and no easements or other encumbrances upon the Property encroach upon any of the Improvements, in each case so as to affect the value or marketability of the Property.

Section 3.34. Survey

Subject to terms and provisions of Section 8.3 below, the survey (the "Survey") of the Property delivered to Lender in connection with the Loan does not fail to reflect any material matter affecting the Property or the title thereto.

Section 3.35. Forfeiture

There has not been and shall never be committed by Borrower or any agent of Borrower any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

Section 3.36. No Broker

No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Borrower in connection with the Loan, except for any broker whose full commission is being paid out of the proceeds of the Loan, as set forth in the written instructions from Borrower to Lender regarding disbursement of the proceeds of the Loan. Borrower hereby agrees to indemnify and hold Lender harmless for, from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from (i) a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein or (ii) any breach of the foregoing representation. The provisions of this Section 3.36 shall survive the repayment of the Debt.

Section 3.37. Conviction of Criminal Acts

Each of Borrower and any Constituent Entity of Borrower, has never been convicted of a crime (which shall not include traffic violations) and is not currently the subject of any pending or threatened criminal investigation or proceeding. Borrower has disclosed to Lender in writing any civil action (whether or not such action resulted in a judgment) and regulatory or enforcement proceeding to which Borrower was a defendant or respondent in which it was alleged that Borrower engaged in fraud, deception or misrepresentation, or with respect to which Borrower was ordered or agreed not to engage in the banking or securities industry.

Section 3.38. Security Agreements

There are no security agreements or financing statements affecting or encumbering any of the Property other than the security agreements and financing statements created in favor of Lender.

Section 3.39. Homestead

The Property forms no part of any property owned, used or claimed by Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Property is located. Borrower hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

Section 3.40. Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws

(i) None of Borrower, Managing Member or any Person who owns any direct equity interest in or controls Borrower or Managing Member currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower will implement procedures, approved by Managing Member, to ensure that no Person who now or hereafter owns any direct equity interest in Borrower or Managing Member is a Prohibited Person or controlled by a Prohibited Person, and (ii) none of Borrower or Managing Member are in violation of any applicable laws relating to anti-money laundering or anti-terrorism, including, without limitation, any applicable laws related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time

to time(collectively, the "Patriot Act"). For purposes hereof: (1) the term "Managing Member" shall mean, if Borrower is a partnership, each general partner of Borrower and, if Borrower is a limited liability company, each manager or managing member of Borrower and in each case, if applicable, each general partner or managing member of such general partner or managing member. In the event that Borrower or any Managing Member is a single member limited liability company, the term "Managing Member" shall include such single member; (2) the term "Prohibited Person" shall mean any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States or America; (3) the term "OFAC List" shall mean the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/tl1sdn.pdf.

Section 3.41. Not a Foreign Person

Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

Section 3.42. Business Purposes

The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes, and no portion of the Loan proceeds shall be used by Borrower for personal, family, agricultural or household purposes.

Section 3.43. Insurance

Borrower has obtained and has delivered to Lender certified copies of all Policies or, to the extent such Policies are not available as of the Closing Date, certificates of insurance with respect to all such Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any of the Policies, and to Borrower's knowledge, no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

Section 3.44. Use of Property

The New York County Property is used exclusively for a high school and other appurtenant and related uses.

The Ulster County Property is used exclusively for administrative offices and other appurtenant and related uses.

The Westchester County Property is used exclusively for administrative offices and other appurtenant and related uses.

Section 3.45. Filing and Recording Taxes

All mortgage, mortgage recording, stamp, documentary, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid.

Section 3.46. Management Agreement

The Property is self-managed by the Borrower and there are no agreements with any Affiliate of Borrower or other third party concerning the management of the Property.

Section 3.47. Personal Property

Borrower has paid in full for, and is the owner of, all Personal Property (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except for Permitted Exceptions, the Lien and security interest created by the Loan Documents and equipment leases for certain non-material Personal Property.

Section 3.48. Taxes

Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 3.49. Federal Reserve Regulations

No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or prohibited by the terms and conditions of this Agreement or the other Loan Documents.

Section 3.50. Intellectual Property

All trademarks, trade names and service marks necessary to the business of Borrower as presently conducted or as Borrower contemplates conducting its business are in good standing and, to the extent of Borrower's actual knowledge, uncontested. Borrower has not infringed, is not infringing, and has not received notice of infringement with respect to asserted trademarks, trade names and service marks of others. There is no infringement by others of trademarks, trade names and service marks of Borrower.

Section 3.51. Survival

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 3 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE 4. - BORROWER COVENANTS

From the date hereof and until repayment of the Debt in full and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Security Instrument (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

Section 4.1. Existence; Compliance with Legal Requirements

Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall at all times maintain, preserve and protect all franchises and trade names used in connection with the operation of the Property. Borrower shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Lease or any Legal Requirements or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Borrower shall, from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Legal Requirements.

Section 4.2. Maintenance and Use of Property

Borrower shall not commit, suffer or permit any waste on the Property. Borrower shall not take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair and in compliance with Legal Requirements. No part of the Improvements or Personal Property (except for normal replacement of the Personal Property) may be removed, demolished or materially altered, in each case, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed so long as no Default exists), except as required pursuant to applicable Legal Requirements or to cause the Property not to be in violation of any Lease. Without the prior written consent of Lender in each case (which consent shall not be unreasonably withheld, conditioned or delayed so long as no Default exists), Borrower shall not commence construction of any improvements on the Property other than improvements required for the maintenance or repair of the Property. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 4.3. Zoning/Use

Without the prior written consent of Lender in each case, Borrower shall not (a) change the use of the Property or (b) seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Property or the Improvements. If, under applicable zoning provisions, the use of all or any part of the Property or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Without Lender's prior written consent, Borrower shall not file or subject any part of the Property or the Improvements to any declaration of condominium or co-operative or convert any part of the Property or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

Section 4.4. Taxes and Other Charges

Except to the extent funds are held in the Tax and Insurance Reserve pursuant to this Agreement when the same become due and payable, Borrower shall (a) pay or cause to be paid (i) all Taxes now or hereafter levied or assessed or imposed against, or which are or may become a Lien upon, the Property and (ii) Other Charges, now or hereafter levied or assessed or imposed against the Property or any part thereof, and (b) furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such Taxes and Other Charges at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may in good faith, by appropriate

proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted Taxes or Other Charges so long as (x) such contest is diligently pursued, (y) Lender determines, in its reasonable judgment, that such contest suspends the obligation to pay the Taxes or Other Charges and that nonpayment of such Taxes or Other Charges will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Lender therein, and (z) prior to the earlier of the commencement of such contest or the delinquency date of the asserted Taxes or Other Charges, Borrower deposits in the Tax and Insurance Reserve an amount determined by Lender to be adequate to cover the payment of such Taxes or Other Charges and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided, further, that in any event each such contest shall be concluded, the Taxes or Other Charges, as the case may be, together with any applicable interest, costs and penalties, shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

Section 4.5. Litigation

Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which might materially adversely affect Borrower's condition (financial or otherwise) or business or the Property.

Section 4.6. Access to Property

Lender and the agents, representatives and employees of Lender shall, subject to the rights of tenants, have full and free access to the Property and any other location where books and records concerning the Property are kept at all reasonable times and on reasonable prior notice for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

Section 4.7. Notice of Default

Borrower shall promptly advise Lender of any material adverse change in the condition (financial or otherwise) of Borrower or the Property or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

Section 4.8. Cooperate in Legal Proceedings

Borrower shall at Borrower's expense cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

Section 4.9. Performance by Borrower

Borrower shall pay when due the principal of and the interest on and other amounts due under this Agreement and evidenced by the Note. Also, Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision to be observed and performed by Borrower under this Agreement and the other Loan Documents and any other agreement or instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto. Further, Borrower shall promptly and strictly perform and comply with all covenants, conditions, obligations and

prohibitions required of Borrower in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to the Security Instrument, except as expressly prohibited by the Loan Documents. Borrower agrees not to enter into, terminate or modify any reciprocal easement agreement affecting the Property without Lender's prior written consent.

Section 4.10. Awards; Insurance Proceeds

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

Section 4.11. Financial Statements, Books and Records and Informational

Reporting

(a) Borrower will keep and maintain proper and accurate books, records and accounts reflecting all items of income and expenses in connection with the business operations of the Borrower including the operation of the Property. Upon reasonable advance notice, Lender or its designees shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Borrower, or other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as Lender shall desire. Within one hundred-twenty (120) days after the end of each fiscal year of the Borrower, the Borrower shall furnish to the Lender for each such fiscal year, an annual financial statement prepared by a certified public accountant in a reasonable format and in such detail as the Lender may reasonably require and certified to by Borrower.

(b) In addition to the financial statements required pursuant to paragraph (a) hereof, the Borrower of the Debt agrees to deliver to Lender (i) a copy of their Federal Income Tax Return with in one hundred twenty (120) days after the end of each fiscal year of the Borrower and (ii) any other financial information and reports as may be reasonably requested by the Lender.

(c) If requested by the Lender, the Borrower further agrees that within ten (10) days after such request, it shall furnish a written statement containing the names of all tenants of the Property, the terms of their respective tenancies, the spaces occupied, the rentals paid therefor and any defaults with respect thereto, which statement shall be certified by the Borrower as true and correct.

(d) Borrower shall deliver to Lender, or cause to be delivered to Lender, such other information with respect to the Property, Borrower, the principals in Borrower which may reasonably be requested from time to time by Lender, within a reasonable time after the applicable request.

Borrower acknowledges the importance to Lender of the timely delivery of each of the items required by this Section 4.11 (each, a "Required Financial Item" and collectively, the "Required Financial Items"). In the event Borrower fails to deliver to Lender any of the Required Financial Items within the time frame specified in this Section 4.11 (each such event, a "Reporting Failure"), in addition to constituting an Event of Default under this Agreement entitling Lender to exercise any of its rights and remedies including, without limitation, increasing the interest rate under the Note to the Default Rate until such time as all Reporting Failures have been cured, and without limiting Lender's other rights and remedies with respect to the occurrence of such an Event of Default, Borrower shall pay to Lender upon

demand the sum of \$1,000.00 per occurrence for each Reporting Failure. It shall constitute a further Event of Default hereunder if any such payment is not received by Lender within thirty (30) days of the date on which such payment is due, and Lender shall be entitled to the exercise of all of its rights and remedies provided hereunder.

Section 4.12. Further Documentation

Borrower shall, on the request of Lender and at the expense of Borrower, promptly: (a) correct any defect, error or omission which may be discovered in the contents of this Agreement, the Note, the Security Instrument or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement and the other Loan Documents and to subject to the Liens and security interests hereof and the Security Instrument, any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Lender to protect, continue or perfect the Liens or the security interests hereunder against the rights or interests of third persons; and (d) furnish to Lender, upon Lender's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Lender and in form and substance supplied by Lender, setting forth all amounts due under the Note, stating whether any Default or Event of Default exists, stating whether any offsets or defenses exist against the Debt, affirming that the Loan Documents are the legal, valid and binding obligations of Borrower, and containing such other matters as Lender may reasonably require.

Section 4.13. Leasing Matters

(a) Entering Into Leases. Borrower may enter not into a proposed Lease (which includes the renewal or extension of an existing Lease (a "Renewal Lease")) without the prior written consent of Lender, which consent shall not be unreasonably, withheld, conditioned or delayed so long as no Default exists. All Leases and Renewal Leases shall (i) provide for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) be an arms-length transaction with a bona fide, independent third party tenant for occupancy by the lessee under such Lease, (iii) not have a materially adverse effect on the value of any Individual Property taken as a whole, (iv) be subject and subordinate to the Security Instrument, and obligate the lessee thereunder to attorn to Lender, or any designee, upon transfer of title to the respective Individual Property thereto, (v) not contain any option or right of first refusal to purchase all or any portion of the Property and (vi) expressly provide that the portion of the Property demised thereby shall not be used for a Prohibited Use. Upon Lender's request, Borrower shall deliver to Lender a true, correct and complete copy of each Lease then in effect.

(b) Covenants Regarding Leases. Borrower (i) shall observe and perform all the obligations imposed upon the lessor under each Lease, and shall not do or permit to be done anything to impair the value of any Lease as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in each Lease upon the part of the Tenant thereunder to be observed or performed, (iv) shall not collect any of the Rents more than one (1) month in advance (it being acknowledged that security deposits shall not be deemed Rents collected in advance); (v) shall not

execute any other assignment of the lessor's interest in any of the Leases or the Rents (other than to Lender as security for the Debt); and (vi) shall not consent to any assignment of or subletting under any Lease not in accordance with the terms of such Lease, in each case without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Within 30 days after Lender's request therefor (which request shall not be made more than twice in any calendar year absent an Event of Default), Borrower shall use commercially reasonable efforts to deliver to Lender an estoppel certificate from each Tenant.

(c) Amendments to Leases. Borrower may not, without the prior written consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit support with respect thereto) (the foregoing, collectively, a "Lease Modification")

(d) Security Deposits. All security deposits of tenants, whether held in cash or in any other form, shall be held in compliance with applicable Legal Requirements. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable Legal Requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described; shall be issued by an institution reasonably satisfactory to Lender; shall, if permitted pursuant to any applicable legal requirements, name Lender as payee or mortgagee thereunder or, at Lender's option, be assigned or fully assignable to Lender; and shall, in all respects, comply with any applicable Legal Requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Upon an Event of Default under, Borrower shall, immediately upon Lender's request (if permitted by applicable Legal Requirements), deliver to Lender the security deposits (and any interest previously earned thereon and not disbursed to the person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

Section 4.14. Property Management

(a) The management of the Property shall be by either (1) Borrower or an Affiliate of the Borrower approved by Lender for so long as Borrower or said Affiliate is managing the Property in a first class manner; or (2) a professional property management company approved by Lender, and in either case pursuant to a written agreement approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed so long as no Default exists. In no event shall any manager be removed, replaced or retained, or any management agreement entered into, modified or amended, in each case without the prior written consent of Lender, which shall not unreasonably be withheld. After an Event of Default or a default under any management contract then in effect, which default is not cured within any applicable grace or cure period, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender. It shall be a condition of Lender's consent to any management agreement, whether with an affiliate of Borrower or a professional property management company, that such manager enter into an agreement with Lender whereby the manager acknowledges and agrees to the aforesaid rights of Lender, and as to such other matters as Lender may reasonably require.

(b) Without limiting the restrictions set forth in Section 4.14(a) pertaining to the management agreement for the Property, Borrower may not terminate any other Contract that is material to the operation of the Property, or enter into any amendment thereto that makes the terms thereof less favorable to Borrower, in each case without the prior written consent of Lender, which shall not unreasonably be withheld, *provided, however*, that if the other party to such Contract is in default

thereunder, and Borrower can replace the goods or services provided on terms not materially disadvantageous to Borrower, then the prior written consent of Lender shall not be required to terminate such Contract. Borrower shall perform its obligations under each Contract and each of the General Intangibles, except where Borrower's failure to do so would not have a material adverse effect on Borrower or the Property. Borrower represents that its interest under each Contract, and each General Intangible, is not subject to any claim, setoff, lien, deduction or encumbrance of any nature, other than that created by the Loan Documents. At any time during the continuance of an Event of Default, Lender may (but shall not be obligated to) take such action as Lender may determine to be reasonably necessary to protect the rights of Borrower under any or all of the Contracts and/or the General Intangibles. Should Lender, or Lender's designee, acquire the Property (whether pursuant to exercise of Lender's remedies under the Loan Documents), Lender may elect to assume Borrower's interests under any or all of the Contracts or General Intangibles as Lender shall determine, and Borrower shall cause to be terminated, without obligation to Lender or the successor owner of the Property, such other Contracts and/or General Intangibles as Lender may direct.

Section 4.15. Liens

Borrower shall not, without the prior written consent of Lender, create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except Permitted Exceptions.

Section 4.16. Debt Cancellation

Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for non-material debt forgiveness for adequate consideration and in the ordinary course of Borrower's business.

Section 4.17. ERISA

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

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(ii) None of the assets of Borrower are, by virtue of the application of 29 C.F.R. §2510.3-101(f) as modified by Section 3(42) of ERISA, regarded as assets of any "employee benefit plan" as defined in Section 3(3) of ERISA, subject to Title I of ERISA; or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

Section 4.18. No Joint Assessment

Borrower shall not suffer, permit or initiate the joint assessment of (a) the Property with any other real property constituting a tax lot separate from the Property, or (b) that portion of the Property which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

Section 4.19. Patriot Act

Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the list maintained by OFAC and accessible through the OFAC website) that prohibits or limits any lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by any lender at any time to enable any lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, the Patriot Act. In addition, Borrower hereby agrees to provide to Lender any additional information that Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

Section 4.20. Defense of Title

If, while the Debt remains unpaid, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Lender (it being agreed that Lender shall not unreasonably withhold its consent to counsel appointed pursuant to the Title Insurance Policy for such purposes), the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Lender reasonably determines that Borrower is not adequately performing its obligations under this Section 4.20, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper; any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Rate, shall be immediately paid by Borrower on demand.

Section 4.21. Use of Rents

Except to the extent provided to the contrary in the Loan Documents, all Rents generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Agreement, the Note, the Security Instrument and the other Loan Documents, and none of the Rents generated by or derived from the Property shall be diverted by Borrower, distributed to the equity owners of Borrower or utilized for any other purposes, in each case unless all expenses attributable to the ownership and operation of the Property then due and payable have been fully paid and satisfied. Without limiting the foregoing, Borrower shall pay when due all utility charges (e.g., for gas, electricity, water and sewer services and similar charges) which are incurred by Borrower or its agents, and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Property and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 4.22. Easements and Rights-of-Way

Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Property without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed with respect to a typical public utility easement that does not adversely affect the use or enjoyment of the Property (or any portion thereof). The purchaser at any foreclosure sale under the Security Instrument, at its discretion, may disaffirm any easement or right-of-way granted in violation of any of the provisions of this Agreement and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent provided that Lender is paid a reasonable review fee together with all other expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and in the preparation of documents effecting the subordination. Borrower shall at all times comply with all easement agreements, reciprocal easement agreements, declarations, restrictive covenants and any other similar types of agreements now or hereafter affecting the Property, and Borrower shall not amend, modify or terminate any such easement agreements, reciprocal easement agreements, declarations, restrictive covenants or any other similar types of agreements without Lender's prior written consent.

Section 4.23. Leasing Costs

Borrower agrees that, in respect of all existing Leases and upon the execution of any Lease approved by Lender, Borrower shall timely perform all build-out, construction, tenant improvement work and other work required to be performed by Borrower under such Lease (the foregoing, "Tenant Improvements") and timely pay as and when due any and all commissions to brokers in connection with such Lease ("Leasing Commissions") and all allowances or other payments due to the Tenant under any Lease ("Tenant Allowances"; Tenant Allowances, Tenant Improvements and Leasing Commissions are collectively, "Leasing Costs"). Borrower shall perform all Tenant Improvements in a good and workmanlike manner, in accordance with all applicable Legal Requirements, and each case in a manner satisfactory to Lender and as necessary to maintain the Property in good condition and in compliance with all applicable Legal Requirements.

Section 4.24. Repairs

Borrower agrees that it will perform all Repairs necessary to maintain the Property in good working order, in accordance with its condition as of the date hereof. Borrower shall perform all Repairs in a good and workmanlike manner, in accordance with all applicable Legal Requirements, and each case in a manner satisfactory to Lender and as necessary to maintain the Property in good condition and in compliance with all applicable Legal Requirements.

Section 4.25. Survey Reserve Release Conditions

Borrower shall satisfy all of the Survey Reserve Release Conditions on or prior to January 5, 2009.

ARTICLE 5. - INTENTIONALLY OMITTED

ARTICLE 6. ALIENATION AND FURTHER ENCUMBRANCES

Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, neither the Property, nor any part thereof or interest therein, shall be sold,

conveyed, disposed of, alienated, hypothecated, leased (except to Tenants under Leases which are not in violation of Section 4.13 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred, nor shall Borrower be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily (any of the foregoing, a "Transfer"), in each case without the prior written consent of Lender being first obtained, which consent may be withheld in Lender's sole discretion. For the purposes of this Section 6, a "Transfer" shall also include (i) transfers of direct or indirect ownership interests in Borrower, and the creation of new or additional ownership interests in Borrower, or in any Constituent Entity of Borrower, (ii) an installment sales agreement with respect to the Property or any portion thereof, (iii) a Lease of all or substantially all of the Property other than for actual occupancy by a space tenant thereunder, (iv) any sale or assignment of any of Borrower's right, title and interest in, to and under any Leases or Rents, other than to Lender, (v) if Borrower or any Constituent Entity of Borrower is a partnership or joint venture, the addition, change, removal or resignation of any general partner, or the transfer or pledge of any interest (whether as a general partner or limited partner) of any general partner in such partnership, and (vi) if Borrower or any Constituent Entity of Borrower is a limited liability company, the addition, change, removal or resignation of any manager or managing member, or the transfer or pledge of any interest (whether as a managing member or otherwise) of such manager or managing member in such limited liability company, or the transfer of Control of such manager or managing member.

ARTICLE 7. - INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 7.1. Insurance

(a) Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times the following insurance:

(i) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk/special" form of insurance policy. The amount of such insurance shall be the lesser of (i) the amount of the Loan, and (ii) not less than one hundred percent (100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval. The deductible with respect to such insurance shall not exceed \$10,000.00 per claim.

(ii) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, together with umbrella coverage in amounts not less than \$10,000,000.00. During any construction on the Property, Borrower's general contractor for such construction shall also provide the insurance required in this Subsection (ii).

Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances. No deductible shall be permitted with respect to such insurance.

(iii) General boiler and machinery insurance coverage is required if steam boilers or other pressure-fired vessels are in operation at the Property. Minimum liability amount per accident must equal the lesser of the replacement (insurable) value of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000.00. The deductible with respect to such insurance shall not exceed \$10,000.00 per claim.

(iv) If the Property or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured); or (ii) such lesser amount as may be required by Lender. The deductible with respect to such insurance shall not exceed \$25,000.00 per occurrence.

(v) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" insurance policy for any Improvements under construction, renovation or alteration in an amount approved by Lender and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration. The deductible for such insurance, if any, shall be satisfactory to Lender.

(vi) Loss of rents or loss of business income insurance in an amount equal to the greater of (A) estimated gross revenues from the operations of the Property for a period of time equal to eighteen (18) months together with an extended coverage indemnity endorsement for an additional period of time equal to six (6) months, or (B) the projected operating expenses (including payments of interest due under the Note and deposits to the Reserves required hereunder) for the maintenance and operation of the Property and depreciation, all for a period of twenty-four (24) months. The amount of such rental loss and/or business interruption insurance shall be increased from time to time while the Loan remains outstanding as and when new Leases and renewal Leases are entered into and the Rents increase or the estimate of (or the actual) operating expenses for the Property, as may be applicable, increases. The deductible for such insurance, if any, shall be reasonably satisfactory to Lender.

(vii) Any other insurance coverage (or higher coverages) running to the benefit of, or required by, Lender in connection with the making of the Loan and as set forth on the insurance certificates or policies delivered to and accepted by Lender in connection with the closing of the Loan.

(viii) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence, Terrorism, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All such insurance provided for in Section 7.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy") and each Policy shall (i) be with insurers authorized to do business in the state within which the Property is located and who have and maintain a rating of at least "A" from S & P (or, alternatively, if the insurers maintain re-insurance with re insurers maintaining such rating, Lender will not unreasonably withhold its consent to satisfying such required rating by means of a "cut-through" endorsement allowing recourse directly against a reinsurer maintaining such rating), (ii) contain the complete address of the Property (or a complete legal description), (iii) be for terms of at least one year, and (iv) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates.

(c) Borrower shall as of the date hereof deliver to Lender evidence that the Policies have been paid current as of the date hereof and certified copies of the Policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, all of which shall be satisfactory to Lender. Without limiting the foregoing, all certificates of insurance for the liability insurance referenced in Section 7.1(a)(ii) above shall be on the ACORD 25 Form, modified to require (or otherwise providing) an unconditional obligation to give Lender prior notice of any cancellation, and all certificates of insurance for other coverages shall be on either the ACORD 27 form or the March, 1993 edition of the ACORD 28 form (unless Lender expressly approves another form). Borrower shall renew all such insurance and deliver to Lender certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to the Policies, Borrower further agrees that all Policies shall include a standard, non-contributory, mortgagee clause naming:

COUNTRY BANK, its successors and/or assigns, as their interests may appear
200 EAST 42ND STREET
9TH FLOOR
NEW YORK, NEW YORK 10017

(x) as an additional insured under all liability insurance Policies, (y) as the first mortgagee on all property insurance Policies and (z) as the loss payee on all loss of rents or loss of business income insurance Policies. Borrower further agrees that all such Policies: (1) shall provide for at least thirty (30) days' prior written notice to Lender prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Lender; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such Policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Lender; (4) in the event that the Property (or any portion thereof) constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit approved by Lender), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages; and (5) may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Lender's applicable insurance requirements set forth in this 7.1. The delivery to Lender of the Policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such Policies relating to the Property by Borrower to Lender as further security for the Debt. In the event of foreclosure of the Security Instrument, or other transfer of title to

(00554302.3)

the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to all unearned insurance premiums and proceeds payable under such Policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title whether or not the damage to the Property occurred prior to such transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the Policies by this Agreement or the other Loan Documents or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Lender therefor, together with interest thereon at the Default Rate from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is a named insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein. To the extent that at any time Lender agrees to accept insurance from an insurer that is rated less than the foregoing, Lender may terminate its waiver and reassert the aforesaid minimum rating requirements upon any renewal of any insurance coverage, or at any time if the rating of any insurer is reduced or Lender determines that any other material adverse event has occurred with respect to the financial condition of such insurer.

Section 7.2. Casualty/ Condemnation and Restoration

(a) Borrower shall give Lender prompt written notice of the occurrence of any Casualty affecting, Condemnation of, or the institution of any Condemnation proceedings affecting, the Property or any portion thereof. All insurance proceeds ("Insurance Proceeds") on the Property, and all causes of action, claims, compensation, awards and recoveries for any Condemnation (collectively, "Condemnation Proceeds") of all or any part of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such Casualty or Condemnation and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any Condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation. Lender may, at Lender's option, (y) hold the balance of any of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration") and require Borrower to restore the Property to the equivalent of its original condition or to a condition approved by Lender, or (z) apply the balance of such proceeds to the payment of the Debt, whether or not then due. To the extent Lender, in accordance with the terms hereof, determines to apply insurance or Condemnation proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the, as applicable, restoration of Casualty damage on similar properties or Restoration or rebuilding of properties that have been the subject of a partial Condemnation. Lender shall not exercise its option to apply insurance proceeds or condemnation proceeds to the payment of the Debt if all of the following conditions are met: (1) no Default or Event of Default has occurred and is continuing; (2) in the case of Casualty, less than forty percent (40%) of the Improvements on an Individual Property has been damaged, or in the case of a Condemnation, less than ten (10%) of the Improvements on an Individual Property has been taken; (3) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration (including, without limitation, by means of a deposit of any shortfall by Borrower with Lender prior to the commencement of the Restoration or promptly upon Lender's determination that such a shortfall exists); (4) Lender determines, in its reasonable discretion, that the

rental income from the Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, deposits to the Reserve Accounts and loan repayment obligations relating to the Property and that the debt service coverage ratio after Restoration will be equal to or greater than the debt service coverage ratio on the date of this Agreement and the loan to value ratio will be no greater than the loan to value ratio on the date of this Agreement (in each case as reasonably determined by Lender); (5) Lender determines, in its reasonable discretion, that (A) the Restoration will be completed before the earlier of (i) one year before the Maturity Date or (ii) one year after the date of the loss or casualty and (B) the rent loss insurance or business interruption insurance referenced in Section 7.1(a)(vi) above will cover all payments due under the Loan during the completion of the Restoration; (6) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to Section 7.1; and (7) Borrower provides Lender with written notice within seven (7) days after settlement of the aforesaid insurance or Condemnation claim of its request to undertake a Restoration.

(b) Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Debt shall not extend or postpone the due date of any monthly installments referred to in this Agreement, the Note or the Loan Documents or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require. Any reduction in the Debt resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the Debt and, in any event, the unpaid portion of the Debt shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied first to the final payment due under the Note and thereafter to installments due under the Note in the inverse order of their due date. If Borrower elects to effect or is otherwise required to effect a Restoration, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or Condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all reasonable costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided the Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

ARTICLE 8. - RESERVE FUNDS

Section 8.1. Tax and Insurance Reserve Funds

(a) Borrower shall establish and maintain with Lender at all times while the Debt is outstanding a reserve account (the "Tax and Insurance Reserve") for payment of Taxes and Other Charges and for the premiums ("Insurance Premiums") on the Policies required to be maintained with respect to Borrower and the Property and as additional security for the Debt. In addition to the initial deposit to the Tax and Insurance Reserve required simultaneously with the execution hereof, commencing on the first Payment Date and continuing thereafter on each Payment Date until the Note and the Debt are

{00554302;3}

fully paid and performed, Borrower shall pay to Lender, for deposit to the Tax and Insurance Reserve, an amount equal to one-twelfth (1/12) of the amount of the annual Taxes and Other Charges that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual Insurance Premiums that will next become due and payable, each as estimated and determined by Lender. So long as no Event of Default has occurred and is continuing, all sums in the Tax and Insurance Reserve shall be held by Lender in the Tax and Insurance Reserve to pay said Taxes and Other Charges, in periodic installments, and Insurance Premiums in one annual installment, in each case, before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all Taxes and Other Charges, and all Insurance Premiums, and so long as no Event of Default has occurred and is continuing, Lender shall pay the Governmental Authority or other party entitled thereto directly to the extent funds are available for such purpose in the Tax and Insurance Reserve. In making any payment from the Tax and Insurance Reserve, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. The Tax and Insurance Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. No interest on the funds contained in the Tax and Insurance Reserve shall be paid by Lender to Borrower. The Tax and Insurance Reserve is solely for the protection of Lender and entails no responsibility on Lender's part beyond the payment of Taxes and Other Charges, and of Insurance Premiums, following receipt of bills, invoices or statements therefor in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of the Loan and the Security Instrument by Lender, any funds in the Tax and Insurance Reserve shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If the total funds in the Tax and Insurance Reserve are reasonably determined by Lender to be in excess of the amount of payments required by Lender for the purposes of the Tax and Insurance Reserve, such excess may be credited by Lender on the subsequent payment to be made hereunder or, if such excess is greater than the amounts due from Borrower to Lender in the month following such determination (and if no Default is then continuing, refunded to Borrower. If at any time Lender determines that, with the making of all monthly deposits to the Tax and Insurance Reserve when due, the Tax and Insurance Reserve nonetheless would not contain sufficient funds to pay the next due periodic installments of all Taxes and Other Charges at least 30 days prior to the delinquency date thereof, or to pay the next due annual Insurance Premiums at least 30 days prior to the due date thereof, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. If the Borrower shall fail to deposit with Lender the full amount of such deficiency as provided above, Lender shall have the option, but not the obligation, to make such deposit and all amounts so deposited by Lender, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand. At any time during the continuance of an Event of Default, Lender may, but shall not be obligated to, apply at any time the balance then remaining in the Tax and Insurance Reserve against the Debt in whatever order Lender shall subjectively determine. No such application of the Tax and Insurance Reserve shall be deemed to cure any Default or Event of Default hereunder, and any such application shall not limit Borrower's obligation to deposit any deficiency of which Lender gives notice.

(b) Notwithstanding the provisions of Section 8.1(a) above to the contrary, provided and on condition that each and all of the Insurance Conditions Precedent (as hereinafter defined) are satisfied and remain satisfied at all times, Borrower shall not be required to fund the Tax and Insurance Reserve on account of Insurance Premiums as provided in Section 8.1(a) above. If at any time any or all of the Insurance Conditions Precedent are no longer met to the satisfaction of Lender, Borrower shall

(00554302;3)

immediately begin and shall continue to fund the Tax and Insurance Reserve on account of Insurance Premiums as provided in Section 8.1(a) above. The term "Insurance Conditions Precedent" means the following conditions precedent: (i) no Event of Default has occurred, (ii) Borrower shall be maintaining the insurance required under Section 7.1 of this Agreement and (iii) at least thirty (30) days prior to the expiration date of all Policies, Borrower provides Lender with evidence satisfactory to Lender that all such Policies have been renewed for a period of not less than twelve (12) months with all premiums paid in advance in respect of all such Policies for such period of twelve (12) month.

(c) Notwithstanding the provisions of Section 8.1(a) to the contrary, provided and on condition that each of the Tax Conditions Precedent (as hereinafter defined) are satisfied and remain satisfied at all times, Borrower shall not be required to fund the Tax and Insurance Reserve on account of Taxes as provided in Section 8.1(a) above. If at any time any or all of the Tax Conditions Precedent are no longer met to the satisfaction of Lender, Borrower shall immediately begin and shall continue to fund the Tax and Insurance Reserve on account of Taxes as provided in Section 8.1(a) above. The "Tax Conditions Precedent" means the following conditions precedent: (i) no Event of Default has occurred and (ii) Borrower furnishes Lender with evidence, satisfactory to Lender in its discretion, that all Taxes are being paid as and when required under Section 4.4 above.

Section 8.2. Debt Service Reserve

On the date hereof, the Borrower pay to Lender the sum of \$500,000.00, as additional security for the Debt. Lender shall deposit the \$500,000.00 (the "Debt Service Reserve Deposit Amount") into an account (the "Debt Service Reserve") at Lender from which Lender shall have the sole right to make withdrawals. Borrower acknowledges and agrees that the entire Loan as evidenced by the Note has been fully advanced as of the date hereof and that, notwithstanding the deposit of the Debt Service Reserve Deposit Amount in the Debt Service Reserve, Borrower shall make all payments of principal, interest and other charges on the entire Loan in accordance with the Note, this Agreement and the other Loan Documents. Notwithstanding the foregoing, for so long as no Default exists, Lender shall, to the extent funds are available in the Debt Service Reserve for such purpose, on each Payment Date, disburse from the Debt Service Reserve to itself the amount of the monthly installment of interest then due under Section 2.3 above.

Section 8.3. Survey Reserve

On the date hereof, the Borrower pay to Lender the sum of \$200,000.00, as additional security for the Debt. Lender shall deposit the \$200,000.00 (the "Survey Reserve Deposit Amount") into an account (the "Survey Reserve") at Lender from which Lender shall have the sole right to make withdrawals. Borrower acknowledges and agrees that the entire Loan as evidenced by the Note has been fully advanced as of the date hereof and that, notwithstanding the deposit of the Survey Reserve Deposit Amount in the Survey Reserve, Borrower shall make all payments of principal, interest and other charges on the entire Loan in accordance with the Note, this Agreement and the other Loan Documents. Notwithstanding the foregoing, upon full and complete satisfaction of the Survey Reserve Release Conditions (as hereinafter set forth) Lender shall release to Borrower all funds then existing in the Survey Reserve. As used herein, the term, "Survey Reserve Release Conditions" means (i) no Default or Event of Default has occurred, (ii) Borrower shall have received Borrower's written request for release of the funds in the Survey Reserve, (iii) Borrower shall, at its sole cost and expense, have caused the title company issuing the Title Insurance Policy to (y) endorse Lender's Title Insurance Policy with a Land Same as Survey endorsement for all of the Property and (z) endorse the Lender's Title Insurance Policy to remove any exception to title coverage related to "any state of facts an accurate survey would show", (iv) Borrower shall, at its sole cost and expense, have delivered to Lender an updated and re-certified Survey for the Ulster County Property and the Westchester County Property that satisfies all of the Survey Requirements and (v)

Borrower shall, at its sole cost and expense, have delivered to Lender a new Survey for the New York County Property that satisfies all of the Survey Requirements.

Section 8.4. Interest Bearing Reserves/Security Interest

(a) Lender shall cause funds in the Debt Service Reserve and the Survey Reserve to be deposited into an interest bearing account of the type customarily maintained by Lender or its servicing agent for the investment of similar reserves, which account may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based on the daily outstanding balance in the Debt Service Reserve and the Survey Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Debt Service Reserve and the Survey Reserve by Borrower. All interest earned on amounts contributed to the Debt Service Reserve and the Survey Reserve shall be retained by Lender and added to the balance in the Debt Service Reserve and the Survey Reserve (as the case may be) and shall be disbursed for payment of the items for which other funds in the Debt Service Reserve and the Survey Reserve are to be disbursed. Borrower acknowledges that all Reserve Accounts other than the Debt Service Reserve and the Survey Reserve shall not accrue or bear interest for the benefit of Borrower, and no interest shall be payable thereon by Lender.

(b) Borrower grants to Lender a first-priority perfected security interest in, and assigns and pledges to Lender, each of the Reserve Accounts and any and all Reserve Funds as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Accounts and the Reserve Funds shall constitute additional security for the Debt. The provisions of this Section 8.4 are intended to give Lender or any subsequent holder of the Loan "control" of the Reserve Accounts within the meaning of the UCC.

Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Reserve Accounts or the Reserve Funds deposited therein or permit any Lien to attach thereto, except for the security interest granted in this Section 8.4, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

The Reserve Funds shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds. Lender may, at its discretion, hold the Reserve Accounts either in a separate account or commingled by Lender with any other funds in the possession or control of Lender. The Reserve Accounts are solely for the protection of Lender, and entail no responsibility on Lender's part beyond making disbursements upon strict satisfaction of the applicable requirements of this Article 8 and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit in any Property Reserve Account are insufficient to reimburse Borrower for amounts otherwise properly requested, Lender shall not be obligated or authorized to transfer funds from other Reserve Accounts, and Borrower shall pay the amount of such deficiency. Upon assignment of the Loan by Lender, any funds in the Reserve Accounts shall be turned over to the assignee, and any responsibility of the assignor with respect thereto shall terminate. Upon full payment of the Debt in accordance with its terms, the balance of all Reserve Accounts then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

ARTICLE 9. CROSS-COLLATERALIZATION

Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its collective interest in the Property and in reliance upon the aggregate of the Property taken together being of greater value as collateral security than the sum of each Individual Property taken separately.

Borrower agrees that the Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Security Instruments shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Security Instrument; (iii) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Individual Properties as security for the Note; and (iv) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance.

(a) To the fullest extent permitted by applicable law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Security Instruments, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Security Instruments, any equitable right otherwise available to Borrower which would require the separate sale of any portion of the Property or require Lender to exhaust its remedies against any Individual Property or any combination of the Individual Properties before proceeding against any other Individual Property or combination of Individual Properties; and further in the event of such foreclosure Borrower does hereby expressly consents to and authorizes, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Individual Properties.

ARTICLE 10. - EVENTS OF DEFAULT; REMEDIES

Section 10.1. Event of Default

The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if any portion of the Debt is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date;

(b) except as otherwise expressly provided in the Loan Documents, if any of the Taxes or Other Charges are not paid when the same are due and payable;

(c) if (i) the Policies are not kept in full force and effect, (ii) insurance certificates are not delivered to Lender in accordance with Section 7.1 hereof or (iii) certified copies of the Policies are not delivered to Lender upon request, provided such copies are available;

(d) a "Transfer";

(e) if any representation or warranty of, or with respect to, Borrower or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, in any other Loan Document, or in the Loan Application, any certificate, report, financial statement or other instrument or document furnished to Lender prior to or at the time of the closing of the Loan or during the term of the Loan shall have been false or misleading in any material respect when made;

(f) if (i) Borrower or any Constituent Entity of Borrower shall commence any case, proceeding or other action (A) under any Creditors Rights Laws, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any Constituent Entity of Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any Constituent Entity of Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Borrower or any Constituent Entity of Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower or any Constituent Entity of Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any Constituent Entity of Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) 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;

(h) if the Property becomes subject to any mechanic's, materialman's or other Lien (other than a Lien for any Taxes or Other Charges not then due and payable or any Lien consented to by Lender) and such Lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

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

(j) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any; or

(k) a Default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(l) An Individual Property or any part thereof shall be taken on execution or other process of law (other than by Condemnation) in any action against Borrower.

(m) Borrower abandons all or a portion (other than a *de minimis* portion) of an Individual Property.

(n) an Individual Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of such Individual Property is materially diminished thereby, and Lender reasonably determines that it is not adequately protected from any loss, damage or risk associated therewith.

(o) any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower or any Constituent Entity of Borrower, without the prior written consent of Lender.

(p) There shall occur a material adverse change in the (i) the business, condition (financial or otherwise), results of operations, performance or prospects of the Borrower, (ii) the condition (financial or otherwise), results of operations, performance, prospects or value of the Property taken as a whole, (iii) the ability of the Borrower to perform any of its obligations under the Loan Documents to which it is a party, including Borrower's ability to perform its obligations under any Leases, Borrower's agreements with any other contractors or any other material agreements affecting the Property, or (iv) the validity or enforceability of any of the Loan Documents or any material right or remedy of the Lender thereunder, or the validity or priority of the lien of the Security Instrument.

(q) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 10.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional one hundred and twenty (120) days.

(r) except as permitted in this Agreement, the actual alteration, improvement, demolition or removal of any of the Improvements without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed so long as no Default exists;

(s) damage to the Improvements or the Property in any manner which is not covered by the Policies solely as a result of Borrower's failure to maintain the Policies required in accordance with this Agreement;

(t) if there shall occur any event which constitutes an "Event of Default" as defined in the in any of the other Loan Documents;

(u) if, upon application by Lender to two (2) or more fire insurance companies which are lawfully doing business in the State of New York and which are issuing policies of fire insurance upon buildings situated within the area wherein the Property is situated, such companies shall refuse to issue such policies; or

(v) Borrower fails to satisfy all of the Survey Reserve Release Conditions on or prior to January 5, 2009; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but in no event beyond February 27, 2009.

Section 10.2. Remedies

(a) Upon the occurrence of an Event of Default (other than an Event of Default described in Section 10.1(f) above) and at any time thereafter Lender may, 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, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in 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 the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in Section 10.1(g) 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.

(b) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against 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 the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

ARTICLE 11. - ENVIRONMENTAL PROVISIONS

Section 11.1. Environmental Representations, Warranties and Covenants

(a) Borrower hereby represents and warrants to Lender that, as of the date hereof, except as disclosed in writing to Lender: (i) to the best of Borrower's knowledge, information and belief, except as expressly set forth in the environmental report prepared for Lender in connection with the Loan (the "Environmental Report"), the Property is not in violation of any local, state or federal law, rule or regulation pertaining to Environmental Laws; (ii) to the best of Borrower's knowledge, information and belief, except as expressly set forth in the Environmental Report, no Hazardous Materials are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Borrower or Tenants in the ordinary course of their respective business and in compliance with all Environmental Laws; (iii) the Property is not subject to any Environmental Lien or judicial or administrative notice or action relating to Hazardous Materials; (iv) to the best of Borrower's knowledge, information and belief, except as expressly set forth in the Environmental Report, there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Materials on the Property; (v) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor does Borrower know of any basis for such a claim; and (vi) Borrower has received no notice of and, to the best of Borrower's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Borrower know of any basis for such a claim.

(b) Borrower shall keep or cause the Property to be kept free from Hazardous Materials (except those substances used by Borrower and Tenants in the ordinary course of their respective business and, in each case, in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Materials by all Tenants (except in the ordinary course of a business that is not a Prohibited Use and in

each case in compliance with all Environmental Laws) and, without limiting the generality of the foregoing, during the term of this Agreement, shall not install in the Improvements or permit to be installed in the Improvements asbestos-containing materials ("ACMs") or any substance containing ACMs. Borrower shall, if required under applicable Environmental Laws, maintain all applicable Material Safety Data Sheets with respect to the Property, and make same available to Lender or Lender's consultants upon reasonable notice.

(c) Borrower shall promptly notify Lender if Borrower shall become aware of the possible existence of any Hazardous Materials on the Property (except in the ordinary course of a business that is not a Prohibited Use and in each case in compliance with all Environmental Laws) or if Borrower shall become aware that the Property is or may be in violation of any Environmental Laws. Further, immediately upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential presence or existence of any Hazardous Materials at, on, about, under, within, near or in connection with the Property. Borrower shall, promptly and when and as required by Lender, at Borrower's sole cost and expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender), and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property; in the event Borrower fails to take such actions, (1) Lender may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Materials or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand, and (2) Borrower hereby grants to Lender and its agents and employees access to the Property and a license to remove any items deemed by Lender to be Hazardous Materials and to do all things Lender shall deem necessary to bring the Property in conformance with Environmental Laws. Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all Losses which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Property, and arising directly or indirectly from or out of: (i) the presence, Release or threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property or (to the extent such Hazardous Materials were Released from, or migrated from, the Property) any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (ii) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Borrower; (iii) the failure by Borrower to comply fully with the terms and conditions of this Article 11; (iv) the breach of any representation or warranty contained in this Article 11; or (v) the enforcement of this Article 11, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or (to the extent such Hazardous Materials were Released from, or migrated from, the Property) any surrounding areas, the cost of any actions taken in response to the presence, Release or threat of Release of any Hazardous Materials on, in, under or affecting any portion of the Property or (to the extent such Hazardous Materials were released from, or migrated from, the Property) any surrounding areas to prevent or minimize such Release or threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section 11.1(c) shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section 11.1(c). Lender's rights under this Section shall survive payment in full of the Debt and shall be

(00554302;3)

in addition to all other rights of Lender under this Agreement, the Security Instrument, the Note and the other Loan Documents.

(d) Upon Lender's request, at any time after the occurrence of an Event of Default hereunder or at such other time as Lender has reasonable grounds to believe that Hazardous Materials are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Materials on the Property or an inspection or audit of the Improvements prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Borrower fails to provide such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be at Borrower's expense and immediately due and payable to Lender by Borrower on demand.

(e) The obligations of Borrower under this Agreement (including, without limitation, this Article 11) with respect to Hazardous Materials shall not in any way limit the obligations of any party under the Environmental Indemnity.

ARTICLE 12. - SECONDARY MARKET

Section 12.1. Cooperation Borrower acknowledges that Lender may effectuate a Secondary Market Transaction. At no material cost to Borrower, Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Investor (as defined herein) or Rating Agency involved therein, including, without limitation, all structural or other changes to the Debt, and modifications to any Loan Documents; *provided, however*, that the Borrower shall not be required to modify any Loan Documents if such modification would (A) increase the interest rate payable under the Note, (B) shorten the period until the stated maturity of the Note, (C) modify the amortization of principal of the Note, or (D) modify any other material term of the Debt. Borrower shall provide such information and documents relating to Borrower, the Property and any Tenants as Lender may reasonably request in connection with such Secondary Market Transaction. Borrower shall make available to Lender all information concerning its business and operations that Lender may reasonably request.

Section 12.2. Disclosure; Indemnification. Lender shall be permitted to share all information provided in connection with the Loan with the Investors, Rating Agencies, investment banking firms, accounting firms, law firms and other third-party advisory firms involved with the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided to Lender in connection with the Loan may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus potential Investors may also see some or all of the information with respect to the Loan, the Property, Borrower and the holders of direct or indirect interests in Borrower. Borrower irrevocably waives any and all rights it may have under any applicable laws (including, without limitation, any right of privacy) to prohibit such disclosure. Lender and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Borrower. Borrower hereby indemnifies Lender as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the information provided by or on behalf of Borrower, 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 information, or necessary in order to make the statements in such information, or in light of the

circumstances under which they were made, not misleading. Lender may publicize the existence of the Debt in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

Section 12.3. Securitization Documents. Borrower acknowledges that, as part of the documents creating and governing any Secondary Market Transaction in which the Loan (or any portion of or interest in the Loan) may be included (the "Securitization Documents"), the parties to such Secondary Market Transaction may, in their sole discretion, elect to impose certain requirements as conditions precedent to certain actions by one or more of the servicing agents appointed with respect to the Loan (including, without limitation, that such servicing agent obtain written confirmation from each applicable Rating Agency that the proposed action will not result in a downgrade, qualification or withdrawal of any rating issued on securities evidencing an ownership interest in the Loan that was in effect immediately prior to such proposed action). No requirement or condition imposed upon such servicing agent pursuant to such Securitization Documents as a condition precedent to the granting or denying of any consent or approval, or the taking or refusal to take of any action, pursuant to this Agreement (except only for any action required of Lender hereunder) shall give rise to any claim or cause of action by Borrower against Lender, or give Borrower any defense for failure to perform its obligations under the Loan Documents.

ARTICLE 13. - INDEMNIFICATIONS

Section 13.1. General Indemnification

Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any applicable Legal Requirements; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (f) the holding or investing of the Reserve Accounts or the performance of the Repairs; (g) Borrower's failure to have delivered to Lender Surveys for all of the Individual Properties satisfying the Survey Requirements and/or Borrower's failure to satisfy the Survey Reserve Release Conditions as and when required under this Agreement; or (h) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

Section 13.2. Mortgage and Intangible Tax Indemnification

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted

against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of the Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 13.3. ERISA Indemnification

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 3.14 or Section 4.17 of this Agreement.

Section 13.4. Intentionally Omitted

Section 13.5. Survival

The obligations and liabilities of Borrower under this Article 13 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

ARTICLE 14. - RECOURSE

Lender shall have recourse to Borrower to the fullest extent provided by law upon any action to enforce the obligations of Borrower under the Note, this Agreement, the Security Instrument and the other Loan Documents.

ARTICLE 15. - NOTICES

Section 15.1. Notices

All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, or (b) expedited prepaid overnight delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: COUNTRY BANK
200 East 42nd Street
9th Floor
New York, New York 10017

With a copy to: Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attention: Michael J. Hurley, Jr., Esq.

If to Borrower: THE CHRISTIAN BROTHERS' INSTITUTE
33 Pryer Terrace
New Rochelle, New York 10804

With a copy to: Tarter Krinsky & Drogin LLP
1350 Broadway
New York, New York 10018
Attention: Anthony D. Dougherty, Esq.

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day.

ARTICLE 16. - FURTHER ASSURANCES

Section 16.1. Replacement Documents

Upon receipt of an affidavit of an officer of Lender or Lender's servicer as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such loss, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

Section 16.2. Recording of Mortgage, Etc.

Borrower forthwith upon the execution and delivery of the Security Instrument and thereafter, from time to time, will cause the Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 16.3. Further Acts, Etc.

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, security agreements, control agreements, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording the Security Instrument, or for complying with all Legal Requirements. Borrower, with ten (10) days of demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so; one or more financing statements and financing statement amendments to evidence more effectively, perfect and maintain the priority of the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 16.3 if Borrower fails to comply with Lender's request with ten (10) days of demand.

Section 16.4. Changes in Tax, Debt, Credit and Documentary Stamp Laws

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than sixty (60) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of the Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than sixty (60) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 16.5. Expenses

Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all costs and expenses (including reasonable, actual attorneys' fees and disbursements and the allocated costs of internal legal services and all actual disbursements of internal counsel) reasonably incurred by Lender in accordance with this Agreement in connection with (a) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to

any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (b) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (c) following a request by Borrower, Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (d) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (e) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (f) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (g) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (h) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

ARTICLE 17. - WAIVERS .

Section 17.1. 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 Default or Event 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 17.2. Modification, Waiver in Writing

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

Section 17.3. Delay Not a Waiver

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

Section 17.4. Trial by Jury

BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.

Section 17.5. Waiver of Notice

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

Section 17.6. Remedies of Borrower

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

Section 17.7. Waiver of Marshalling of Assets

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in

Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 17.8. Intentionally Omitted

Section 17.9. Waiver of Counterclaim

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 17.10. Subrogation

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

ARTICLE 18. - GOVERNING LAW

Section 18.1. Governing Law

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE

OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Anthony D. Dougherty, Esq.
Tarter Krinsky & Drogin LLP
1350 Broadway
New York, New York 10018

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER AND (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS).

Section 18.2. Severability

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 18.3. Preferences

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Creditors Rights Laws, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or

part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

ARTICLE 19. - MISCELLANEOUS

Section 19.1. Survival

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

Section 19.2. Lender's Discretion

Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3. Headings

The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.4. Schedules and Exhibits Incorporated

The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.5. Offsets, Counterclaims and Defenses

Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.6. No Joint Venture or Partnership; No Third Party Beneficiaries

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower

and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

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

(c) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Agreement, the Security Instrument, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 3 of this Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Agreement, the Note, the Security Instrument and the other Loan Documents in the absence of the warranties and representations as set forth in Article 3 of this Agreement.

Section 19.7. Publicity.

All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan, Lender or any of its Affiliates shall be subject to the prior written approval of Lender, not to be unreasonably withheld. Lender shall be permitted to make any news, releases, publicity or advertising by Lender or its Affiliates through any media intended to reach the general public which refers to the Loan, the Property, Borrower, and its Affiliates with the approval of Borrower or any such Persons, which approval shall not be unreasonably

withheld, conditioned or delayed. Borrower also agrees that Lender may share any information pertaining to the Loan with its Affiliates in connection with the sale or transfer of the Loan or any Investor and/or securities created.

Section 19.8. Conflict; Construction of Documents; Reliance

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.9. Duplicate Originals; Counterparts

This Loan Agreement and each of the other Loan Documents may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement and each of the other Loan Documents (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document.

Section 19.10. Entire Agreement

This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 19.11. Joint and Several Liability

Each Individual Borrower shall be jointly and severally liable for payment of the Debt and performance of all other obligations of all Borrowers (or any of them) under this Agreement and any other Loan Document.

ARTICLE 20. RIGHT OF SETOFF

In addition to Lender's right of setoff arising by operation of law, Borrower grants to Lender a contractual possessory security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender, all right, title and interest in and to Borrower's account(s) with Lender (whether checking, savings, or some other account(s) and whether evidenced by a certificate of deposit), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing

on this Note against any and all such accounts.

ARTICLE 21. PARTIAL RELEASE PROVISIONS

Section 21.1. Partial Release

So long as no Default exists, Lender shall release an Individual Property (the "Release Property") from the Lien of the Loan Documents (a "Partial Release") in connection with the Sale of an Individual Property and upon satisfaction of the following conditions:

(a) Borrower shall have (i) paid to Lender in connection with the Partial Release an amount equal to the Partial Release Price and (ii) complied with all other requirements for a prepayment of the Loan set forth in Article 2 above to the extent relating to the Partial Release;

(b) The remaining portion of the Property that is not being released shall (i) comply with all applicable Legal Requirements (including without limitation, applicable subdivision, zoning, and land use laws), (ii) be a separate tax parcel and not be subject to any Liens for taxes attributable to the Release Property, and (iii) benefit from appropriate appurtenant easements for, among other things, access, utilities, and parking as are necessary or appropriate for the continued use and operation thereof as is currently being used or as contemplated, all to the reasonable satisfaction of Lender;

(c) Lender shall have received and approved (i) the forms of all documents necessary to release the Release Property from the Liens of the Loan Documents, each in appropriate form required by the state in which the Release Property is located and otherwise satisfactory to Lender in all respects, (ii) all certifications, documents, information, affidavits, reports, Appraisals and other statements required by Lender in connection with the Release including, without limitation, such certifications, documents, information, affidavits, reports, Appraisals and other statements required by Lender in determining and calculating the Release Price, (iii) such endorsements to the Title Insurance Policy as Lender shall require; and (iv) such other documents, agreements, and opinions of counsel as Lender may reasonably require; and

(d) the Release Property shall be conveyed to a Person other than Borrower;

(e) Lender shall have received payment from Borrower of Lender's reasonable costs and expenses incurred in connection with the Partial Release (including, without limitation, reasonable attorneys' fees and costs).

Section 21.2. No Release for Environmental Matters

Nothing in this Article 20 shall release Borrower from any liability or obligation relating to any environmental matters arising under Article 11.

Section 21.3. Cooperation

Borrower shall cooperate with Lender in amending the Note, this Agreement or any of the applicable Loan Documents in connection with a Partial Release, and shall execute and deliver any further instruments and documents as Lender may reasonably require to effectuate such Partial Release.

[NO FURTHER TEXT ON THIS PAGE]

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

BORROWER:

THE CHRISTIAN BROTHERS' INSTITUTE,
New York not-for-profit corporation

By: Vincent McNally
Name: Brother Vincent M. McNally
Title: Treasurer

LENDER:

COUNTRY BANK

By: Joseph M. Murphy
Name: Joseph M. Murphy
Title: President

EXHIBIT A
(Survey Requirements)

Country Bank Survey Requirements

We require that you provide a current property survey, certified to Country Bank, its successors and/or assigns and redated to within one month prior to the closing of the loan. The survey must meet current state standards for mortgage loan surveys and/or land title surveys and must be sufficient to remove any survey exception from the title insurance policy to be issued in connection with the loan transaction. The survey must locate all improvements on the subject property, show the correct distances and bearings of property boundary lines and the mathematical closure of the subject property and contain a corresponding metes and bounds legal description identical to the legal description of the land referred to in the title policy. The surveyor will also need to note the flood zone designation of the property. The survey must show all easements of record.

The survey should show access from the property to and from adjoining streets or highways and any observable encroachments of the property improvements of the improvements onto adjoining property.

The survey must be delivered in triplicate and must bear the original signature and seal of the surveyor preparing the survey. A copy of the survey must also be delivered to the title insurance company issuing the mortgage title insurance policy.

Also, please note:

1. If easements are referred to in title policy docs, same must be shown on the survey.
2. Parking - Must show the location and the number of spaces. -If there is no parking, state same on survey. Also, state the number of spaces required by the municipality's zoning Dept.
3. Identify encroachments
4. Must designate letter of Flood Zone.
5. Certification that property described is same as that described in the Title commitment using the following language:

The property described herein is the same property described in [TITLE INSURANCE COMPANY] Commitment No. _____ with an effective date of _____ and that all easements, covenants and restrictions referenced in said title commitment or apparent from a physical inspection of the site or otherwise known to me have been plotted hereon or otherwise noted as to their effect on the subject property.

Exhibit B

(Security Agreement)

THE CHRISTIAN BROTHERS' INSTITUTE, a
New York not-for-profit corporation,, as mortgagor
(Mortgagor)

To
COUNTRY BANK, as mortgagee
(Mortgagee)

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT**

Dated: As of November 25, 2008
Location: 74 West 124th Street
a/k/a 276/278 Lenox Avenue
a/k/a 66/80 West 124th St.
New York, New York
Section: 6
Block: 1721
Lot: 70
County: New York

**PREPARED BY AND UPON
RECORDATION RETURN TO:**

Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attention: Michael J. Hurley, Jr., Esq.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Security Instrument") is made as of this 25th day of November, 2008, by **THE CHRISTIAN BROTHERS' INSTITUTE**, a New York not-for-profit corporation, as mortgagor ("Mortgagor") for the benefit of **COUNTRY BANK**, a banking corporation, organized and existing under the laws of the State of New York, as mortgagee ("Mortgagee"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

RECITALS:

This Security Instrument is given to secure a loan (the "Loan") in the principal sum of **FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00)** advanced pursuant to that certain Loan Agreement, dated as of the date hereof, among Mortgagor and Mortgagee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated the date hereof, made by Mortgagor in favor of Mortgagee (such Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "Note");

Mortgagor desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents; and

This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby.

ARTICLE 1.

GRANTS OF SECURITY

Section 1.1. **Property Mortgaged.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Mortgagee and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "Property"):

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

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

(d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the

center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All of Mortgagor's right, title and interest in, to and under all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, or other agreements entered into in connection with such leases, subleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under any Creditors Rights Laws (collectively, the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under any Creditors Rights Laws (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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

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

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

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

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

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

(m) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(n) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing items set forth in subsections (a) through (m) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims; and

(o) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in subsections (a) through (n) above.

Section 1.2. Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security Instrument, Mortgagee grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents and Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Mortgagee, as security for the Obligations (hereinafter defined), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

Section 1.4. Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5. Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever, PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations (as defined in

Section 2.2 below) as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor's obligation to indemnify and hold harmless Mortgagee pursuant to the provisions hereof and the other Loan Documents shall survive any such payment or release.

ARTICLE 2.

DEBT AND OBLIGATIONS SECURED

Section 2.1. **Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2. **Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"): (a) all other obligations of Mortgagor contained herein; (b) each obligation of Mortgagor contained in the Loan Agreement and any other Loan Document; and (c) each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

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

Section 2.4. **Payment of Debt.** Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 2.5. **Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 3.

PROPERTY REPRESENTATION, WARRANTIES AND COVENANTS

Mortgagor represents, warrants, covenants and agrees that:

Section 3.1. **Insurance.** Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.

Section 3.2. **Taxes.** Mortgagor shall pay all Taxes and Other Charges assessed or imposed against the Property or any part thereof in accordance with the Loan Agreement.

Section 3.3. **Leases.** Mortgagor shall not enter in any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

Section 3.4. **Warranty of Title.** Mortgagor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such

Property, free and clear of all Liens whatsoever except the Permitted Exceptions, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, first priority Lien on the Property, subject only to Permitted Exceptions, and (b) security interests in and to, and collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Exceptions, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Mortgagor shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Mortgagee against the claims of all Persons whomsoever.

Section 3.5. **Payment for Labor and Materials.** Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Exceptions.

ARTICLE 4.

FURTHER ASSURANCES

Section 4.1. **Compliance With Loan Agreement.** Mortgagor shall comply with the covenants set forth in Article 16 of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Mortgagee in, the Property.

Section 4.2. **Authorization to File Financing Statements; Power of Attorney.** Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property. For purposes of such filings, Mortgagor agrees to furnish any information reasonably requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Mortgagor's authorization above is not sufficient and Mortgagor fails to execute any such document within fifteen (15) days of Mortgagee's request. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of this Section 4.2. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE 5.

DUE ON SALE/ENCUMBRANCE

Section 5.1. **No Sale/Encumbrance.** Mortgagor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with

respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof or Mortgagor, other than in accordance with the provisions of Article 6 of the Loan Agreement, without the prior written consent of Mortgagee.

ARTICLE 6.

PREPAYMENT; RELEASE OF PROPERTY

Section 6.1. **Prepayment.** The Debt may only be prepaid in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2. **Release of Property.** Mortgagor shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement.

ARTICLE 7.

DEFAULT

Section 7.1. **Event of Default.** The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

ARTICLE 8.

RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1. **Remedies.** Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law (including, without limitation, in accordance with the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendment or substitution statute with regard thereto)), in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power

of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, Guarantor or any other Person liable for the payment of the Debt;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and, to the fullest extent permitted by applicable law, Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default beyond any applicable notice or grace period under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property; and (ii) request Mortgagor at its expense to assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least seven (7) days prior to such action shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion: (i)

Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Security Instrument;

(k) intentionally omitted;

(l) pursue such other remedies as Mortgagee may have under applicable law; or

(m) In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 10.1(g) of the Loan Agreement shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Mortgagee.

Section 8.2. Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

Section 8.3. Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 8.4. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its reasonable discretion, decides should be brought to protect its interest in the Property.

Section 8.5. Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 8.6. Other Rights, Etc. (a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.7. Right to Release Any Portion of the Property. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8. Right of Entry. Upon reasonable notice to Mortgagor, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.9. Bankruptcy. (a) Upon or at any time after the occurrence of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Mortgagor a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than ten (10) days' prior notice of the date on which

Mortgagor shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten-day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.10. **Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 8.11. **Cross-Collateralization.** In accordance with the terms and conditions of the Loan Agreement, without limitation to any other right or remedy provided to Mortgagee in this Security Instrument or any of the other Loan Documents, Mortgagor acknowledges and agrees that (i) upon the occurrence of an Event of Default, to the fullest extent permitted by law, Mortgagee shall have the right to pursue all of its rights and remedies in one proceeding, or separately and independently in separate proceedings which Mortgagee, in its sole and absolute discretion, shall determine from time to time; (ii) Mortgagee shall not be required to either marshal assets, sell any collateral for the Loan in any inverse order of alienation, or be subjected to any "one action" or "election of remedies" law or rule; (iii) the exercise by Mortgagee of any remedies against any of the collateral for the Loan shall not impede Mortgagee from subsequently or simultaneously exercising remedies against other collateral for the Loan; (iv) all Liens and other rights, remedies and privileges provided to Mortgagee in the Loan Documents or otherwise shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the collateral for the Loan and all of the collateral for the Loan has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Loan; and (v) all of the Individual Properties shall remain security for the performance of all of Mortgagor's obligations hereunder, under the Note and under any of the other Loan Documents.

ARTICLE 9.

ENVIRONMENTAL HAZARDS

Section 9.1. **Environmental Covenants.** Mortgagor has provided representations and warranties regarding environmental matters set forth in Section 11.1 of the Loan Agreement and shall comply with the covenants regarding environmental matters set forth in Article 11 of the Loan Agreement.

Section 9.2. **Mortgagee's Rights.** Mortgagee and any other person or entity designated by Mortgagee, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in

Mortgagee's sole but reasonable discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Mortgagor shall cooperate with and provide access to Mortgagee and any such person or entity designated by Mortgagee.

ARTICLE 10.

WAIVERS

Section 10.1. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all Legal Requirements now or hereafter in force regarding appraisement, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Legal Requirements.

Section 10.2. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagor is not permitted by Legal Requirements to waive its right to receive notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

Section 10.3. Intentionally Omitted.

Section 10.4. Sole Discretion of Mortgagee. Whenever pursuant to this Security Instrument Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Mortgagee and shall be final and conclusive.

Section 10.5. WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF MORTGAGEE AND MORTGAGOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR AND MORTGAGEE.

Section 10.6. Waiver of Foreclosure Defense. Mortgagor hereby waives any defense Mortgagor might assert or have by reason of Mortgagee's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Mortgagee.

ARTICLE 11.

RECOURSE

Section 11.1. Recourse. Mortgagee shall have recourse to Mortgagor to the fullest extent provided by law upon any action to enforce the obligations of Mortgagor under the Note, the Loan Agreement, this Security Instrument and other Loan Documents.

ARTICLE 12.

NOTICES

Section 12.1. Notices. All notices or other written communications hereunder shall be delivered in accordance with Article 15 of the Loan Agreement.

ARTICLE 13.

APPLICABLE LAW

Section 13.1. GOVERNING LAW.

(a) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, AND THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MORTGAGOR DOES HEREBY DESIGNATE AND APPOINT

Anthony D. Dougherty, Esq.
Tarter Krinsky & Drogin LLP
1350 Broadway
New York, New York 10018

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MORTGAGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. MORTGAGOR (I) SHALL GIVE PROMPT NOTICE TO MORTGAGEE OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER AND (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS).

Section 13.2. Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 14.

DEFINITIONS

Section 14.1. Defined Terms. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word

"Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 15.

MISCELLANEOUS PROVISIONS

Section 15.1. No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2. Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

Section 15.3. Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4. Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6. Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Mortgagor and Mortgagee are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 15.7. Limitation on Mortgagee's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

ARTICLE 16.

STATE SPECIFIC PROVISIONS

Section 16.1. State-Specific Provisions. The following provisions shall govern and control in the event of any conflict with any other provision of this Security Instrument:

(a) Mortgagor represents that this Security Instrument does [not] encumber property principally improved or to be improved by one or more structures containing, in the aggregate, not more than six (6) residential dwelling units.

(b) Pursuant to Section 13 of the lien law of New York, Mortgagor shall receive the advances secured hereby, and shall hold the right to receive such advances, as a trust fund to be applied first for the purpose of paying the cost of any improvement, and shall apply such advances first to the payment of the cost of any such improvements on the Property, before using any part of the total of the same for any other purpose.

(c) Mortgagee shall have all of the rights as against lessees of the Property as set forth in Section 291(f) of the Real Property Law of New York.

(d) Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Security Instrument at execution or which under any contingency may become secured hereby at any time hereafter is the principal sum of \$5,000,000.00 plus interest thereon, plus amounts expended by the Mortgagee after a declaration of default hereunder to maintain the lien of this Security Instrument or to protect the Property secured by this Security Instrument, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property secured hereby, and any costs, charges or amounts to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at the Default Rate.

[NO FURTHER TEXT ON THIS PAGE]

{00554310;3}

EXHIBIT A.

(Legal Description)

ALL those certain lots, pieces or parcels of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly side of Lenox Avenue with the southerly side of 124th Street;

RUNNING THENCE Easterly along the southerly side of 124th Street one hundred and fifty (150) feet;

THENCE Southerly, parallel with Lenox Avenue, one hundred (100) feet and eleven (11) inches;

THENCE Westerly, parallel with 124th Street, Seventy-five (75) feet;

THENCE Northerly, parallel with Lenox Avenue, fifty (50) feet and six (6) inches;

THENCE Westerly, parallel with 124th Street, Seventy-five (75) feet to the easterly side of Lenox Avenue; and

THENCE Northerly along the easterly side of Lenox Avenue fifty (50) feet and five (5) inches to the corner at the point or place of BEGINNING.