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8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SANTA ANA DIVISION**

12
13 In re

14 STRADELLA INVESTMENTS, INC.,

15 Debtor.

Case No. 8:10-bk-23193-CB

Chapter 11

16 **FIRST AMENDED DISCLOSURE**
17 **STATEMENT DESCRIBING DEBTOR'S**
18 **PLAN OF REORGANIZATION (DATED**
19 **FEBRUARY 13, 2013)**

20 Disclosure Statement Hearing:

21 Date: February 27, 2013

22 Time: 1:30 p.m.

23 Plan Confirmation Hearing:

24 Date: [To be scheduled by the Court]

25 Time: [To be scheduled by the Court]

26 Place: Courtroom 5D
27 U.S. Bankruptcy Court
28 411 West Fourth Street
Santa Ana, CA 92701

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1 **I. INTRODUCTION**

2 On September 19, 2010 (the "Petition Date"), Stradella Investments, Inc., the debtor and
3 debtor in possession in the above-referenced case (the "Debtor"), commenced its bankruptcy
4 case by filing a voluntary petition under chapter 11 of the United States Code, 11 U.S.C. § 101
5 et seq. ("Bankruptcy Code"). This document is the Disclosure Statement that describes the Plan
6 of Reorganization ("Plan") that is being proposed by the Debtor, a copy of which is attached
7 hereto as Exhibit 1.

8 Chapter 11 allows the Debtor, and, under some circumstances, creditors and other
9 parties in interest, to propose a plan of reorganization. The Plan is a plan of reorganization,
10 which provides for creditors to be paid in full over time from the proceeds of the Debtor's
11 assets. The effective date of the Plan (the "Effective Date") will be the first business day which
12 is at least fifteen calendar days following the date of entry of the Court order confirming the
13 Plan (the "Plan Confirmation Order") provided that all of the following conditions to the
14 effectiveness of the Plan have been satisfied or waived by the Debtor: (a) there is no stay in
15 effect with respect to the Plan Confirmation Order; (b) the Plan Confirmation Order is not
16 subject to any appeal or rehearing; and (c) the Plan and all documents, instruments and
17 agreements to be executed in connection with the Plan have been executed and delivered by all
18 parties to such documents, instruments and agreements. Following the Effective Date the
19 Debtor shall be referred to as the "Reorganized Debtor" and shall be referred to herein as the
20 Debtor or the Reorganized Debtor.

21 **A. Purpose of this Disclosure Statement**

22 This Disclosure Statement summarizes what is in the Plan, and tells you certain
23 information relating to the Plan and the process the Court follows in determining whether or not
24 to confirm the Plan.

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1 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO**
2 **KNOW ABOUT:**

- 3 (1) **WHO CAN VOTE OR OBJECT,**
4 (2) **WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your claim**
5 **will receive if the Plan is confirmed) AND HOW THIS TREATMENT COMPARES TO**
6 **WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION,**
7 (3) **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS**
8 **DURING ITS BANKRUPTCY CASE,**
9 (4) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE**
10 **WHETHER OR NOT TO CONFIRM THE PLAN,**
11 (5) **WHAT IS THE EFFECT OF CONFIRMATION, AND**
12 (6) **WHETHER THE PLAN IS FEASIBLE.**

13 This Disclosure Statement cannot tell you everything about your rights. You should
14 consider consulting your own lawyer to obtain more specific advice on how the Plan will affect
15 you and your best course of action.

16 Be sure to read the Plan as well as this Disclosure Statement. If there are any
17 inconsistencies between the Plan and this Disclosure Statement, the Plan provisions will govern.

18 The Bankruptcy Code requires a Disclosure Statement to contain "adequate information"
19 concerning the Plan. The Bankruptcy Court has approved this document as an adequate
20 Disclosure Statement, containing enough information to enable parties affected by the Plan to
21 make an informed judgment about the Plan. Any party can now solicit votes for or against the
22 Plan.

23 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

24 THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS
25 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT
26 YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE
27
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1 PLAN, THEN THE PLAN WILL BE BINDING ON ALL CREDITORS AND INTEREST
2 HOLDERS IN THIS CASE.

3 **1. Time and Place of the Plan Confirmation Hearing**

4 The hearing where the Court will determine whether or not to confirm the Plan (the
5 "Plan Confirmation Hearing") will take place on _____, 2013, at __: __ .m., before the
6 Honorable Catherine E. Bauer, United States Bankruptcy Judge for the Central District of
7 California, in Courtroom 5D, located at 411 West Fourth Street, Santa Ana, California.

8 **2. Deadline for Voting For or Against the Plan**

9 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot
10 and return the ballot in the enclosed envelope to Daniel H. Reiss, Esq., Levene, Neale, Bender,
11 Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067, fax:
12 (310) 229-1244, email: DHR@LNBYB.com.

13 Your ballot must be received by **5:00 p.m., prevailing Pacific Time, on _____**,
14 **2013** or it will not be counted, unless otherwise ordered by the Court, solely upon request of the
15 Debtor.

16 **3. Deadline for Objecting to the Confirmation of the Plan**

17 Objections to the confirmation of the Plan must be filed with the Court and served by
18 same day service upon Daniel H. Reiss, Esq., Levene, Neale, Bender, Yoo & Brill L.L.P.,
19 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067, fax: (310) 229-1244,
20 email: DHR@LNBYB.com, by **5:00 p.m., prevailing Pacific Time, on _____, 2013**.

21 **C. Identity of Persons to Contact for More Information Regarding the Plan**

22 Any interested party desiring further information about the Plan should contact Daniel
23 H. Reiss, Esq., Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite
24 1700, Los Angeles, California 90067, fax: (310) 229-1244, email: DHR@LNBYB.com.

25 **D. Disclaimer**

26 The financial data relied upon in formulating the Plan is based on the Debtor's books and
27 records which, unless otherwise indicated, are unaudited. The information contained in this
28

1 Disclosure Statement is provided by the Debtor. The Bankruptcy Court has not yet determined
2 whether or not the Plan is confirmable and makes no recommendation as to whether or not you
3 should support or oppose the Plan.

4 **II. BACKGROUND**

5 **A. Description of the Debtor's Assets and a Summary of the Circumstances that Led to** 6 **the Filing of the Debtor's Chapter 11 Case.**

7 The Debtor is an active California corporation in good standing. The Debtor's sole
8 shareholder is St. Cloud Company, Inc. The Debtor's president is Abdolrashid Boroumand.

9 The Debtor's primary asset is a \$25 million promissory note (the "Note") in its favor
10 made out by RM Eagle, LLC ("RM Eagle") in connection with the purchase of certain real
11 property (the "Property"). RM Eagle defaulted on a construction loan with respect to
12 development of the Property, and the lender foreclosed on RM Eagle. An affiliate of Stark
13 Investments is currently the title holder of the Property. The Note is secured by a deed of trust
14 on the Property.

15 According to its terms, the Note begins accruing, and requires the payment of, quarterly
16 interest at approximately the Prime Rate, plus 3.5% per annum (approximately 6.75% at the
17 current rates), commencing on September 30, 2013. Accordingly, although there are currently
18 no funds to pay any of the creditors of the Debtor, it is expected that, starting on September 30,
19 2013, there could be approximately \$421,000 in quarterly interest payments generated by the
20 Note. Alternatively, if the current owner of the Property defaults by failing to pay interest
21 payments, the Debtor will be in a position to foreclose on the Note and the related deed of trust
22 and reacquire the Property. Although the value of the Property is uncertain, it is estimated to be
23 at least \$20 million.

24 Additionally, it has been contended that the Debtor may have an interest in a certain
25 Commercial Parcel. Whether the Debtor has a valuable interest in the aforementioned
26
27
28

1 Commercial Parcel is unclear due to the circumstances surrounding and history of the
2 Commercial Parcel. Specifically, the history of the Commercial Parcel is as follows:

3 RM Eagle, on the one hand, and Northwoods and Stradella entities¹ (collectively, the
4 “Stradella Sellers”), on the other hand, entered into the “Agreement Concerning the Commercial
5 Parcel” on or about March 14, 2006 (the “Commercial Parcel Agreement”).

6 The Debtor originally intended that its interest in an approximately 26 acre portion of the
7 land (the “Commercial Parcel”) be carved out of the Property being conveyed to RM Eagle.
8 However, because the existing parcel map did not identify the Commercial Parcel as a separate
9 legal parcel (and could not be described separately in a legal sense), the Commercial Parcel
10 Agreement stated that the Commercial Parcel would be held “in [t]rust” by the Buyer (that is,
11 RM Eagle) for the benefit of the seller. See Commercial Parcel Agreement, Recital B & Section
12 1.

13 The Commercial Parcel Agreement required RM Eagle, *among other things*, to
14 eventually “cause the Commercial Parcel to be created as a legal parcel under the Subdivision
15 Map Act of the State of California,” and “[p]romptly after the Commercial Parcel becomes a
16 separate legal parcel,” deliver to the sellers a grant deed conveying the same to the same sellers.
17 See Commercial Parcel Agreement, Section 2.1(b).

18 However, on or about March 14, 2006, the Debtor (along with the other sellers) entered
19 into an “*Intercreditor Agreement*” (the “Intercreditor Agreement”) and a “*Subordination and*
20 *Standstill Agreement*” (the “Subordination Agreement”) with RM Eagle’s lender, First National.
21 The Intercreditor Agreement was recorded and became public record on March 14, 2006, Doc.
22 #2006-0181839, and a copy of the same is attached hereto as **Exhibit “3”** and is incorporated
23 herein by reference. The Subordination Agreement was recorded and became public record on
24

25
26
27 ¹ Namely, Stradella Investments, Inc., Sarbonne Investments, Inc., Spiros Investments, Inc., Savona
Investments, Inc., Sandals Investments, Inc., Tortuoso Investments, Inc., and Tavistock Investments, Inc.

1 March 14, 2006, Doc. #2006-0183118, and a copy of the same is attached hereto as **Exhibit “4”**
2 and is incorporated herein by reference.

3 In those agreements, the Debtor acknowledged that First National was making a loan of
4 \$43 million to RM Eagle (the “Second Note”, or the “First National Loan”), and agreed to
5 certain terms concerning First National’s rights as a lender vis-à-vis the Debtor’s existing rights
6 under its own its own \$25 million Secured Note issued by RM Eagle in connection with the sale
7 of the Property by the Stradella Sellers (the “First Note”).² See Intercreditor Agreement,
8 Recitals ¶¶1-3, at 1; Subordination Agreement, Recitals ¶¶3-4, at 1.

9 More importantly, the said Agreements included acknowledgments that First National’s
10 Loan to RM Eagle was secured by a *Deed of Trust, Assignment of Leases and Rents and Security*
11 *Agreement (and Fixture Filings)* (the “First National Deed of Trust”) made for the benefit of the
12 lender, also dated March 14, 2006. See Intercreditor Agreement, Recitals ¶2, at 1; Subordination
13 Agreement, Recitals ¶1, at 1. First National’s Deed of Trust was recorded and made part of the
14 public record on March 14, 2006, Doc. #2006-0181836, and a copy of the same is attached
15 hereto as **Exhibit “5”** and is incorporated herein by reference.

16 The First National Deed of Trust on its face identified the entire Eagle Property as
17 collateral, without carving out the Commercial Parcel. See First National’s Deed of Trust,
18 Recitals ¶1, at 1, and Exhibit “A” thereto (entitled “Legal Description”).

19 Furthermore, the First National Deed of Trust expressly provided that the Commercial
20 Parcel would be reconveyed to RM Eagle, but subject to certain conditions:

21 “68. Commercial Parcel. *Provided no Event of Default exists, upon*
22 *Borrower’s [i.e., RM Eagle] written request after the Commercial Parcel (as*
23 *defined in the Purchase and Sale Agreement) becomes a legal parcel*
24 *following the recordation of a parcel map or subdivision map creating the*
25 *Commercial Parcel as a separate legal parcel . . . Lender [i.e., First National]*

26
27 ² Recorded and made part of the public record on March 14, 2006, Doc. #2006-0181833.

1 shall execute and deliver a reconveyance of the Commercial Parcel from the
2 lien of this Security Instrument in a form acceptable to Lender, for no
3 additional consideration”

4
5 See First National Deed of Trust, §68, at 59 (Emphasis added).

6 The First National Deed of Trust defined the “Events of Default” to include, among other
7 things, “failure of Borrower [i.e., RM Eagle] to pay (i) any scheduled payment (whether such
8 amount is interest, principal, Reserves, or otherwise) owing to Lender [i.e., First National] as and
9 when the same is due under the Note, this Security Instrument, or any of the other Loan
10 Documents” See First National Deed of Trust, § 23(a), at 31.

11 Therefore, on its face, the First National Deed of Trust provided that in order to take back
12 the Commercial Property, RM Eagle was required to (1) cause the Commercial Parcel to
13 become a legal parcel by way of recordation of a parcel map or subdivision map, and (2) not be
14 in default on the terms of the First National Loan, or the Deed of Trust.

15 RM Eagle failed (or refused) to make payments required under the terms of the First
16 National loan, and on or about March 4, 2009, the successor-in-interest to First National³
17 foreclosed on the Eagle Property as described in the Deed of Trust – which included the
18 Commercial Parcel and did not carve out the same. (The Notice of Trustee’s Sale was recorded
19 and made part of the public record in or about March 2009, and a true and correct copy of the
20 same is attached hereto as **Exhibit “6”** and is incorporated herein by reference); see also
21 Trustee’s Deed Upon Sale and Bill of Sale, dated March 4, 2009 (The Trustee’s Deed was
22 recorded and made part of the public record on March 11, 2009, Doc. #2009-0115144, and a true
23
24

25
26 ³ The successor-in-interest to First National is Stark RM Eagle LLC, a Wisconsin Limited Liability
27 Company (“Stark”). Stark is unrelated to RM Eagle. The Debtor is informed and believes that Stark commenced
28 litigation against RM Eagle’s principal(s), in connection with their alleged breach of certain obligations arising out
of the First National Loan.

1 and correct copy of the same is attached hereto as **Exhibit “7”** and is incorporated herein by
2 reference).

3
4 Additionally, RM Eagle also failed to take steps to cause the Commercial Parcel to
5 become a legal parcel, so that it could be returned to the Debtor. And now that the Eagle
6 Property has been foreclosed, RM Eagle has lost all rights to the said property.

7 Finally, the Debtor contends that its original intention was to carve out the Commercial
8 Parcel from the Eagle Property conveyed to RM Eagle, and to provide for a return of the
9 Commercial Parcel to the Debtor without any pre-conditions. The Debtor further contends that
10 the deal documents, as drafted by Sheppard Mullin Richter & Hampton LLP, did not accurately
11 reflect the Debtor’s intentions, and that as a result of the same the Eagle Property was foreclosed
12 along with the Commercial Parcel.

13 The Debtor expects that the Plan will be primarily – if not solely - funded through
14 proceeds of the Note (the “Note Proceeds”); however, the Debtor has agreed to contact a broker
15 regarding jointly marketing for sale with creditor Ronald Schwartz any purported interest in the
16 Commercial Parcel in an effort to provide additional Plan funding. For avoidance of doubt it is
17 the Debtor’s position that the Debtor has no legal title in the Commercial Property at this time.
18 Nor does the Plan require the Debtor seek legal title.

19 This case was commenced by the filing of a voluntary petition under Chapter 11 of the
20 Bankruptcy Code on September 19, 2010 (the “Petition Date”), among other things, in response
21 to collection actions that were undertaken by alleged secured creditor, Ronald Schwartz
22 (“Schwartz”) in the action entitled state court action entitled Schwartz v. Stradella Investments,
23 Inc., Case No. 076492, which is currently pending in the Superior Court of the State of
24 California for the County of Riverside, Indio Court (the “Schwartz Action”).

25 **B. Description of the Debtor’s Primary Liabilities.**

26 The principal creditors of the Debtor are Viridian Investments, N.V.’s, a Netherlands
27 Antilles corporation (“Viridian I”), and Viridian Investment Services, Ltd., a British Virgin
28

1 Islands corporation ("Viridian II", and collectively with Viridian I, "Viridian"), which is
2 allegedly owed approximately \$59 million as of the Petition Date, and Schwartz, who claims to
3 be owed approximately \$1.4 million based on a pre-petition judgment for a finder's fee
4 generated from the sale of the Property. Schwartz and Viridian both claim a senior security
5 interest in the Note. In addition to the two secured creditors, the Debtor scheduled
6 approximately \$180,000 in unsecured claims.

7 **C. The Debtor's Tax Obligations and Compliance.**

8 The Debtor's parent company, St. Cloud Company, Inc. ("St. Cloud"), is a duly formed
9 Delaware corporation which made an election as to be treated as a small business corporation,
10 commonly referred to as a Subchapter S corporation, under Section 1362(a) of Subchapter S of
11 the Internal Revenue Code ("IRC"). This Subchapter S election has been in effect for St. Cloud
12 since at least 2006. Before 2006, the Debtor filed a consolidated Federal income tax return for
13 itself and its seven wholly owned subsidiaries. For the tax years commencing in 2006, an
14 election was made under IRC § 1361(b)(3) to treat the Debtor as a "qualified subchapter S
15 subsidiary". In pertinent part, IRC § 1361(b)(3) provides:

16 "(3) Treatment of certain wholly owned subsidiaries.

17 (A) In general. Except as provided in regulations prescribed by the
18 Secretary, for purposes of
19 this title—

20 (i) a corporation which is a qualified subchapter S subsidiary shall not be
21 treated as a separate corporation, and

22 (ii) all assets, liabilities, and items of income, deduction, and credit of a
23 qualified subchapter S subsidiary shall be treated as assets, liabilities, and
24 such items (as the case may be) of the S corporation.

25 (B) Qualified subchapter S subsidiary. For purposes of this paragraph, the
26 term "qualified subchapter S subsidiary" means any domestic corporation
27 which is not an ineligible corporation
28

1 (as defined in paragraph (2)), if—

2 (i) 100 percent of the stock of such corporation is held by the S corporation,

3 and

4 (ii) the S corporation elects to treat such corporation as a qualified
5 subchapter S subsidiary.”

6 Pursuant to these unambiguous statutory provisions, the Debtor is not treated as a
7 separate corporation for tax purposes, and all tax attributes of the Debtor are treated as those of
8 St. Cloud. See, IRC § 1361(b)(3)(i) and (ii). Therefore, the Debtor has no obligation to file a
9 separate federal corporate tax return or pay corporate taxes.

10 Under California Revenue and Taxation Code Section 23800.5, IRC § 1361(b)(3) applies
11 to the Debtor at the state level also (i.e., the separate corporate identity of the Debtor is
12 disregarded for purposes of California taxation). California law does modify IRC § 1361(b)(3)
13 in that a tax is charged at the S-Corporation level for income relating to subsidiary – i.e., the
14 Debtor; however, this does not create a tax liability for the Debtor at the federal or state level,
15 and the Debtor need not file its own separate tax return.

16 Moreover, the Debtor’s parent is also not subject to Federal income taxation in
17 accordance with IRC § 1363(a), which provides that:

18 “(a) General rule. Except as otherwise provided in this subchapter, an S corporation
19 shall not be subject to the taxes imposed by this chapter.”

20 Income of an S corporation is instead passed through to its shareholders under IRC §
21 1366(a), which in pertinent part provides that:

22 “(a) Determination of shareholder's tax liability

23 (1) In general. In determining the tax under this chapter of a shareholder for the
24 shareholder's taxable year in which the taxable year of the S corporation ends (or for
25 the final taxable year of a shareholder who dies, or of a trust or estate which
26 terminates before the end of the corporation's taxable year), there shall be taken into
27 account the shareholder's pro rata share of the corporation's--
28

- 1 (A) items of income (including tax-exempt income), loss, deduction, or credit the
2 separate treatment of which could affect the liability for tax of any shareholder, and
3 (B) nonseparately computed income or loss.

4 Based on the foregoing, the Debtor submits that it is in compliance all Federal and State
5 tax laws.

6 **D. Significant Events That Have Occurred During the Debtor's Chapter 11 Bankruptcy**
7 **Case.**

8 1. The Litigation Surrounding The Priority Of Liens Against The Note.

9 Shortly after the commencement of the Debtor's Chapter 11 Case, the Debtor realized
10 that it could not proceed with its reorganization without first resolving the lien priority dispute
11 between Schwartz and Viridian. Thus, the most significant events that occurred during the
12 Debtor's Chapter 11 case relate to the adversary proceeding commenced by the Debtor on or
13 about October 10, 2010 and which is entitled Stradella Investments, Inc. v. Schwartz, et al., Case
14 No. 8:10-ap-01462-CB (the "Adversary Proceeding"). The Adversary Proceeding was
15 commenced by the Debtor against Schwartz and Viridian by which it seeks, among other things,
16 declaratory relief as to the relative priority of Viridian and Schwartz's purported liens held
17 against the Note. Thereafter, two cross-claims were filed, to wit, one by Schwartz and one by
18 Northwoods Corporation ("Northwoods"). Thereafter, the Debtor responded as Cross-Defendant
19 to Northwoods' Cross-Claim for Declaratory Relief. The Debtor was not named in the cross-
20 claim by Schwartz.

21 Schwartz claims a lien in the Note based on a judgment lien he obtained against the
22 Debtor in July, 2009. Viridian contends that it has a perfected senior lien on the Note based on
23 possession of the Note since the Note was issued in March, 2006. The Note is currently being
24 held by one of the principals of Viridian in London. Because the Debtor does not have sufficient
25 assets to satisfy both Schwartz's claim and Viridian's claim, the resolution of the lien priority
26 dispute has become paramount in this chapter 11 case.

1 Viridian's argument in the Adversary Proceeding has been simple and straight forward:
2 pursuant to an oral security agreement and physical possession of the Note, it is the senior
3 secured creditor of the Debtor with respect to the Note. All of the documents related to the RM
4 Eagle sale transaction, including, but not limited to, the Allocation Agreement and Heads of
5 Agreement, support this contention. Viridian also contends that it only agreed to release the deed
6 of trust on the Property in exchange for obtaining a security interest in the proceeds of its
7 collateral, i.e., the Note. Viridian contends that it would be illogical that Viridian, which only
8 received a fraction of the cash component of the RM Eagle sale proceeds, would have agreed to
9 become an unsecured creditor of the Debtor.

10 Schwartz contends that because the principals of Viridian are the brothers of the principal
11 of the Debtor, Viridian never loaned money to Debtor, and that Viridian's claim is a sham. The
12 Debtor has throughout its history been basically a "dirt" company, meaning it owned the land but
13 had no other sources of income. Schwartz contends, among other things, that the money to
14 maintain and pay expenses relating to the Property, including real property taxes, came from
15 Viridian.

16 The Adversary Proceeding is still at issue. Notwithstanding, all of the parties best efforts
17 in mediation, the parties to the Adversary Proceeding have not been able to reach a settlement.
18 On or about October 31, 2012, Schwartz filed a Motion for Summary Judgment (the "Motion")
19 in the Adversary Proceeding. The Motion was granted in part and denied in part. Additionally, in
20 connection with the Motion, the Court found that the Debtor and Viridian are insiders of each
21 other; however, the Court did not make any finding as to whether Karlin & Peebles LLP was and
22 insider of the Debtor.

23 2. Claims Bar Date

24 On or about May 22, 2012, the Debtor filed a motion seeking an order setting a deadline
25 for creditors to file proofs of claim in this case (the "Bar Date Motion"). The Court entered an
26 order granting the Bar Date Motion on June 19, 2012 and set a bar date of August 18, 2012 as
27 the last date to file proofs of claim and interest in this case. On June 20, 2012, the Debtor filed
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1 and served its *Notice of Claims Bar Date* on all known and potential Claimants and Interest
2 Holders.

3 3. Administrative Matters

4 The Debtor has addressed the various administrative matters attendant to the
5 commencement of its Chapter 11 bankruptcy case, including filing the Debtor's Schedule of
6 Assets and Liabilities and Statement of Financial Affairs (as amended, the "Schedules") with
7 the Court, and 7-Day Package with the Office of the United States Trustee ("OUST"). The
8 Debtor also attended its initial interview with the OUST, and the meeting of creditors, as
9 required under 11 U.S.C. § 341(a). The Debtor continues to file its Monthly Operating Reports.

10 4. Employment and Compensation of Professionals

11 The Debtor retained Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB") as its
12 bankruptcy counsel and an application to employ LNBYB was filed on October 14, 2010. The
13 Court entered an order approving the Debtor's employment of LNBYB on December 2, 2010.

14 5. Schwartz's Objection to the Debtor's Disclosure Statement

15 On December 11, 2012, the Debtor filed that certain "*Disclosure Statement Describing*
16 *Debtor's Plan of Reorganization (Dated December 11, 2012)*" [Docket No. 82] (the "Original
17 Disclosure Statement"). Thereafter, on January 16, 2013, Schwartz filed that certain "*Objection*
18 *to Approval of Disclosure Statement Describing Debtor's Plan of Reorganization (Dated*
19 *December 11, 2012)*" [Docket No. 90] (the "Objection"). The Objection and the allegations set
20 forth therein are incorporated herein by reference.

21 **III. PLAN SUMMARY**

22 Class 1 under the Plan consists of the alleged secured claim of Schwartz whose claim is
23 based on a judgment obtained against Stradella in July, 2009. Schwartz's proposed treatment is
24 set forth in Class 1 in the Plan under Options A, B, and C.

25 Class 2 consists of the secured claim of Viridian in the principal amount of
26 approximately \$59 million and is based on a series of secured loans (the "Viridian Loans") over
27 several years to the Debtor and its subsidiaries for the costs of acquisition and maintenance of
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1 the Property. Viridian's proposed treatment is set forth in Class 2 in the Plan under Options A,
2 B, and C.

3 As discussed above, Schwartz and Viridian each contend that their respective lien is
4 senior in priority to the other. The Debtor initiated the Adversary Proceeding by which it seeks,
5 among other things, declaratory relief as to the relative priority of purported liens of Viridian
6 and Schwartz. The Adversary Proceeding is currently pending before the Bankruptcy Court.

7 **IV. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER**
8 **THE PLAN**

9 **A. What Creditors and Interest Holders Will Receive Under Plan**

10 As required by the Bankruptcy Code, the Plan (i) classifies claims and interests in
11 various classes according to their right to priority, (ii) states whether each class of claims or
12 interests is impaired or unimpaired, and provides the treatment each class will receive.

13 **B. Unclassified Claims**

14 Certain types of claims are not placed into voting classes; instead they are unclassified.
15 Unclassified claims are not considered impaired and they do not vote on the Plan because such
16 claims are automatically entitled to specific treatment provided in the Bankruptcy Code. As
17 such, the Debtor has not placed the following claims in a class:

18 1. Administrative Expenses

19 Administrative expenses are claims for costs or expenses of administering the Debtor's
20 Chapter 11 case which are allowed under Section 507(a)(2) of the Bankruptcy Code. The
21 Bankruptcy Code requires that all administrative claims be paid on the Effective Date of the
22 Plan unless a particular claimant agrees to different treatment.

23 The following chart lists all of the Debtor's Section 507(a)(2) administrative claims and
24 the treatment of each respective under the Plan:

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Name	Amount Owed	Treatment
Office of the U.S. Trustee Fees	\$0	Fees are paid in the ordinary course, but to

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		the extent that any such claims remain unpaid as of the Effective Date, Viridian has agreed that the administrative claims shall be paid from the first collections of Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan.
Levene, Neale, Bender, Yoo & Brill L.L.P., bankruptcy counsel to the Debtor	\$250,000.00 (est.), which would be in addition to any post-petition fees and expenses paid to LNBYB by the Debtor	Paid in full after the entry of an order allowing such fees and expenses and when funds are available from Note Proceeds. Viridian has agreed that the administrative claims shall be paid from the first collections of Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan.
TOTAL	\$250,000.00	Paid in the manner described above

Court Approval Required:

The Court must approve each of the professional's fees and expenses listed in the above chart before any particular professional fee or expense may be paid. For all professional fees and expenses, except fees owing to the Clerk of the Bankruptcy Court or the OUST, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees and expenses allowed by the Court will be required to be paid under the Plan. The administrative claim amounts set forth above simply represent the Debtor's best estimate as to the amount of allowed administrative claims in this case. The actual administrative claims may be higher or lower. Much of whether the

1 administrative claims described above for professionals are the actual amounts will be
2 dependent upon whether the Debtor is required to engage in any substantial litigation regarding
3 the confirmation of the Plan and/or claim objections. To the extent the Debtor is required to
4 engage in any such substantial litigation, the Debtor's professionals are likely to incur
5 professional fees and expenses in excess (and possibly substantially in excess) of the figures set
6 forth above. It is expected that administrative professionals and the Debtor will need to
7 negotiate an agreement whereby professional claims are paid over time.
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9 Any creditors, other than professionals, wishing to file a request for allowance of
10 administrative expense must file such request no later than ninety (90) days after the Effective
11 Date. By voting to accept the Plan, creditors are not acknowledging the validity of, or
12 consenting to the amount of, any administrative claims, and no party is waiving any of its rights
13 to object to the allowance of any administrative claims. Similarly, professionals who have been
14 employed in this case shall not be deemed to agree that the figures contained herein represent
15 any ceiling on the amount of fees and expenses that such professionals have incurred or for
16 which they are entitled to seek payment pursuant to Court order. Such fees and expenses are just
17 estimates provided at the time of the preparation of the Disclosure Statement.
18

19 2. Priority Tax Claims

20 Priority Tax Claims include certain unsecured income, employment and other taxes described
21 by Section 507(a)(8) of the Bankruptcy Code. Each holder of an Allowed Priority Tax Claim
22 against the Debtor's estate shall receive, on the Effective Date, in full satisfaction, release and
23 discharge of such Allowed Priority Tax Claim, at the election of the Debtor, either (i) Cash
24 payment in the amount of the holder's Allowed Priority Tax Claim; (ii) deferred Cash payments
25 over a period not to exceed five (5) years, from the Petition Date, equal to the Allowed amount
26 of such claim; (iii) in a manner not less favorable than the most favored unsecured claim
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1 provided for by the Plan; or (iv) such other terms as may be agreed upon by such holder and the
2 Debtor. The rate of interest to be paid on Priority Tax Claims paid out over a period not to
3 exceed five (5) years from the Petition Date shall be equal to the underpayment rate specified in
4 26 U.S.C. § 6621(a)(2) (determined without regard to 26 U.S. C. § 6621(c)) as of the Effective
5 Date or such other rate as required by 11 U.S.C. § 511(a) if ordered by the Court.

6 Upon any payment default (after a 30-day cure period), the respective taxing authorities'
7 administrative collection powers and rights shall be reinstated as they existed prior to the
8 Petition Date. The treatment prescribed below is subject to any tax authorities' objection under
9 11 U.S.C. § 511(a), and the Reorganized Debtor reserves the right to challenge all aspects of
10 such claims.

11 Following are the Priority Tax Claims that are either contained in the Debtor's
12 Schedules or have been asserted by taxing authorities in proof of claim filed in this case:

<u>DESCRIPTION</u>	<u>TREATMENT</u>
<p>14 <u>Priority claim of:</u> Franchise Tax Board</p> <p>15</p> <p>16 <u>Amount of Claim =</u> \$829.28</p>	<p>Paid in full, with interest thereon at the rate specified in 26 U.S.C. § 6621(a)(2), from the first collections from Note Proceeds to which Viridian would be entitled to on account of the Viridian Claim under the Plan, but no later than five (5) years after the Petition Date</p>

18 The Debtor reserves the right to file objections with the Bankruptcy Court to any of the
19 foregoing tax claims that the Debtor disputes.

20 **C. Classified Claims and Interests**

21 **1. Classes of Secured Claims**

22 Secured claims are claims secured by liens on property of the estate. The Debtor
23 reserves the right to dispute all claims in this Plan, including but not limited to the secured
24 claims listed below. The following charts set forth the description and treatment of the Debtor's
25 secured claims:

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<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
1	<p>The secured claim of Ronald Schwartz</p> <p>Filed claim amount is \$1,491,116.58.</p> <p><u>Basis of Debt:</u> Judgment.</p> <p><u>Collateral Description:</u> Substantially all personal and real property, if any, owned by the Debtor</p> <p><u>Priority of Security Interest:</u> TBD</p>	Y; allowed claim in this class is entitled to vote on Plan.	<p>Option A:</p> <p>If Schwartz prevails in the Adversary Proceeding and its lien is deemed to be senior to Viridian or if Schwartz votes "no" on the Plan:</p> <p>(1) Schwartz shall receive all Note Proceeds until the Schwartz Claim is paid in full. The Note Proceeds shall be paid to Schwartz within five business days of receipt by the Debtor;</p> <p>(2) the Schwartz claim shall accrue interest at the applicable judgment rate from and after the Petition Date until the paid in full;</p> <p>(3) If the Schwartz Claim is not paid in full within five years of the Effective Date, then Schwartz shall be able to take such action as available to enforce the Schwartz Claim under applicable nonbankruptcy law.</p> <p>Option B:</p> <p>If Schwartz and Viridian both vote for the Plan:</p> <p>(1) Schwartz and Viridian shall be both deemed secured creditors and their liens will be <i>pari passu</i> with each other;</p> <p>(2) Schwartz will receive 40% of Note Proceeds until paid in full. For example, if Stark Investment</p>

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			<p>(the current holder of the Note) pays \$421,000 in quarterly interest payments beginning on September 30, 2013, \$168,400 will be paid to Schwartz and \$252,600 will be paid to Viridian; and</p> <p>(3) Schwartz will waive any interest accruing after the Petition Date under 11 U.S.C. § 506</p> <p>Option C:</p> <p>If Viridian prevails in the Adversary Proceeding and its lien is deemed to be senior to Schwartz:</p> <p>(1) Schwartz will only be entitled to Note Proceeds after Viridian is paid in full, unless otherwise agreed in writing with Viridian. Any such agreement shall not need Court approval and shall not constitute a modification of the Plan;</p> <p>(2) the Schwartz Claim shall be deemed not to have accrued interest after the Petition Date.</p> <p>Under All Options:</p> <p>The Debtor can, in its sole discretion, at any time pay the Schwartz Claim in full from a source other than the Note Proceeds, including any monies borrowed from a third party or from the proceeds of the sale of the Debtor's interest in the Commercial Parcel, if any.</p>
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<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
2	<p><u>Secured claim of:</u> Viridian</p> <p><u>Basis of Debt:</u> Multiple loans</p> <p><u>Collateral Description:</u> Note</p> <p><u>Priority of Security Interest:</u> TBD</p> <p><u>Total claim amount:</u> Approximately \$62.8 million.</p>	Y; allowed claim in this class is entitled to vote on the Plan.	<p>Option A:</p> <p>If Schwartz prevails in the Adversary Proceeding and its lien is deemed to be senior to Viridian or Schwartz votes "no" on the Plan:</p> <p>Viridian shall receive all Note Proceeds after the Schwartz Claim is paid in full. The Note Proceeds shall be paid to Viridian within five business days of receipt by the Debtor. Viridian will not be entitled to interest on the Viridian Claim.</p> <p>Option B:</p> <p>If Viridian and Schwartz both vote for the Plan:</p> <p>(1) Schwartz and Viridian shall be both deemed secured creditors and their liens will be <i>pari passu</i> with each other;</p> <p>(2) Viridian will receive 60% of Note Proceeds until paid in full. For example, if Stark Investment pays \$421,000 in quarterly interest payments beginning on September 30, 2013, \$168,400 will be paid to Schwartz and \$252,600 will be paid to Viridian;</p> <p>(3) Viridian will waive any interest accruing after the Petition Date under 11 U.S.C. § 506</p>

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			<p>Option C:</p> <p>If Viridian prevails in the Adversary Proceeding and its lien is deemed to be senior to Schwartz:</p> <p>(1) Viridian shall be entitled to Note Proceeds until the Viridian Claim is paid in full, unless otherwise agreed in writing with Schwartz. Any such agreement shall not need Court approval and shall not constitute a modification of the Plan;</p> <p>(2) the Viridian Claim shall be deemed not to have accrued interest after the Petition Date.</p> <p><u>Payment by Viridian of administrative and priority tax claims:</u></p> <p>Viridian has agreed that the administrative claims and priority tax claims shall be paid from the first collections from Note Proceeds to which it would be entitled on account of the Viridian Claim under the Plan. The payment of the administrative and tax priority claims shall not increase the amount of the Viridian Claim.</p>
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2. **Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in Sections 507(a)(3), (4), (5), (6), and (7) of the Bankruptcy Code are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claim. The Debtor is not aware of the existence of any claims under Sections 507(a)(3), (4), (5), (6), and (7) of the Bankruptcy Code.

3. **Classes of General Unsecured Claims**

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a). The following chart describes the Plan's treatment of the classes containing all of the Debtor's non-priority general unsecured claims

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
3	All general unsecured claims	Y; allowed claims in this class are entitled to vote on the Plan.	Holders of Class 3 shall be paid from any amounts remaining from the proceeds of the Note after Classes 1 and 2 are paid; however, in the event, Class 3 will vote in favor of the Plan, Viridian has agreed to pay any allowed claims of non-insider unsecured creditors from the first collections from the Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan. The payment of the non-insider unsecured claim shall not increase the amount of the Viridian Claim.

4. **Class of Interest Holders**

Interest holders are the parties who hold an ownership interest (i.e., equity interest) in

1 the Debtor. The following chart identifies the Plan's treatment of the class of interest holders:

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<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
4	All equity holders, including holders of common stock, preferred stock, stock options, warrants, etc.	N; allowed claim in this class is unimpaired and is not entitled to vote as presumed to accept the Plan.	Class 4 equity interests in the Debtor will be retained in the same manner as of the Petition Date.

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10 **D. Means of Effectuating the Plan and Implementation of the Plan**

11 1. Funding for the Plan

12 The treatment of all claim holders will occur in the manner described above. All cash
13 distributions to be made on or near the Effective Date will be funded from the Debtor's
14 available cash. Viridian has agreed that the administrative claims and priority tax claims due
15 under the Plan shall be paid from the first collections of Note Proceeds that would otherwise
16 have been paid to Viridian on account of the Viridian Claim.

17 Schwartz has contended that the Debtor has an interest in the above-described
18 Commercial Parcel. Therefore, in order to ensure that any interest is disposed of for the benefit
19 of creditors of this estate, the Debtor and Schwartz will jointly employ a broker to market the
20 Debtor's interest in the Commercial Parcel. The broker will be obligated to conduct a sales
21 process in a commercially reasonable manner for a period of one year, beginning on the
22 Effective Date of the Plan (the "Sales Period"). The Bankruptcy Court will maintain jurisdiction
23 over the sales process, and the sale of the Commercial Parcel is subject to Bankruptcy Court
24 approval and a reasonableness standard. If a disagreement arises between the Debtor and
25 Schwartz concerning either the marketing and sales process or the actual terms of the sale of the
26 interest in the Commercial Parcel, such disagreement shall be resolved by the Bankruptcy Court.
27 If, by the end of the Period, either (1) the Debtor's interest in the Commercial Parcel is not sold

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1 or (2) the Debtor pays Schwartz in full from another source, then the Debtor's interest in the
2 Commercial Parcel shall revert back to the Debtor to be administered in the Debtor's sole
3 discretion.

4 The Debtor expects that the Plan will be primarily – if not solely - funded through the
5 Note Proceeds; however, as stated above, the Debtor has agreed to jointly market for sale with
6 Schwartz any purported interest in the Commercial Parcel in an effort to provide additional Plan
7 funding.

8 2. Composition of the Reorganized Debtor

9 Holders of Class 4 equity interests in the Debtor will own all of the equity interests in
10 the Reorganized Debtor in the manner described above.

11 3. Post-Confirmation Management

12 The management of the Reorganized Debtor will be identical to the current management
13 of the Debtor.

14 4. Disbursing Agent

15 The Reorganized Debtor will serve as the disbursing agent for purposes of making all
16 distributions required to be made under the Plan. The Reorganized Debtor will not charge any
17 disbursing agent fee for making such distributions.

18 5. Objections to Claims

19 The Debtor or the Reorganized Debtor, as the case may be, will file objections to all
20 claims which are inconsistent with the Debtor's books and records or which lack legal and/or
21 factual basis, unless the Debtor deems the inconsistency or amount at issue to be insignificant or
22 too small to warrant litigation. As provided by Section 502(c) of the Bankruptcy Code, the
23 Court may estimate any contingent or unliquidated disputed claim for purposes of confirmation
24 of the Plan. The Reorganized Debtor will have the authority to file any objections to claims
25 following Plan confirmation (or to continue with the prosecution of any claims objections
26 commenced by the Debtor prior to Plan confirmation), and the Court shall retain jurisdiction
27 over the Reorganized Debtor and this case to resolve such claim objections following Plan
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1 confirmation. Nothing contained in the Plan shall constitute a waiver or release by the Debtor or
2 the Reorganized Debtor of any rights of setoff or recoupment, or of any defense, the Debtor or
3 the Reorganized may have with respect to any claim.

4 6. Avoidance Actions

5 The Debtor is not aware of any payments made during the ninety-day preference period
6 for non-insiders or the one-year period for insiders that would be clearly avoidable as preference
7 payments, as the Debtor believes that all such payments would be subject to some form of
8 ordinary course, contemporaneous exchange or new value defense. The Debtor is also not
9 aware of any fraudulent conveyances that have occurred and that could have been avoided. All
10 claims, causes of action and avoidance actions of the Debtor and its estate are preserved by the
11 Plan, and the Reorganized Debtor shall have full power and authority to settle, adjust, retain,
12 enforce or abandon any claim, cause of action or avoidance actions as the representative of the
13 Debtor's estate under Section 1123(b) of the Bankruptcy Code or otherwise, regardless of
14 whether such claims, causes of action or avoidance actions were commenced prior or
15 subsequent to the Plan Effective Date.

16 7. Employment of Officers, Employees and Professionals

17 On and after the Effective Date, the Reorganized Debtor shall have the right to employ
18 and compensate such officers, employees, professionals, agents and representatives as the
19 Reorganized Debtor determines is necessary or appropriate to implement all of the provisions of
20 the Plan and to enable the Debtor to operate its business without the need for any further order
21 of the Court.

22 8. Distributions to Be Made Pursuant to the Plan

23 Distributions to be made to holders of Allowed claims pursuant to the Plan may be
24 delivered by regular mail, postage prepaid, to the address shown in the Debtor's Schedules, as
25 they may from time to time be amended in accordance with Federal Bankruptcy Rules 1007 and
26 1009, or, if a different address is stated in a proof of claim duly filed with the Bankruptcy Court,
27 to such address. Checks issued to pay allowed claims shall be null and void if not negotiated
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1 within sixty (60) days after the date of issuance thereof (the “Non-Negotiated Checks”) and the
2 amounts of such null and void checks shall be redistributed among all other unsecured creditors.
3 The holder of a claim with respect to which a Non-Negotiated Check was issued shall forfeit all
4 such holder’s right to further distributions under the Plan.

5 If there remain any disputed claims in any creditor Class on the date of a distribution
6 under the Plan, a sum will be withheld from distribution to the holders of allowed claims of that
7 Class in an amount that would have been distributed on account of the disputed claim as if all
8 such disputed Class claims were allowed in the amounts asserted. Once a disputed claim is
9 resolved, the holder of the formerly disputed claim will receive the distribution that the claim
10 holder is entitled to receive, and any excess sums available will be distributed to the other
11 holders of allowed claims in that Class.

12 9. Post-confirmation Reporting

13 The Reorganized Debtor shall file quarterly reports with the Court setting forth a
14 detailed analysis of income, expenses and cash flow to, among other things, inform the Court
15 and all parties in interest with respect to the performance of the Reorganized Debtor after the
16 Effective Date.

17 10. Exculpations and Releases

18 To the maximum extent permitted by law, neither the Debtor, the Reorganized Debtor,
19 nor any of their employees, officers, directors, shareholders, agents, members, representatives,
20 or professionals employed or retained by any of them, shall have or incur liability to any person
21 or entity for any act taken or omission made in good faith in connection with or related to the
22 formulation and implementation of the Plan, or a contract, instrument, release, or other
23 agreement or document created in connection therewith, the solicitation of acceptances for or
24 confirmation of the Plan, or the consummation and implementation of the Plan and the
25 transactions contemplated therein.

26 11. Injunctions

27 The Plan Confirmation Order shall enjoin the prosecution, whether directly, derivatively
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1 or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of
2 action, liability or interest released, discharged or terminated pursuant to the Plan. Except as
3 provided in the Plan or the Plan Confirmation Order, as of the Effective Date, all entities that
4 have held, currently hold or may hold a claim or other debt or liability that is discharged or an
5 interest or other right of an equity security holder that is extinguished pursuant to the terms of
6 the Plan are permanently enjoined from taking any of the following actions against the Debtor,
7 the Reorganized Debtor, or their property on account of any such discharged claims, debts or
8 liabilities or extinguished interests or rights: (i) commencing or continuing, in any manner or in
9 any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in
10 any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien
11 or encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against
12 any debt, liability or obligation due to the Debtor; and (v) commencing or continuing any action
13 in any manner, in any place, that does not comply with or is inconsistent with the provisions of
14 the Plan. By accepting distribution pursuant to the Plan, each holder of an allowed claim
15 receiving distributions pursuant to the Plan shall be deemed to have specifically consented to
16 the injunctions set forth in this Section.

17 12. Executory Contracts and Unexpired Leases

18 The Debtor is not aware of, and is not a party to, any executory contracts or unexpired
19 leases.

20 13. Changes in Rates Subject to Regulatory Commission Approval

21 The Debtor is not subject to governmental regulatory commission approval of its rates.

22 14. Retention of Jurisdiction

23 After confirmation of the Plan and occurrence of the Effective Date, in addition to
24 jurisdiction which exists in any other court, the Court will retain such jurisdiction as is legally
25 permissible including for the following purposes:

26 i. To resolve any and all disputes regarding the operation and interpretation
27 of the Plan and the Plan Confirmation Order;

1 ii. To resolve any and all disputes regarding the operation and interpretation
2 of the Plan;

3 iii. To determine the allowability, classification, or priority of claims and
4 interests upon objection by the Debtor, the Reorganized Debtor, or by other parties in interest
5 with standing to bring such objection or proceeding and to consider any objection to claim or
6 interest whether such objection is filed before or after the Effective Date;

7 iv. To determine the extent, validity and priority of any lien asserted against
8 property of the Debtor or property of the Debtor's estate;

9 v. To construe and take any action to enforce the Plan, the Plan
10 Confirmation Order, and any other order of the Court, issue such orders as may be necessary for
11 the implementation, execution, performance, and consummation of the Plan and the Plan
12 Confirmation Order, and all matters referred to in the Plan and the Plan Confirmation Order,
13 and to determine all matters that may be pending before the Court in this case on or before the
14 Effective Date with respect to any person or entity related thereto;

15 vi. To determine (to the extent necessary) any and all applications for
16 allowance of compensation and reimbursement of expenses of professionals for the period on or
17 before the Plan Effective Date;

18 vii. To determine any request for payment of administrative expenses;

19 viii. To determine motions for the rejection, assumption, or assignment of
20 executory contracts or unexpired leases filed before the Plan Effective Date and the allowance
21 of any claims resulting therefrom;

22 ix. To determine all applications, motions, adversary proceedings, contested
23 matters, and any other litigated matters instituted during the pendency of this case whether
24 before, on, or after the Plan Effective Date including avoidance causes of action, and the
25 Reorganized Debtor shall have the right to commence any avoidance causes of action after the
26 Plan Effective Date and to continue with the prosecution of any avoidance causes of action
27 commenced by the Debtor prior to the Plan Effective Date;

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1 x. To determine such other matters and for such other purposes as may be
2 provided in the Plan Confirmation Order;

3 xi. To modify the Plan under Section 1127 of the Bankruptcy Code in order
4 to remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the
5 Plan so as to carry out its intent and purpose;

6 xii. Except as otherwise provided in the Plan or the Plan Confirmation Order,
7 to issue injunctions, to take such other actions or make such other orders as may be necessary or
8 appropriate to restrain interference with the Plan or the Plan Confirmation Order, or the
9 execution or implementation by any person or entity of the Plan or the Plan Confirmation
10 Order;

11 xiii. To issue such orders in aid of consummation of the Plan or the Plan
12 Confirmation Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect
13 to any person or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy
14 Rules; and

15 xiv. To enter a final decree closing this Chapter 11 case.

16 **V. TAX CONSEQUENCES OF THE PLAN**

17 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
18 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
19 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of
20 possible tax consequences is intended solely for the purpose of alerting readers about possible
21 tax issues the Plan may present to the Debtor. The Debtor CANNOT and DOES NOT represent
22 that the tax consequences contained below are the only tax consequences of the Plan because
23 the Tax Code embodies many complicated rules which make it difficult to state completely and
24 accurately all of the tax implications of any action. In general, the Debtor does not expect to
25 incur any substantial tax liability as a result of the implementation of the Plan with the
26 exception of tax liability related to capital gains from the sale of real property to the extent that
27 the sale of real property is necessary under the Plan.

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1 **VI. CONFIRMATION REQUIREMENTS AND PROCEDURES**

2 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
3 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
4 CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following
5 discussion is intended solely for the purpose of alerting readers about basic confirmation issues,
6 which they may wish to consider, as well as certain deadlines for filing claims. The Debtor
7 CANNOT and DOES NOT represent that the discussion contained below is a complete
8 summary of the law on this topic.

9 Many requirements must be met before the Court can confirm a plan. Some of the
10 requirements include that the plan must be proposed in good faith, acceptance of the plan,
11 whether the plan pays creditors at least as much as creditors would receive in a Chapter 7
12 liquidation, and whether the plan is feasible. These requirements are not the only requirements
13 for confirmation.

14 **A. Who May Vote or Object**

15 Any party in interest may object to the confirmation of the Plan, but, as explained below,
16 not everyone is entitled to vote to accept or reject the Plan.

17 **B. Who May Vote to Accept/Reject the Plan**

18 A creditor or interest holder has a right to vote for or against the Plan if that creditor or
19 interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes
20 and (2) classified in an impaired class.

21
22 **C. What Is an Allowed Claim/Interest**

23 As noted above, a creditor or interest holder must first have an allowed claim or interest
24 to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a
25 party in interest files an objection to the claim or interest. When an objection to a claim or
26 interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless

1 the Court, after notice and hearing, either overrules the objection or allows the claim or interest
2 for voting purposes.

3 THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE ON
4 ACCOUNT OF PRE-PETITION CLAIMS WAS AUGUST 18, 2012. A creditor or interest
5 holder may have an allowed claim or interest even if a proof of claim or interest was not timely
6 filed. A claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim
7 is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has
8 objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest
9 has objected to the interest.

10 A detailed claims chart is attached hereto as Exhibit 2 (the "Claims Chart"). The Claims
11 Chart identifies all claims which were scheduled by the Debtor, including the amounts and
12 priorities of the claims and whether the Debtor contends that the claims are disputed, contingent
13 or unliquidated. The Claims Chart also identifies all proofs of claim which were filed by
14 creditors asserting claims against the Debtor, including the amounts and priorities of the claims
15 asserted. Finally, the Claims Chart indicates whether the Debtor has disputed or presently
16 disputes any portion of the claims. The Debtor reserves the right to update and modify the
17 claims chart at any time and to file objections to claims even if the Claims Chart does not
18 identify any dispute relating to a particular claim.

19 **D. What Is an Impaired Claim/Interest.**

20 As noted above, an allowed claim or interest has the right to vote only if it is in a class
21 that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or
22 contractual rights of the members of that class. For example, a class comprised of general
23 unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what
24 they are owed.

25 In this case, the Debtor believes that members of classes 1, 2, and 3 are impaired.
26 Members of classes 1, 2, and 3 are entitled to vote to accept or reject the Plan. Parties that
27 dispute the Debtor's characterization of their claim or interest as being impaired or unimpaired
28

1 may file an objection to the Plan contending that the Debtor has incorrectly characterized the
2 class.

3 **E. Who Is Not Entitled to Vote.**

4 The following four types of claims are not entitled to vote: (1) claims that have been
5 disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Sections
6 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code; and (4) claims in classes that do not
7 receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote
8 because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant
9 to Bankruptcy Code Sections 507(a)(2), (a)(3), and (a)(8) are not entitled to vote because such
10 claims are not placed in classes and they are required to receive certain treatment specified by
11 the Bankruptcy Code. Claims in classes that do not receive or retain any value under the Plan
12 do not vote because such classes are deemed to have rejected the Plan. EVEN IF YOUR
13 CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO
14 OBJECT TO THE CONFIRMATION OF THE PLAN.

15 **F. Who Can Vote in More Than One Class.**

16 A creditor whose claim has been allowed in part as a secured claim and in part as an
17 unsecured claim is entitled to accept or reject the Plan in both capacities by casting one ballot
18 for the secured part of the claim and another ballot for the unsecured claim.

19 **G. Votes Necessary to Confirm the Plan.**

20 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one
21 impaired class has accepted the Plan without counting the votes of any insiders within that class,
22 and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be
23 confirmed by "cramdown" on non-accepting classes, as discussed below.

24 **H. Votes Necessary for a Class to Accept the Plan.**

25 A class of claims is considered to have accepted the Plan when more than one-half (1/2)
26 in number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on
27 the plan, voted in favor of the plan. A class of interests is considered to have "accepted" a plan
28

1 when at least two-thirds (2/3) in amount of the interest-holders of such class which actually
2 voted on the plan, voted to accept the plan.

3 **I. Treatment of Non-Accepting Classes.**

4 As noted above, even if all impaired classes do not accept the Plan, the Court may
5 nonetheless confirm the Plan if the non-accepting classes are treated in the manner required by
6 the Bankruptcy Code. The process by which non-accepting classes are forced to be bound by
7 the terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the
8 Plan to be “crammed down” on non-accepting classes of claims or interests if it meets all
9 consensual requirements except the voting requirements of 1129(a)(8) and if the Plan does not
10 “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted
11 to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law. In order for a
12 plan to be fair and equitable “the holder of any claim or interest that is junior to the claims of
13 [an unsecured creditor] class will not receive or retain under the plan on account of such junior
14 claim or interest any property.” In other words, if a debtor’s equity holders are to retain their
15 interests in the debtor, then unsecured creditors must receive property of a value, as of the
16 effective date of the plan, equal to the allowed amount of each creditor’s claim. This rule is also
17 known as the “absolute priority rule.”

18 **J. Request for Confirmation Despite Nonacceptance by Impaired Class(es).**

19 The Debtor will ask the Court to confirm the Plan by cramdown on any and all impaired
20 classes that do not vote to accept the Plan. The Debtor believes, but it will be up to the Court to
21 determine, that the Plan satisfies the “fair and equitable” standard and does not “discriminate
22 unfairly” against any creditors. As part of the foregoing, the Debtor believes, but again it will be
23 up to the Court to determine, that the Plan satisfies the requirement for “absolute priority” as the
24 Plan provides for payment of unsecured creditors holding allowed claims from any remaining
25 proceeds of the Note after Classes 1 and 2 are paid. In any event, with the possible exception of
26 Class 1, the Debtor anticipates that all Classes of creditors will vote in favor of the Plan.

27 ///

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1 **K. Liquidation Analysis.**

2 Another confirmation requirement is the "Best Interest Test", which requires a
3 liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an
4 impaired class and that claimant or interest holder does not vote to accept the Plan, then that
5 claimant or interest holder must receive or retain under the Plan property of a value not less than
6 the amount that such holder would receive or retain if the Debtor were liquidated under Chapter
7 7 of the Bankruptcy Code.

8 In a Chapter 7 case, the debtor's assets are usually sold by a Chapter 7 trustee. Secured
9 creditors are paid first from the sales proceeds of properties on which the secured creditor has a
10 lien. Administrative claims are paid next. Next, unsecured creditors are paid from any
11 remaining sales proceeds, according to their rights to priority. Unsecured creditors with the
12 same priority share in proportion to the amount of their allowed claim in relationship to the
13 amount of total allowed unsecured claims. Finally, interest holders receive the balance that
14 remains after all creditors are paid, if any.

15 For the Court to be able to confirm the Plan, the Court must find that all creditors and
16 interest holders who do not accept the Plan will receive at least as much under the Plan as such
17 holders would receive under a Chapter 7 liquidation of the Debtor. The Debtor maintains that
18 this requirement is clearly met.

19 The Debtor submits that the Debtor satisfies the "best interest of creditors test" with
20 respect to all Classes of claims and interests. Under the Plan, the Debtor anticipates that the
21 Note will be paid in full in the amount of \$25 million plus interest. In contrast, if the Debtor
22 were forced to liquidate the Note at this time, it is likely that the liquidation would yield
23 significantly less than \$20 million due to the fact that the Debtor estimates that the Property –
24 the sole collateral for the Note - is worth only approximately \$20 million at this time. In sum,
25 under the Plan the Debtor's creditors will receive at least as much as if the Debtor were forced
26 to liquidate the Note.

27 ///

28

1 **L. Feasibility.**

2 Another requirement for confirmation involves the feasibility of the Plan, which means
3 that confirmation of the Plan is not likely to be followed by the liquidation, or the need for
4 further financial reorganization, of the Reorganized Debtor.

5 There are at least two important aspects of a feasibility analysis. The first aspect
6 considers whether the Debtor will have enough cash on hand on the Plan Effective Date to pay
7 all the claims and expenses which are entitled to be paid on such date. The Plan does not
8 provide for any claims and expenses to be paid on the Plan Effective Date; therefore, there will
9 clearly be enough cash on hand on the Plan Effective Date.

10 The second aspect considers whether the Reorganized Debtor will have enough cash over
11 the life of the Plan to make the required Plan payments. As discussed herein, it is expected that
12 starting on September 30, 2013, there could be approximately \$421,000 in quarterly interest
13 payments generated by the Note. Alternatively, if the current owner of the Property defaults by
14 failing to pay interest payments, the Debtor will be in a position to foreclose on the Note and the
15 related deed of trust and reacquire the Property. Thus, the Reorganized Debtor has the ability to
16 make all of the Plan payments which are required to be made over time.

17 Schwartz has contended that the Debtor has an interest in the above-described
18 Commercial Parcel. For avoidance of doubt it is the Debtor's position that the Debtor has no
19 legal title in the Commercial Property at this time. Nor does the Plan require the Debtor seek
20 legal title. However, in order to ensure that any interest that can be disposed of for the benefit of
21 creditors of this estate is disposed of, the Debtor and Schwartz will jointly contact a broker from
22 a reputable major brokerage firm to explore whether the Debtor can market its interest in the
23 Commercial Parcel for a period beginning on the Effective Date of the Plan for a period of one
24 year (the "Sales Period"). To the extent that a broker determines that the interest is marketable
25 then such broker will be obligated to conduct a sales process in a commercially reasonable
26 manner during the Sales Period. The Bankruptcy Court will maintain jurisdiction over the sales
27 process, and the sale of the Commercial Parcel is subject to Bankruptcy Court approval and a
28

1 reasonableness standard. If a disagreement arises between the Debtor and Schwartz concerning
2 either the marketing and sales process or the actual terms of the sale of the interest in the
3 Commercial Parcel, such disagreement shall be resolved by the Bankruptcy Court. If, by the end
4 of the Period, either (1) the Debtor's interest in the Commercial Parcel is not sold or (2) the
5 Debtor pays Schwartz in full from another source, then the Debtor's interest in the Commercial
6 Parcel shall revert back to the Debtor to be administered in the Debtor's sole discretion.

7 Given the foregoing, this second aspect of Plan feasibility is also clearly satisfied.

8 **VII. RISK FACTORS REGARDING THE PLAN**

9 As indicated above, there is no risk regarding the Debtor's ability to satisfy its Effective
10 Date requirements because the Plan does not provide for any claims and expenses to be paid on
11 the Plan Effective Date.

12 The second aspect of risk considers whether the Reorganized Debtor will have enough
13 cash over the life of the Plan to make the required Plan payments. As indicated above, the
14 Debtor submits that it will have enough cash over the life of the Plan to make plan payments
15 due to either the quarterly interest payments received pursuant to the Note or due to foreclosing
16 on the Note and taking possession of the Property.

17 **VIII. EFFECT OF CONFIRMATION OF THE PLAN**

18 **A. Discharge.**

19 The Debtor will receive a discharge under the Plan pursuant to and in accordance with
20 the provisions of Section 1141 of the Bankruptcy Code because there has not been a liquidation
21 of all or substantially all of the property of the Debtor's estate and because the Reorganized
22 Debtor will be continuing with the Debtor's current business operations.

23 **B. Modification of the Plan.**

24 The Debtor may modify the Plan at any time before confirmation. However, the Court
25 may require a new disclosure statement and/or re-voting on the Plan if the Debtor modifies the
26 Plan before confirmation. The Debtor may also seek to modify the Plan at any time after
27
28

1 confirmation of the Plan so long as (1) the Plan has not been substantially consummated and (2)
2 the Court authorizes the proposed modifications after notice and a hearing.

3 **C. Post-Confirmation Status Reports.**

4 Until a final decree closing the Debtor's Chapter 11 case is entered, the Reorganized
5 Debtor may file status reports as may be required or ordered explaining what progress has been
6 made toward consummation of the confirmed Plan.

7 **D. Post-Confirmation Conversion/Dismissal.**

8 A creditor or any other party in interest may bring a motion to convert or dismiss the
9 case under Section 1112(b) of the Bankruptcy Code after the Plan is confirmed if there is a
10 default in performing the Plan. If the Court orders the Debtor's Chapter 11 case converted to
11 Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11
12 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate,
13 and the automatic stay will be reimposed upon the revested property, but only to the extent that
14 relief from stay was not previously authorized by the Court during this case. The Plan
15 Confirmation Order may also be revoked under very limited circumstances. The Court may
16 revoke the Plan Confirmation Order if it was procured by fraud and if a party in interest brings
17 an adversary proceeding to revoke confirmation within 180 days after the entry of the Plan
18 Confirmation Order.

19 **E. Final Decree.**

20 Once this estate has been fully administered as referred to in Bankruptcy Rule 3022, the
21 Reorganized Debtor will file a motion with the Court to obtain a final decree to close the
22 Debtor's Chapter 11 case. The Reorganized Debtor shall be responsible for the timely payment
23 of all fees incurred pursuant to 28 U.S.C. Section 1930(a)(6).

24 Dated: February 13, 2013

STRADELLA INVESTMENTS, INC.
Debtor in Possession

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By: _____
Abdolrashid Boroumand

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24 Dated: February 13, 2013

STRADELLA INVESTMENTS, INC.
Debtor in Possession

By: 
Abdolrashid Boroumand

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Presented By:

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: /s/ Timothy J. Yoo

TIMOTHY J. YOO
DANIEL H. REISS
LINDSEY L. SMITH
Attorneys for Chapter 11
Debtor and Plan Proponent

EXHIBIT 1

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10 Counsel for Chapter 11 Debtor and Debtor in Possession

11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SANTA ANA DIVISION**

14 In re

15 STRADELLA INVESTMENTS, INC.,

16 Debtor.

Case No. 8:10-bk-23193-CB

Chapter 11

17 **DEBTOR'S CHAPTER 11 PLAN OF**
18 **REORGANIZATION (DATED FEBRUARY**
19 **13, 2013)**

20 Disclosure Statement Hearing:

Date: February 27, 2013

Time: 1:30 p.m.

21 Plan Confirmation Hearing:

22 Date: [To be scheduled by the Court]

23 Time: [To be scheduled by the Court]

24 Place: Courtroom 5D
25 U.S. Bankruptcy Court
26 411 West Fourth Street
27 Santa Ana, CA 92701

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Cases

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Statutes

11 U.S.C. § 101..... 2

11 U.S.C. § 511(a) 6

26 U.S. C. § 6621(c) 6

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1 **I. INTRODUCTION**

2 On September 19, 2010 (the "Petition Date"), Stradella Investments, Inc., the debtor and
3 debtor in Possession in the above-referenced case (the "Debtor"), commenced its bankruptcy
4 case by filing a voluntary petition under chapter 11 of the United States Code, 11 U.S.C. § 101
5 et seq. ("Bankruptcy Code"). This document is the Plan of Reorganization ("Plan") that is
6 being proposed by the Debtor.

7 Chapter 11 allows the Debtor, and, under some circumstances, creditors and other
8 parties in interest, to propose a plan of reorganization. The Plan is a plan of reorganization,
9 which provides for creditors to be paid in full over time from the proceeds of the Debtor's
10 assets. The effective date of the Plan (the "Effective Date") will be the first business day which
11 is at least fifteen calendar days following the date of entry of the Court order confirming the
12 Plan (the "Plan Confirmation Order") provided that all of the following conditions to the
13 effectiveness of the Plan have been satisfied or waived by the Debtor: (a) there is no stay in
14 effect with respect to the Plan Confirmation Order; (b) the Plan Confirmation Order is not
15 subject to any appeal or rehearing; and (c) the Plan and all documents, instruments and
16 agreements to be executed in connection with the Plan have been executed and delivered by all
17 parties to such documents, instruments and agreements. Following the Effective Date the
18 Debtor shall be referred to as the "Reorganized Debtor" and shall be referred to herein as the
19 Debtor or the Reorganized Debtor.

20 **II. PLAN SUMMARY**

21 The Debtor's primary asset is a \$25 million promissory note (the "Note") in its favor
22 made out by RM Eagle, LLC ("RM Eagle") in connection with the sale of certain real property
23 (the "Property"). RM Eagle defaulted on a construction loan with respect to development of the
24 Property, and the lender foreclosed on RM Eagle. An affiliate of Stark Investments is currently
25 the title holder of the Property which is collateral of the Note. According to its terms, the Note
26 begins accruing, and requires the payment of, quarterly interest payments at approximately
27 Prime Rate, plus 3.5% per annum (approximately 6.75% at the current rates), commencing on
28 September 30, 2013. Accordingly, although there are currently no funds to pay any of the

1 creditors of the Debtor, it is expected that, starting on September 30, 2013, there could be
2 approximately \$421,000 in quarterly interest payments generated by the Note. Alternatively, if
3 the current owner of the Property defaults by failing to pay interest payments, the Debtor will be
4 in a position to foreclose on the Note and the related deed of trust and reacquire the Property.
5 Although the value of the Property is uncertain, it is estimated to be at least \$20 million. The
6 Plan is funded solely through proceeds of the Note (the "Note Proceeds").

7 Class 1 under the Plan consists of the alleged secured claim of Ronald Schwartz
8 ("Schwartz") whose claim is based on a judgment obtained against the Debtor in July, 2009.
9 Schwartz's proposed treatment is set forth in Class 1 below under Options A, B, and C.

10 Class 2 consists of the secured claim of Viridian Investments, N.V., a Netherlands
11 Antilles corporation ("Viridian I"), Viridian Investment Services, Ltd., a British Virgin Islands
12 corporation ("Viridian II", and collectively with Viridian I, as "Viridian") in the principal
13 amount of approximately \$59 million and is based on a series of secured loans (the "Viridian
14 Loans") over several years to the Debtor and its subsidiaries for the costs of acquisition and
15 maintenance of the Property. Viridian's proposed treatment is set forth in Class 2 below under
16 Options A, B, and C.

17 Schwartz and Viridian each contend that their respective lien is senior in priority to the
18 other. The Debtor initiated the adversary proceeding Stradella Investments, Inc. v. Schwartz, et
19 al., Bk. Case no. 8:10-ap-01462-CB (the "Adversary Proceeding") by which it seeks, among
20 other things, declaratory relief as to the relative priority of purported liens of Viridian and
21 Schwartz. The Adversary Proceeding is currently pending before the Bankruptcy Court.

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III. CLASSIFICATION AND TREATMENT OF
CLAIMS AND INTERESTS UNDER THE PLAN

A. What Creditors and Interest Holders Will Receive Under Plan

As required by the Bankruptcy Code, the Plan (i) classifies claims and interests in various classes according to their right to priority, (ii) states whether each class of claims or interests is impaired or unimpaired, and provides the treatment each class will receive.

B. Unclassified Claims

Certain types of claims are not placed into voting classes; instead they are unclassified. Unclassified claims are not considered impaired and they do not vote on the Plan because such claims are automatically entitled to specific treatment provided in the Bankruptcy Code. As such, the Debtor has not placed the following claims in a class:

1. Administrative Expenses

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Section 507(a)(2) of the Bankruptcy Code. The Bankruptcy Code requires that all administrative claims be paid on the Effective Date of the Plan unless a particular claimant agrees to different treatment.

The following chart lists all of the Debtor's Section 507(a)(2) administrative claims and the treatment of each respective under the Plan:

Office of the U.S. Trustee Fees	\$0	Fees are paid in the ordinary course, but to the extent that any such claims remain unpaid as of the Effective Date, Viridian has agreed that the administrative claims shall be paid from the first collections of Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan.
Levene, Neale, Bender, Yoo & Brill L.L.P., bankruptcy counsel to the	\$250,000.00 (est.), which would be in addition to any post-petition fees	Paid in full after the entry of an order allowing such fees and

Debtor	and expenses paid to LNBYB by the Debtor	expenses and when funds are available from Note Proceeds. Viridian has agreed that the administrative claims shall be paid from the first collections of Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan.
TOTAL	\$250,000.00	Paid in the manner described above

Court Approval Required:

The Court must approve each of the professional's fees and expenses listed in the above chart before any particular professional fee or expense may be paid. For all professional fees and expenses, except fees owing to the Clerk of the Bankruptcy Court or the OUST, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees and expenses allowed by the Court will be required to be paid under the Plan. The administrative claim amounts set forth above simply represent the Debtor's best estimate as to the amount of allowed administrative claims in this case. The actual administrative claims may be higher or lower. Much of whether the administrative claims described above for professionals are the actual amounts will be dependent upon whether the Debtor is required to engage in any substantial litigation regarding the confirmation of the Plan and/or claim objections. To the extent the Debtor is required to engage in any such substantial litigation, the Debtor's professionals are likely to incur professional fees and expenses in excess (and possibly substantially in excess) of the figures set forth above. It is expected that administrative professionals and the Debtor will need to negotiate an agreement whereby professional claims are paid over time.

1 Any creditors, other than professionals, wishing to file a request for allowance of
2 administrative expense must file such request no later than ninety (90) days after the Effective
3 Date. By voting to accept the Plan, creditors are not acknowledging the validity of, or
4 consenting to the amount of, any administrative claims, and no party is waiving any of its rights
5 to object to the allowance of any administrative claims. Similarly, professionals who have been
6 employed in this case shall not be deemed to agree that the figures contained herein represent
7 any ceiling on the amount of fees and expenses that such professionals have incurred or for
8 which they are entitled to seek payment pursuant to Court order. Such fees and expenses are just
9 estimates provided at the time of the preparation of the Plan.
10

11 2. Priority Tax Claims

12 Priority Tax Claims include certain unsecured income, employment and other taxes
13 described by Section 507(a)(8) of the Bankruptcy Code. Each holder of an Allowed Priority Tax
14 Claim against the Debtor's estate shall receive, on the Effective Date, in full satisfaction, release
15 and discharge of such Allowed Priority Tax Claim, at the election of the Debtor, either (i) Cash
16 payment in the amount of the holder's Allowed Priority Tax Claim; (ii) deferred Cash payments
17 over a period not to exceed five (5) years, from the Petition Date, equal to the Allowed amount
18 of such claim; (iii) in a manner not less favorable than the most favored unsecured claim
19 provided for by the Plan; or (iv) such other terms as may be agreed upon by such holder and the
20 Debtor. The rate of interest to be paid on Priority Tax Claims paid out over a period not to
21 exceed five (5) years from the Petition Date shall be equal to the underpayment rate specified in
22 26 U.S.C. § 6621(a)(2) (determined without regard to 26 U.S. C. § 6621(c)) as of the Effective
23 Date or such other rate as required by 11 U.S.C. § 511(a) if ordered by the Court.
24

25 Upon any payment default (after a 30-day cure period), the respective taxing authorities'
26 administrative collection powers and rights shall be reinstated as they existed prior to the
27 Petition Date. The treatment prescribed below is subject to any tax authorities' objection under
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11 U.S.C. § 511(a), and the Reorganized Debtor reserves the right to challenge all aspects of such claims.

Following are the Priority Tax Claims that are either contained in the Debtor's Schedules or have been asserted by taxing authorities in proof of claim filed in this case:

<u>DESCRIPTION</u>	<u>TREATMENT</u>
Priority claim of: Franchise Tax Board <u>Amount of Claim =</u> \$829.28	Paid in full, with interest thereon at the rate specified in 26 U.S.C. § 6621(a)(2), from the first collections from Note Proceeds to which Viridian would be entitled to on account of the Viridian Claim under the Plan, but no later than five (5) years after the Petition Date

The Debtor reserves the right to file objections with the Bankruptcy Court to any of the foregoing tax claims that the Debtor disputes.

C. Classified Claims and Interests

I. Classes of Secured Claims

Secured claims are claims secured by liens on property of the estate. The Debtor reserves the right to dispute all claims in this Plan, including but not limited to the secured claims listed below. The following charts set forth the description and treatment of the Debtor's secured claims:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
1	The secured claim of Ronald Schwartz Filed claim amount is \$1,491,116.58. <u>Basis of Debt:</u> Judgment. <u>Collateral Description:</u> Substantially all personal and real property, if any, owned by the Debtor <u>Priority of Security</u>	Y; allowed claim in this class is entitled to vote on Plan.	Option A: If Schwartz prevails in the Adversary Proceeding and its lien is deemed to be senior to Viridian or if Schwartz votes "no" on the Plan: (1) Schwartz shall receive all Note Proceeds until the Schwartz Claim is paid in full. The Note Proceeds shall be paid to Schwartz within five business days of receipt by the Debtor; (2) the Schwartz claim shall

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	<p><u>Interest:</u> TBD</p>		<p>accrue interest at the applicable judgment rate from and after the Petition Date until the paid in full;</p> <p>(3) If the Schwartz Claim is not paid in full within five years of the Effective Date, then Schwartz shall be able to take such action as available to enforce the Schwartz Claim under applicable nonbankruptcy law.</p> <p>Option B:</p> <p>If Schwartz and Viridian both vote for the Plan:</p> <p>(1) Schwartz and Viridian shall be both deemed secured creditors and their liens will be <i>pari passu</i> with each other;</p> <p>(2) Schwartz will receive 40% of Note Proceeds until paid in full. For example, if Stark Investment (the current holder of the Note) pays \$421,000 in quarterly interest payments beginning on September 30, 2013, \$168,400 will be paid to Schwartz and \$252,600 will be paid to Viridian; and</p> <p>(3) Schwartz will waive any interest accruing after the Petition Date under 11 U.S.C. § 506</p> <p>Option C:</p> <p>If Viridian prevails in the Adversary Proceeding and its lien is deemed to be senior to Schwartz:</p>
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<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
2	<p><u>Secured claim of:</u> Viridian</p> <p><u>Basis of Debt:</u> Multiple loans</p> <p><u>Collateral Description:</u> Note</p> <p><u>Priority of Security Interest:</u> TBD</p> <p><u>Total claim amount:</u> Approximately \$62.8 million.</p>	Y; allowed claim in this class is entitled to vote on the Plan.	<p>Option A:</p> <p>If Schwartz prevails in the Adversary Proceeding and its lien is deemed to be senior to Viridian or if Schwartz votes "no" on the Plan:</p> <p>Viridian shall receive all Note Proceeds after the Schwartz Claim is paid in full. The Note Proceeds shall be paid to Viridian within five business days of receipt by the Debtor. Viridian will not be entitled to interest on the Viridian Claim.</p> <p>Option B:</p> <p>If Viridian and Schwartz both vote for the Plan:</p> <p>(1) Schwartz and Viridian shall be both deemed secured creditors and their liens will be <i>pari passu</i> with each other;</p> <p>(2) Viridian will receive 60% of Note Proceeds until paid in full. For example, if Stark Investment pays \$421,000 in quarterly interest payments beginning on September 30, 2013, \$168,400 will be paid to Schwartz and \$252,600 will be paid to Viridian;</p> <p>(3) Viridian will waive any interest accruing after the Petition Date under 11 U.S.C. § 506</p> <p>Option C:</p> <p>If Viridian prevails in the</p>

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			<p>Adversary Proceeding and its lien is deemed to be senior to Schwartz:</p> <p>(1) Viridian shall be entitled to Note Proceeds until the Viridian Claim is paid in full, unless otherwise agreed in writing with Schwartz. Any such agreement shall not need Court approval and shall not constitute a modification of the Plan;</p> <p>(2) the Viridian Claim shall be deemed not to have accrued interest after the Petition Date.</p> <p><u>Payment by Viridian of administrative and priority tax claims:</u></p> <p>Viridian has agreed that the administrative claims and priority tax claims shall be paid from the first collections from Note Proceeds to which it would be entitled on account of the Viridian Claim under the Plan. The payment of the administrative and tax priority claims shall not increase the amount of the Viridian Claim.</p>
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2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Sections 507(a)(3), (4), (5), (6), and (7) of the Bankruptcy Code are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of

the Effective Date, equal to the allowed amount of such claim. The Debtor is not aware of the existence of any claims under Sections 507(a)(3), (4), (5), (6), and (7) of the Bankruptcy Code.

3. Classes of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a). The following chart describes the Plan's treatment of the classes containing all of the Debtor's non-priority general unsecured claims

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
3	All general unsecured claims	Y; allowed claims in this class are entitled to vote on the Plan.	Holders of Class 3 shall be paid from any amounts remaining from the proceeds of the Note after Classes 1 and 2 are paid; however, in the event, that Class 3 will vote in favor of the Plan, Viridian has agreed to pay any allowed claims of non-insider unsecured creditors from the first collections from the Note Proceeds to which it would be entitled to on account of the Viridian Claim under the Plan. The payment of the non-insider unsecured claim shall not increase the amount of the Viridian Claim.

4. Class of Interest Holders

Interest holders are the parties who hold an ownership interest (i.e., equity interest) in the Debtor. The following chart identifies the Plan's treatment of the class of interest holders:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
4	All equity holders, including holders of common stock, preferred stock, stock options, warrants, etc.	N; allowed claim in this class is unimpaired and is not entitled to vote as presumed to	Class 4 equity interests in the Debtor will be retained in the same manner as of the Petition Date.

	accept the Plan.	
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3 **D. Means of Effectuating the Plan and Implementation of the Plan**

4 1. Funding for the Plan

5 The treatment of all claim holders will occur in the manner described above. All cash
6 distributions to be made on or near the Effective Date will be funded from the Debtor's
7 available cash. Viridian has agreed that the administrative claims and priority tax claims due
8 under the Plan shall be paid from the first collections of Note Proceeds that would otherwise
9 have been paid to Viridian on account of the Viridian Claim.

10 Schwartz has contended that the Debtor has an interest in the above-described
11 Commercial Parcel. For avoidance of doubt it is the Debtor's position that the Debtor has no
12 legal title in the Commercial Property at this time. Nor does the Plan require the Debtor seek
13 legal title. However, in order to ensure that any interest that can be disposed of for the benefit of
14 creditors of this estate is disposed of, the Debtor and Schwartz will jointly contact a broker from
15 a reputable major brokerage firm to explore whether the Debtor can market its interest in the
16 Commercial Parcel for a period beginning on the Effective Date of the Plan for a period of one
17 year (the "Sales Period"). To the extent that a broker determines that the interest is marketable
18 then such broker will be obligated to conduct a sales process in a commercially reasonable
19 manner during the Sales Period. The Bankruptcy Court will maintain jurisdiction over the sales
20 process, and the sale of the Commercial Parcel is subject to Bankruptcy Court approval and a
21 reasonableness standard. If a disagreement arises between the Debtor and Schwartz concerning
22 either the marketing and sales process or the actual terms of the sale of the interest in the
23 Commercial Parcel, such disagreement shall be resolved by the Bankruptcy Court. If, by the end
24 of the Period, either (1) the Debtor's interest in the Commercial Parcel is not sold or (2) the
25 Debtor pays Schwartz in full from another source, then the Debtor's interest in the Commercial
26 Parcel shall revert back to the Debtor to be administered in the Debtor's sole discretion.

27 The Debtor expects that the Plan will be primarily – if not solely - funded through the
28 Note Proceeds; however, as stated above, the Debtor has agreed to jointly market for sale with

1 Schwartz any purported interest in the Commercial Parcel in an effort to provide additional Plan
2 funding.

3 2. Composition of the Reorganized Debtor

4 Holders of Class 4 equity interests in the Debtor will own all of the equity interests in
5 the Reorganized Debtor in the manner described above.

6 3. Post-Confirmation Management

7 The management of the Reorganized Debtor will be identical to the current management
8 of the Debtor.

9 4. Disbursing Agent

10 The Reorganized Debtor will serve as the disbursing agent for purposes of making all
11 distributions required to be made under the Plan. The Reorganized Debtor will not charge any
12 disbursing agent fee for making such distributions.

13 5. Objections to Claims

14 The Debtor or the Reorganized Debtor, as the case may be, will file objections to all
15 claims which are inconsistent with the Debtor's books and records or which lack legal and/or
16 factual basis, unless the Debtor deems the inconsistency or amount at issue to be insignificant or
17 too small to warrant litigation. As provided by Section 502(c) of the Bankruptcy Code, the
18 Court may estimate any contingent or unliquidated disputed claim for purposes of confirmation
19 of the Plan. The Reorganized Debtor will have the authority to file any objections to claims
20 following Plan confirmation (or to continue with the prosecution of any claims objections
21 commenced by the Debtor prior to Plan confirmation), and the Court shall retain jurisdiction
22 over the Reorganized Debtor and this case to resolve such claim objections following Plan
23 confirmation. Nothing contained in the Plan shall constitute a waiver or release by the Debtor or
24 the Reorganized Debtor of any rights of setoff or recoupment, or of any defense, the Debtor or
25 the Reorganized may have with respect to any claim.

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1 6. Avoidance Actions

2 The Debtor is not aware of any payments made during the ninety-day preference period
3 for non-insiders or the one-year period for insiders that would be clearly avoidable as preference
4 payments, as the Debtor believes that all such payments would be subject to some form of
5 ordinary course, contemporaneous exchange or new value defense. The Debtor is also not
6 aware of any fraudulent conveyances that have occurred and that could have been avoided. All
7 claims, causes of action and avoidance actions of the Debtor and its estate are preserved by the
8 Plan, and the Reorganized Debtor shall have full power and authority to settle, adjust, retain,
9 enforce or abandon any claim, cause of action or avoidance actions as the representative of the
10 Debtor's estate under Section 1123(b) of the Bankruptcy Code or otherwise, regardless of
11 whether such claims, causes of action or avoidance actions were commenced prior or
12 subsequent to the Plan Effective Date.

13 7. Employment of Officers, Employees and Professionals

14 On and after the Effective Date, the Reorganized Debtor shall have the right to employ
15 and compensate such officers, employees, professionals, agents and representatives as the
16 Reorganized Debtor determines is necessary or appropriate to implement all of the provisions of
17 the Plan and to enable the Debtor to operate its business without the need for any further order
18 of the Court.

19 8. Distributions to Be Made Pursuant to the Plan

20 Distributions to be made to holders of Allowed claims pursuant to the Plan may be
21 delivered by regular mail, postage prepaid, to the address shown in the Debtor's Schedules, as
22 they may from time to time be amended in accordance with Federal Bankruptcy Rules 1007 and
23 1009, or, if a different address is stated in a proof of claim duly filed with the Bankruptcy Court,
24 to such address. Checks issued to pay allowed claims shall be null and void if not negotiated
25 within sixty (60) days after the date of issuance thereof (the "Non-Negotiated Checks") and the
26 amounts of such null and void checks shall be redistributed among all other unsecured creditors.
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1 The holder of a claim with respect to which a Non-Negotiated Check was issued shall forfeit all
2 such holder's right to further distributions under the Plan.

3 If there remain any disputed claims in any creditor Class on the date of a distribution
4 under the Plan, a sum will be withheld from distribution to the holders of allowed claims of that
5 Class in an amount that would have been distributed on account of the disputed claim as if all
6 such disputed Class claims were allowed in the amounts asserted. Once a disputed claim is
7 resolved, the holder of the formerly disputed claim will receive the distribution that the claim
8 holder is entitled to receive, and any excess sums available will be distributed to the other
9 holders of allowed claims in that Class.

10 9. Post-confirmation Reporting

11 The Reorganized Debtor shall file quarterly reports with the Court setting forth a
12 detailed analysis of income, expenses and cash flow to, among other things, inform the Court
13 and all parties in interest with respect to the performance of the Reorganized Debtor after the
14 Effective Date.

15 10. Exculpations and Releases

16 To the maximum extent permitted by law, neither the Debtor, the Reorganized Debtor,
17 nor any of their employees, officers, directors, shareholders, agents, members, representatives,
18 or professionals employed or retained by any of them, shall have or incur liability to any person
19 or entity for any act taken or omission made in good faith in connection with or related to the
20 formulation and implementation of the Plan, or a contract, instrument, release, or other
21 agreement or document created in connection therewith, the solicitation of acceptances for or
22 confirmation of the Plan, or the consummation and implementation of the Plan and the
23 transactions contemplated therein.

24 11. Injunctions

25 The Plan Confirmation Order shall enjoin the prosecution, whether directly, derivatively
26 or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of
27 action, liability or interest released, discharged or terminated pursuant to the Plan. Except as
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1 provided in the Plan or the Plan Confirmation Order, as of the Effective Date, all entities that
2 have held, currently hold or may hold a claim or other debt or liability that is discharged or an
3 interest or other right of an equity security holder that is extinguished pursuant to the terms of
4 the Plan are permanently enjoined from taking any of the following actions against the Debtor,
5 the Reorganized Debtor, or their property on account of any such discharged claims, debts or
6 liabilities or extinguished interests or rights: (i) commencing or continuing, in any manner or in
7 any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in
8 any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien
9 or encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against
10 any debt, liability or obligation due to the Debtor; and (v) commencing or continuing any action
11 in any manner, in any place, that does not comply with or is inconsistent with the provisions of
12 the Plan. By accepting distribution pursuant to the Plan, each holder of an allowed claim
13 receiving distributions pursuant to the Plan shall be deemed to have specifically consented to
14 the injunctions set forth in this Section.

15 12. Executory Contracts and Unexpired Leases

16 The Debtor is not aware of, and is not a party to, any executory contracts or unexpired
17 leases.

18 13. Changes in Rates Subject to Regulatory Commission Approval

19 The Debtor is not subject to governmental regulatory commission approval of its rates.

20 14. Retention of Jurisdiction

21 After confirmation of the Plan and occurrence of the Effective Date, in addition to
22 jurisdiction which exists in any other court, the Court will retain such jurisdiction as is legally
23 permissible including for the following purposes:

24 i. To resolve any and all disputes regarding the operation and interpretation
25 of the Plan and the Plan Confirmation Order;

26 ii. To resolve any and all disputes regarding the operation and interpretation
27 of the Plan;

1 iii. To determine the allowability, classification, or priority of claims and
2 interests upon objection by the Debtor, the Reorganized Debtor, or by other parties in interest
3 with standing to bring such objection or proceeding and to consider any objection to claim or
4 interest whether such objection is filed before or after the Effective Date;

5 iv. To determine the extent, validity and priority of any lien asserted against
6 property of the Debtor or property of the Debtor's estate;

7 v. To construe and take any action to enforce the Plan, the Plan
8 Confirmation Order, and any other order of the Court, issue such orders as may be necessary for
9 the implementation, execution, performance, and consummation of the Plan and the Plan
10 Confirmation Order, and all matters referred to in the Plan and the Plan Confirmation Order,
11 and to determine all matters that may be pending before the Court in this case on or before the
12 Effective Date with respect to any person or entity related thereto;

13 vi. To determine (to the extent necessary) any and all applications for
14 allowance of compensation and reimbursement of expenses of professionals for the period on or
15 before the Plan Effective Date;

16 vii. To determine any request for payment of administrative expenses;

17 viii. To determine motions for the rejection, assumption, or assignment of
18 executory contracts or unexpired leases filed before the Plan Effective Date and the allowance
19 of any claims resulting therefrom;

20 ix. To determine all applications, motions, adversary proceedings, contested
21 matters, and any other litigated matters instituted during the pendency of this case whether
22 before, on, or after the Plan Effective Date including avoidance causes of action, and the
23 Reorganized Debtor shall have the right to commence any avoidance causes of action after the
24 Plan Effective Date and to continue with the prosecution of any avoidance causes of action
25 commenced by the Debtor prior to the Plan Effective Date;

26 x. To determine such other matters and for such other purposes as may be
27 provided in the Plan Confirmation Order;

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1 xi. To modify the Plan under Section 1127 of the Bankruptcy Code in order
2 to remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the
3 Plan so as to carry out its intent and purpose;

4 xii. Except as otherwise provided in the Plan or the Plan Confirmation Order,
5 to issue injunctions, to take such other actions or make such other orders as may be necessary or
6 appropriate to restrain interference with the Plan or the Plan Confirmation Order, or the
7 execution or implementation by any person or entity of the Plan or the Plan Confirmation
8 Order;

9 xiii. To issue such orders in aid of consummation of the Plan or the Plan
10 Confirmation Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect
11 to any person or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy
12 Rules; and

13 xiv. To enter a final decree closing this Chapter 11 case.

14 **IV. EFFECT OF CONFIRMATION OF THE PLAN**

15 **A. Discharge.**

16 The Debtor will receive a discharge under the Plan pursuant to and in accordance with
17 the provisions of Section 1141 of the Bankruptcy Code because there has not been a liquidation
18 of all or substantially all of the property of the Debtor's estate and because the Reorganized
19 Debtor will be continuing with the Debtor's current business operations.

20 **B. Modification of the Plan.**

21 The Debtor may modify the Plan at any time before confirmation. However, the Court
22 may require a new disclosure statement and/or re-voting on the Plan if the Debtor modifies the
23 Plan before confirmation. The Debtor may also seek to modify the Plan at any time after
24 confirmation of the Plan so long as (1) the Plan has not been substantially consummated and (2)
25 the Court authorizes the proposed modifications after notice and a hearing.

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1 **C. Post-Confirmation Status Reports.**

2 Until a final decree closing the Debtor's Chapter 11 case is entered, the Reorganized
3 Debtor may file status reports as may be required or ordered explaining what progress has been
4 made toward consummation of the confirmed Plan.

5 **Post-Confirmation Conversion/Dismissal.**

6 A creditor or any other party in interest may bring a motion to convert or dismiss the
7 case under Section 1112(b) of the Bankruptcy Code after the Plan is confirmed if there is a
8 default in performing the Plan. If the Court orders the Debtor's Chapter 11 case converted to
9 Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11
10 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate,
11 and the automatic stay will be reimposed upon the reverted property, but only to the extent that
12 relief from stay was not previously authorized by the Court during this case. The Plan
13 Confirmation Order may also be revoked under very limited circumstances. The Court may
14 revoke the Plan Confirmation Order if it was procured by fraud and if a party in interest brings
15 an adversary proceeding to revoke confirmation within 180 days after the entry of the Plan
16 Confirmation Order.

17 **D. Final Decree.**

18 Once this estate has been fully administered as referred to in Bankruptcy Rule 3022, the
19 Reorganized Debtor will file a motion with the Court to obtain a final decree to close the
20 Debtor's Chapter 11 case. The Reorganized Debtor shall be responsible for the timely payment
21 of all fees incurred pursuant to 28 U.S.C. Section 1930(a)(6).

22 Dated: February 13, 2013

STRADELLA INVESTMENTS, INC.

23
24 By: _____
25 ABDOLRASHID BOROUMAND
26
27
28

1 Presented By:

2 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

3 By: /s/ Timothy J. Yoo

4 TIMOTHY J. YOO
5 DANIEL H. REISS
6 Attorneys for Chapter 11
7 Debtor and Plan Proponent
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EXHIBIT 2


Name	C/U/D	Scheduled Claim			Proof of Claim					
		Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured	Claim No.	Date Claim Filed	Admin	Secured	Priority	Unsecured
Abdolfarshid Boroumand Franchise Tax Board				Unknown	1	11/5/2010			829.28	
Karlin and Peebles, LLP				\$56,959.36						
Northwoods Corporation				\$59,497,403.00						
Ronald Schwartz	U/D	\$1,473,337.24			2	8/15/2012		1,715,374.74		
Sheppard Mullin	U			\$117,000.00						
St. Cloud Company, Inc.				\$126,989.60						
Viridian Investment Services, Ltd.		\$59,497,403.00								
Viridian Investment Services, Ltd.		\$231,579.36								

EXHIBIT 3

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY N.H.S.
WHEN RECORDED MAIL TO:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive
4th Floor
Costa Mesa, CA 92626
Attn: John R. Simon, Esq.

DOC # 2006-0181839
03/14/2006 08:00A Fee:109.00
Page 1 of 35
Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder



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INTERCREDITOR AGREEMENT

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(\$3.00 Additional Recording Fee Applies)

STC-6250 9/96 (Rev. 8/97)

SMRH 0000793

INTERCREDITOR AGREEMENT

by and between

**NORTHWOODS CORPORATION, STRADELLA INVESTMENTS, INC., SARBONNE
INVESTMENTS, INC., SPIROS INVESTMENTS, INC., SAVONA INVESTMENTS, INC.,
SANDAL INVESTMENTS, INC., TORTUOSO INVESTMENTS, INC., and TAVISTOCK
INVESTMENTS, INC.,
as First Lender,**

and

**FIRST NATIONAL OF AMERICA, INC.,
as Second Lender**

Dated as of March 14, 2006

Eagle Ridge Intercreditor Agreement
NYDOCS1-808006.7

SMRH 0000576

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT (this "Agreement") is dated as of March __, 2006 by and between NORTHWOODS CORPORATION, a Delaware corporation, STRADELLA INVESTMENTS, INC., a California corporation ("Stradella"), SARBONNE INVESTMENTS, INC., a California corporation, SPIROS INVESTMENTS, INC., a California corporation, SAVONA INVESTMENTS, INC., a California corporation, SANDAL INVESTMENTS, INC., a California corporation, TORTUOSO INVESTMENTS, INC., a California corporation, and TAVISTOCK INVESTMENTS, INC., a California corporation (individually and collectively, "First Lender") and FIRST NATIONAL OF AMERICA, INC., a Florida corporation ("Second Lender").

RECITALS

WHEREAS, First Lender has made or is the owner and holder of a loan to RM Eagle LLC, a Delaware limited liability company ("Borrower") in the original principal amount of \$25,000,000.00 (the "First Loan"), which First Loan is evidenced by that certain Secured Promissory Note (the "First Note") dated as of the date hereof (the "Closing Date") made by Borrower to First Lender, and secured by that certain Long Form Deed of Trust and Assignment of Rents made by Borrower for the benefit of First Lender (the "First Mortgage"), constituting a first deed of trust lien on certain real property located in Rancho Mirage, California and more particularly described in Exhibit A annexed hereto (the "Premises"); and

WHEREAS, Second Lender has made or is the owner and holder of a loan to Borrower in the original principal amount of \$43,000,000.00 (the "Second Loan"), which Second Loan is evidenced by a Promissory Note dated as of the Closing Date (the "Second Note") made by Borrower to Second Lender, and secured by, among other things, a second deed of trust lien on the Premises;

WHEREAS, First Lender and Second Lender desire to enter into this Agreement to provide for certain agreements with respect to the First Loan Documents (as such term is hereinafter defined) and the Second Loan Documents (as such term is hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, First Lender and Second Lender each hereby agrees as follows:

Section 1. Certain Definitions; Rules of Construction. As used in this Agreement, the following capitalized terms shall have the following meanings:

"Affiliate" of any specified Person shall mean any other Person directly or indirectly Owning and Controlling, or directly or indirectly Owned and Controlled by, or under direct or indirect common Ownership and Control with, such specified Person. As used in this definition, "Owning", "Owned" and "Ownership" mean the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of the Person in question.

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

"Award" has the meaning provided in Section 6(d).

"Bankruptcy Code" means Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Borrower" has the meaning provided in the Recitals hereto.

"Borrower Proceeding" means a Proceeding in which Borrower is a debtor.

"Closing Date" is defined in the recitals hereto.

"Continuing First Loan Event of Default" means an Event of Default under the First Loan Documents for which (i) First Lender has provided notice of such Event of Default to Second Lender in accordance with Section 8 hereof and (ii) the First Loan Monetary Cure Period or First Loan Non-Monetary Cure Period, as applicable, has expired.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. "Controlled by," "Controlling" and "under common Control with" shall have the respective correlative meaning thereto.

"Control Affiliate" of any specified Person shall mean any other Person directly or indirectly Controlling, or directly or indirectly Controlled by, or under direct or indirect common Control with, such specified Person.

"Enforcement Action" means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including the taking of possession or control of the Premises or any material portion thereof, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to First Lender under the First Loan Documents, or to Second Lender under the Second Loan Documents, as the case may be, at law, in equity or otherwise with respect to Borrower and/or the Premises.

"Event of Default" as used herein means (i) with respect to the First Loan and the First Loan Documents, any default or event of default thereunder which has occurred and is continuing (i.e., has not been cured by Borrower or waived in writing by First Lender); and (ii) with respect to the Second Loan and the Second Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (i.e., has not been cured by Borrower or waived in writing by Second Lender).

"First Lender" has the meaning provided in the first paragraph of this Agreement.

"First Loan" has the meaning provided in the Recitals hereto.

"First Loan Default Notice" has the meaning provided in Section 8(a).

"First Loan Documents" means, collectively, the First Note and the First Mortgage, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

"First Loan Event of Default" means any default that occurs under the First Mortgage, including without limitation under Section 10 thereof, or under any other First Loan Document.

"First Loan Liabilities" shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the First Loan Documents and all amounts due or to become due pursuant to the First Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

"First Loan Modification" has the meaning provided in Section 5(a).

"First Loan Monetary Cure Period" means the period commencing with the occurrence of a monetary default under the First Loan Documents (i.e., with respect to any failure by Borrower to make any payment of principal or interest when due or to make a payment of any other sum of money thereunder) and ending upon the expiration of ten (10) Business Days after the later of (i) the receipt from First Lender of the First Loan Default Notice and (ii) the expiration of Borrower's cure period, if any (a "Borrowers' Monetary Cure Period") to cure such monetary default as set forth in the First Loan Documents.

"First Loan Non-Monetary Cure Period" means the period of time during which Second Lender has the right to cure a non-monetary default under the First Loan Documents pursuant to Section 8(c) hereof.

"First Loan Purchase Price" means a price, calculated as of the Purchase Date, equal to the outstanding principal balance of the First Loan, together with all accrued and unpaid interest.

"First Mortgage" has the meaning provided in the Recitals hereto.

"Institutional Lender" means any institutional lender such as a bank, insurance company, pension trust, pension fund, investment bank, trust company, investment company, money management firm or other business entity that is engaged in the business of making or owning real estate loans or operating commercial properties.

"Lender" means First Lender and/or Second Lender, as the context may require.

"Patriot Act Requirements" means that, at all times, (a) none of the funds or other assets of the Person in question (which, for the purposes of this paragraph, is intended to apply to a proposed Permitted Transferee) or any principal (for purposes of this paragraph a principal shall be deemed to be the owner of a one percent (1%) or greater interest) in such Person, shall constitute property of, or be beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, the Uniting and

Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruction Terrorism (the "USA Patriot Act") Act of 2001 (Public Law 107-56), The Trading with the Enemy Act, 50 U.S.C. App. I *et seq.*, and any Executive Orders or regulations promulgated under any such legislation with the result that the investment in any such Person in question or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law (any such person, entity or government being referred to herein as an "Embargoed Person"); (b) no Embargoed Person shall have any interest of any nature, as applicable, with the result that the investment in any such Person in question or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law; and (c) none of the funds of the Person in question or any principal in such Person, as applicable, shall have been derived from any unlawful activity with the result that the investment in such Person or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law.

"Permitted Transferee" means any reputable Person of good character and, in the case of a closely-held entity, for which each principal that holds a controlling interest therein is also reputable and of good character, and which Person(s) and principal(s) are in compliance with the Patriot Act Requirements.

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

"Premises" has the meaning provided in the Recitals hereto.

"Proceeding" has the meaning provided in Section 7(c).

"Protective Advances" means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises or any portion thereof (including all reasonable attorneys' fees, costs relating to the entry upon the Premises or any portion thereof to make repairs and the payment, purchase, contest or compromise of any encumbrance, charge or lien which in the good faith judgment of Lender appears to be prior or superior to the First Mortgage or Second Mortgage) or the Separate Collateral or any portion thereof, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Second Loan, amounts advanced or otherwise paid by Second Lender pursuant to Section 8.

"Purchase and Sale Agreement" means that certain Purchase and Sale Agreement dated as of February 21, 2006 between First Lender, as Seller, and Borrower, as Buyer.

"Purchase Date" has the meaning provided in Section 11(a)(i).

"Purchase and Sale Documents" means, collectively, the Purchase and Sale Agreement and all of the other documents or instruments executed or delivered in connection therewith,

including without limitation, the Participation Agreement (and the Memoranda executed in connection therewith), the Purchase Agreement Memorandum and the Hotel Agreement.

“Purchase Notice” has the meaning provided in Section 11(a)(i).

“Purchase Option Event” has the meaning provided in Section 11(a)(i).

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

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

“Second Loan Documents” means the documents evidencing, securing or otherwise executed in connection with the Second Loan, which are listed on Exhibit B attached hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“Second Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Second Loan Documents and all amounts due or to become due pursuant to the Second Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post petition interest.

“Second Loan Modification” has the meaning provided in Section 5(b).

“Second Mortgage” means that certain Deed of Trust, Assignment of Lease and Rents and Security Agreement (and Fixture Filing) dated as of the date hereof made by the Borrower for the benefit of Second Lender.

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

“Separate Collateral” means any other collateral given as security for the Second Loan pursuant to the Second Loan Documents, in each case not directly constituting security for the First Loan.

“Third Mortgage” means that certain Subordinate Long Form Deed of Trust and Assignment of Rents of even date herewith made by Borrower for the benefit of First Lender.

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

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

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

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

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

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

(v) the headings and captions used in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of the provisions of this Agreement;

(vi) the terms "includes" or "including" shall mean without limitation by reason of enumeration;

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

(viii) the words "to Second Lender's knowledge" or "to the knowledge of Second Lender" (or words of similar meaning) shall mean to the actual knowledge of officers of Second Lender with direct oversight responsibility for the Second Loan without independent investigation or inquiry and without any imputation whatsoever; and

(ix) the words "to First Lender's knowledge" or "to the knowledge of First Lender" (or words of similar meaning) shall mean to the actual knowledge of officers of First Lender with direct oversight responsibility for the First Loan without independent investigation or inquiry and without any imputation whatsoever.

Section 2. Approval of Loans and Loan Documents.

(a) Second Lender. Second Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the First Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the First Loan Documents; (ii) the execution, delivery and performance of the First Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Second Loan Documents; (iii) First Lender is not under any obligation or duty to, nor has First Lender represented that it will, see to the application of the proceeds of the First Loan; and (iv) any application or use of the proceeds of the First Loan for purposes other than those provided in the First Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the First Loan Documents.

(b) First Lender. First Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Second Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Second Loan Documents, (ii) the execution, delivery and performance of the Second Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the First Loan Documents or the Purchase and Sale Documents, (iii) Second Lender is under no obligation or duty to, nor has Second Lender represented that it will, see to the application of the proceeds of the Second Loan and (iv) any application or use of the proceeds of the Second Loan for purposes other than those provided in the Second Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Second Loan Documents. First Lender hereby acknowledges and agrees that any conditions precedent to First Lender's consent to deed of trust or other financing as set forth in the First Loan Documents or the Purchase and Sale Documents or any other agreements with Borrower, as they apply to the Second Loan Documents or the making of the Second Loan, have been satisfied or waived.

Section 3. Representations and Warranties.

(a) Second Lender. Second Lender hereby represents and warrants as follows:

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

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

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

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

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

(vi) To the knowledge of Second Lender, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Second Lender of this

Agreement or consummation by Second Lender of the transactions contemplated by this Agreement.

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

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

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

(x) The Second Loan is not cross-defaulted with any loan other than the First Loan.

(xi) Second Lender is in compliance with the USA Patriot Act.

(b) First Lender. First Lender hereby represents and warrants as follows:

(i) The First Note and the First Mortgage constitute all of the First Loan Documents. To First Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the First Loan Documents.

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

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

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

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

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

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

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

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

(x) The First Loan is not cross-defaulted with any other loan. The Premises do not secure any indebtedness or obligations owing to First Lender or any of its Affiliates from Borrower or any other Person (other than the First Loan and the obligations secured by the Third Mortgage).

(xi) First Lender is in compliance with the USA Patriot Act.

Section 4. Transfer of Second Loan or First Loan. (a) Second Lender may Transfer the Second Loan, and any interest therein, to Fairway Onshore Loan Fund LLC, a Delaware limited liability company, and/or to any Institutional Lender.

(b) First Lender shall not Transfer the First Loan, or any of its rights or interests therein, except that (i) First Lender may Transfer all (but not part) of its rights and interests under the First Loan to a Permitted Transferee and (ii) any constituent entity in First Lender may Transfer its rights and interests in the First Loan to any other constituent entity therein, provided that, in each case, (A) First Lender shall not be in default under this Agreement, (B) no later than thirty (30) days prior to the proposed Transfer, First Lender shall have notified Second Lender in writing of the proposed Transfer, including the name of the proposed transferee and, if the proposed transferee is a closely-held entity, the holder(s) of the ownership interests therein, and, if the proposed transferee is a constituent entity, shall thereafter deliver such documents as Second Lender shall reasonably require in order to determine that the proposed transferee is a constituent entity transferee, and (C) in the case of clause (b)(i) hereof, any transferee thereunder shall, if required by Second Lender as a condition to such Transfer, execute and deliver to Second Lender a written confirmation of its agreement to comply with all of the terms and conditions of this Agreement.

(c) If more than one Person shall hold a direct interest in the First Loan, the holder(s) of more than 50% of the aggregate principal amount of the First Loan (or if none of the Persons holding a direct interest own more than 50%, then the holder of a plurality of such interests) shall designate by written notice to Second Lender one of such Persons (the "Directing First Lender") to act on behalf of all such Persons holding an interest in the First Loan. Each entity comprising First Lender hereby designates Stradella to be the Directing First Lender hereunder. Except as otherwise agreed in writing by First Lender and Second Lender, the Directing First Lender shall have the sole right to receive any notices which are required to be given or which may be given to First Lender pursuant to this Agreement and to exercise the rights and power given to First Lender hereunder, including any approval rights of First Lender. Once the Directing First Lender has been designated hereunder, Second Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than 50% of the aggregate principal amount of the First Loan (or if none of the Persons holding a direct interest own more than 50%, then the aggregate holder of a plurality of such interests) of the designation of a different Person to act as the Directing First Lender. Notwithstanding any provision of this Section 4(c) to the contrary, each Person holding an interest or participation in the First Loan shall be deemed to be First Lender for purposes of the rights and restrictions contained in this Section 4 and shall be subject to the rights and restrictions thereof with respect to such Person's interest in the First Loan.

Section 5. Modifications, Amendments, etc. (a) First Lender shall not, without the prior written consent of Second Lender, in its sole discretion, in each instance, enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "First Loan Modification") of the First Loan or the First Loan Documents.

(b) Second Lender shall have the right, without the consent of First Lender in each instance, to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Second Loan Modification") of the Second Loan or the Second Loan Documents, provided that no such Second Loan Modification shall (i) increase the interest rate, (ii) increase the principal amount of the Second Loan such that it would thereby be equal to greater than a 70% loan-to-value ratio, or (iii) shorten the scheduled maturity date of the Second Loan (i.e., which is thirty (30) months from the closing date thereof), without First Lender's consent. Without limiting the generality of the foregoing, the following shall not be deemed to contravene the provisions of this Section 5(b): (A) any amounts funded by Second Lender under the Second Loan Documents as a result of the making of any Protective Advances by Second Lender, (B) interest accruals or accretions and any compounding thereof (including default interest), and (C) a Second Loan Modification in the case of a work-out or other surrender, extension, compromise, release, renewal, or indulgence relating to the Second Loan.

(c) First Lender shall deliver to Second Lender immediately upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the First Loan Documents (including any side letters, waivers or consents entered into, executed or delivered by First Lender), it being understood that nothing contained in this Section 5(c) is intended to modify or limit in any way the prohibition contained in Section 5(a) hereof.

(d) Second Lender shall deliver to First Lender immediately upon execution thereof copies of any and all material modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the First Loan Documents.

Section 6. Subordination of Second Mortgage.

(a) Second Lender hereby acknowledges and agrees that the Second Mortgage, and the liens and security interests created thereby, shall be subordinate and junior to the First Mortgage, and the liens and security interests created thereby, provided that such subordination shall not apply to any First Loan Modification entered into in violation of Section 5(a) above.

(b) Notwithstanding anything to the contrary contained in this Section 6 or elsewhere in this Agreement, and notwithstanding the existence of a default under the First Mortgage or any of the First Loan Documents, nothing contained herein shall serve to restrict in any way whatsoever the right of Second Lender to receive and retain payments made on account of the Second Loan (including, without limitation, any scheduled payments, prepayments, prepayment fees, repayment at maturity, late charges, default interest any other payments

thereunder), or the right of Second Lender to exercise its rights and remedies, at law, in equity or otherwise, against Borrower under the Second Loan Documents, including without limitation to realize upon its lien against the Premises pursuant to an Enforcement Action or otherwise. Additionally, this Agreement shall not be construed as subordinating and shall not subordinate, limit or restrict the right of Second Lender to exercise its rights and remedies, at law, in equity or otherwise, in order to realize upon any of the Separate Collateral, and First Lender hereby acknowledges and agrees that First Lender does not have, and shall not hereafter acquire, any lien on, or any other interest whatsoever in the Separate Collateral, or any part thereof.

(c) Nothing contained herein shall prohibit Second Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Second Loan). Second Lender shall notify First Lender of any Protective Advances made by Second Lender within a reasonable time thereafter.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, First Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"). To the extent the amount of the Award is in excess of amounts required to be paid to First Lender under the First Loan Documents and/or applied to repair or restore the Premises, such excess Award shall (i) first, be paid to or at the direction of Second Lender until the Second Loan has been paid in full, and (ii) second, be paid to Borrower.

Section 7. Marshalling; Bankruptcy.

(a) Marshalling of Assets and Information. Each of Second Lender and First Lender hereby waives any requirement for marshalling of assets in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the First Loan Documents or the Second Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Second Lender and First Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither First Lender nor Second Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations.

(b) No Fiduciary Duties. Second Lender agrees that First Lender owes no fiduciary duty to Second Lender in connection with the administration of the First Loan and the First Loan Documents and Second Lender agrees not to assert any such claim. First Lender agrees that Second Lender owes no fiduciary duty to First Lender in connection with the administration of the Second Loan and the Second Loan Documents and First Lender agrees not to assert any such claim.

(c) Bankruptcy. (i) The provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action by or against Borrower under any existing or future law of any

jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (as to Borrower or any other entity, a "Proceeding").

(ii) Each of First Lender and Second Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against Borrower without the prior written notification of the other at least ten (10) days in advance thereof, together with a detailed statement specifying the cause of the action to be taken. Without limiting the generality of the foregoing, for as long as the First Loan or Second Loan shall remain outstanding, neither First Lender nor Second Lender shall, and shall not solicit any person or entity to, and shall not direct or cause Borrower to, without having first notified the other Lender at least ten (10) days in advance thereof, together with a detailed statement specifying the cause of the action to be taken: (1) commence any Proceeding with respect to Borrower; (2) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (3) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (4) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (5) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, the Premises (or any portion thereof) or any other collateral securing the First Loan (or any portion thereof); (6) make an assignment for the benefit of any creditor of Borrower; or (7) take any action in furtherance of any of the foregoing.

(d) To the extent any payment under the First Loan Documents or Second Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the First Loan or Second Loan or part thereof originally intended to be satisfied shall for all purposes of this Agreement be deemed to be reinstated and outstanding as if such payment had not occurred.

Section 8. Rights of Cure to Second Lender.

(a) First Loan Default Notice. Prior to First Lender's commencing any Enforcement Action by reason of an Event of Default under the First Loan Documents, First Lender shall provide written notice of the default which would permit First Lender to commence such Enforcement Action to Second Lender whether or not First Lender is obligated to give notice thereof to Borrower (each, a "First Loan Default Notice"). First Lender shall permit Second Lender an opportunity to cure such default in accordance with the provisions of this Section 8. Prior to or concurrently with undertaking any curative action with respect to the First Loan, First Lender shall provide Second Lender with written notice thereof. First Lender shall, upon request by Second Lender, advise Second Lender as to the current status of any Enforcement Action.

(b) First Loan Monetary Cure Period. If the default identified in a First Loan Default Notice is a monetary default (i.e., relating to any failure by Borrower to pay a

sum of money), Second Lender shall have until the expiration of the applicable First Loan Monetary Cure Period to cure such monetary default. Second Lender shall not be required, in order to effect a cure hereunder within the First Loan Monetary Cure Period, to pay any applicable late charges or default rate interest, and no late charges or default rate interest shall accrue as against Second Lender for such period.

(c) First Loan Non-Monetary Cure Period. If the default is of a non-monetary nature, Second Lender shall have the same period of time as Borrower under the First Loan Documents to cure such non-monetary default (which period shall commence on the date of giving of the First Loan Default Notice to Second Lender) plus thirty (30) days; provided, however, if such non-monetary default cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Second Lender (or, with respect to a non-monetary default that is not susceptible of cure, if Second Lender shall be diligently pursuing the foreclosure of the Second Loan), Second Lender shall be given an additional period of time as is reasonably necessary for Second Lender in the exercise of due diligence to cure such non-monetary default (or complete such foreclosure) for so long as (i) Second Lender makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal and/or interest payments under the First Loan, if any, and any other amounts due under the First Loan Documents (other than default rate interest), (ii) such additional period of time does not exceed one hundred twenty (120) days, unless such non-monetary default is of a nature that cannot be cured within such hundred twenty (120) days or requires foreclosure of the Second Loan in order to cure (or such foreclosure requires more than one hundred twenty (120) days to complete with the exercise of reasonable diligence), in which case, Second Lender shall have such additional time as is reasonably necessary to foreclose on the Second Loan and cure such non-monetary default (or to complete such foreclosure, as the case may be), provided Second Lender is diligently pursuing such cure and/or foreclosure, as applicable, and (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower and no Borrower Proceeding exists.

(d) Copies of Default Notices. First Lender shall deliver to Second Lender a copy of any notice of an Event of Default under the First Loan Documents simultaneously with the delivery of such notice to Borrower. Notwithstanding anything to the contrary contained in the First Loan Documents or in this Agreement to the contrary, no Event of Default shall be deemed to exist under the First Loan Documents unless and until Second Lender shall have received a copy of the notice of such Event of Default as required in the immediately preceding sentence.

Section 9. Intentionally Omitted.

Section 10. Intentionally Omitted.

Section 11. Right to Purchase First Loan.

(a) (i) If (A) the First Loan has been accelerated or is unpaid at maturity, (B) any Enforcement Action has been commenced and is continuing under the First Loan Documents, (C) Borrower has become a debtor in any Proceeding or (D) a Continuing First Loan Event of Default has been continuing for ten (10) days or more (each of the foregoing, a

"Purchase Option Event"), Second Lender shall have the right, exercisable by giving written notice to First Lender (such notice, the "Purchase Notice"), to purchase, in whole but not in part, the First Loan for the First Loan Purchase Price. To be effective the Purchase Notice shall be given no later than ten (10) days prior to the date scheduled for any foreclosure sale of the Premises. If Second Lender notifies First Lender in a timely manner that it desires to purchase the First Loan and the First Loan Documents by giving the Purchase Notice, the closing of such acquisition shall occur on the date ("Purchase Date") designated by Second Lender in the Purchase Notice which Purchase Date shall be not later than the earlier of (I) ten (10) Business Days after the date the Purchase Notice is received by First Lender and (II) the date that is five (5) Business Days preceding the date of any scheduled foreclosure sale under the First Loan Documents. Concurrently with payment to First Lender of the First Loan Purchase Price, First Lender shall deliver or cause to be delivered to Second Lender (x) all First Loan Documents held by or on behalf of First Lender and will execute in favor of Second Lender or its designee assignment documentation, in form and substance reasonably acceptable to Second Lender, at the sole cost and expense of Second Lender, to assign the First Loan and its rights under the First Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the First Loan and that First Lender owns the First Loan free and clear of any liens or encumbrances, other than liens and encumbrances that are then being released), and (y) all funds then on deposit in the accounts created under the First Loan Documents.

(ii) In addition to any and all other rights of Second Lender herein, First Lender agrees that it will not accept a deed in lieu of foreclosure to the Premises (a "Deed in Lieu") prior to the later of (x) twenty (20) Business Days after the earlier to occur of acceleration of the First Loan or the commencement of a foreclosure proceeding under the First Loan Documents and (y) ten (10) Business Days after First Lender gives Second Lender written notice of its intention to accept a Deed-in-Lieu, provided that, if Second Lender shall deliver a Purchase Notice to First Lender prior to the expiration of such twenty (20) or ten (10) Business Day period, as applicable, First Lender shall not accept the Deed in Lieu to the Premises, provided that Second Lender pays the First Loan Purchase Price to First Lender and acquires the First Loan on or prior to the Purchase Date (as set forth in the Purchase Notice and satisfying the requirements set forth in Section 11(a)(i)).

(b) Subject to the provisions of Section 11(a), the right of Second Lender to purchase the First Loan shall terminate (i) upon a transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or (ii) with respect to a specific Purchase Option Event, if such Purchase Option Event ceases to exist in accordance with its terms.

Section 12. Additional Understandings. For as long as the Second Loan remains outstanding, First Lender shall notify Second Lender promptly if Borrower seeks or requests a release of the lien of the First Loan or seeks or requests First Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the First Loan. In the event of a request by Borrower for First Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against

the Premises, First Lender shall, if First Lender has the right to consent, obtain the prior written consent of Second Lender prior to First Lender's granting of its consent or agreement thereto.

Section 13. Obligations Hereunder Not Affected. (a) All rights, interests, agreements and obligations of First Lender and Second Lender under this Agreement shall remain in full force and effect irrespective of:

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

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

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

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

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

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

Section 14. Miscellaneous.

(a) Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 14. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) upon receipt if mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (c) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To First Lender:

Stradella Investments, Inc.
c/o Abdolrashid Boroumand
28312 Avenida La Mancha
San Juan Capistrano, CA 92675
Attention:

with a copy to:

Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive
Costa Mesa, CA 92626-1993
Attention: John P. Simon, Esq.

To Second Lender:

First National of America, Inc.
188 Mount Airy Road
Basking Ridge, New Jersey 07920
Attention: Jerry P. Sager

with a copy to:

Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Attention: Joseph Bulian, Esq.

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

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

(c) Further Assurances. So long as all or any portion of the First Loan or Second Loan remains unpaid and any First Loan Document encumbers the Premises or any Second Loan Document encumbers the Premises, First Lender and Second Lender shall each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

(d) No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

(e) Successors and Assigns. This Agreement shall bind all successors and permitted assigns of First Lender and Second Lender and shall inure to the benefit of all successors and permitted assigns of First Lender and Second Lender.

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

(g) Legal Construction. In all respects, including matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

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

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

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

(k) Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the First Loan Documents or the Second Loan Documents, the terms and conditions of this Agreement shall control.

(l) No Release. Nothing herein contained shall operate to (a) release Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the First Loan Documents or (ii) any liability of Borrower under the First Loan Documents or (b) release Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Second Loan Documents or (ii) any liability of Borrower under the Second Loan Documents.

(m) Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the first to occur of (i) payment in full of all amounts payable to First Lender under the First Loan Documents and discharge of the First Mortgage as a lien against the Premises, or (ii) payment in full of all amounts payable to Second

Lender under the Second Loan Documents and discharge of the Second Mortgage as a lien against the Premises, or (iii) the transfer of the Premises by foreclosure of the Second Loan Documents or other Enforcement Action, or (iv) the transfer of the Premises by foreclosure as permitted hereby of the First Loan Documents or other Enforcement Action as permitted hereby; provided, however, that (x) any rights or remedies of any party hereto arising out of any breach of any provision hereof occurring prior to the date of termination shall survive such termination and (y) the Second Lender shall be entitled to purchase the First Loan for the First Loan Purchase Price within 10 (ten) Business Days after acquisition by Second Lender of the Premises by reason of an Enforcement Action.

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

(o) Injunction. Each of First Lender and Second Lender acknowledges (and waives any defense based on a claim to the contrary) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by First Lender or Second Lender hereunder would cause irreparable harm to the other. Accordingly, First Lender and Second Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such nonbreaching party.

(p) Subordination and Standstill Agreement. First Lender and Second Lender are also parties to that certain Subordination and Standstill Agreement dated as of the date hereof (the "Subordination Agreement"), and nothing contained herein is intended to pertain to the Subordinate Documents (as defined in the Subordination Agreement), or affect the rights and obligations of Second Lender and First Lender with respect to the Subordinate Documents and Second Loan Documents, respectively, as set forth in the Subordination Agreement.

(q) Reciprocal Disclaimer. (i) First Lender and Second Lender are each sophisticated lenders and/or investors in real estate and their respective decision to enter into the First Loan and the Second Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the First Loan Documents and the Second Loan Documents and such other matters, materials and market conditions and criteria which each of First Lender and Second Lender deem relevant. Each of First Lender and Second Lender has not relied in entering into this Agreement, and respectively, the First Loan, the First Loan Documents, the Second Loan or the Second Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of First Lender and Second Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of First Lender and Second Lender have not relied upon, any statements, representations, warranties

or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of First Lender and Second Lender acknowledges that the other has made no representations or warranties as to the First Loan or the Second Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the First Loan or the Second Loan).

(ii) Each of First Lender and Second Lender acknowledges (x) that the First Loan and the First Loan Documents and the Second Loan and Second Loan Documents are distinct, separate transactions and loans, separate and apart from each other, and (y) that each party to this Agreement is a distinct and separate lender with a distinct and separate loan and with its own rights, remedies and collateral which are not in necessarily aligned with that of the other parties hereto.

Section 15. Expenses.

(a) To the extent not paid by Borrower or out of or from any collateral securing the First Loan which is realized by First Lender, Second Lender agrees upon demand to pay to First Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts or agents, which First Lender may incur in connection with the (i) exercise or enforcement of any of the rights of First Lender against Second Lender hereunder to the extent that First Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Second Lender to perform or observe any of the provisions hereof.

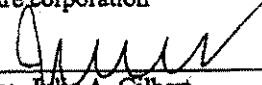
(b) To the extent not paid by Borrower out of or from any collateral securing the applicable Second Loan which is realized by Second Lender, First Lender agrees upon demand to pay to Second Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts or agents, which Second Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Second Lender against First Lender hereunder to the extent that Second Lender is the prevailing party in any dispute with respect thereto or (ii) failure by First Lender to perform or observe any of the provisions hereof.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, First Lender and Second Lender have executed this Agreement as of the date and year first set forth above.

FIRST LENDER:

NORTHWOODS CORPORATION,
a Delaware corporation

By: 
Name: Julie A. Gilbert
Title: President

STRADELLA INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SARBONNE INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SPIROS INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SAVONA INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SANDAL INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

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a Delaware corporation

By: _____
Name: Julie A. Gilbert
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STRADELLA INVESTMENTS, INC.
a California corporation

By: Abdolrashid Boroumand
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Title: President

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SANDAL INVESTMENTS, INC.
a California corporation

By: Abdolrashid Boroumand
Name: Abdolrashid Boroumand
Title: President

TORTUOSO INVESTMENTS, INC.
a California corporation

By: Abdolrashid Boroumand
Name: Abdolrashid Boroumand
Title: President

TAVISTOCK INVESTMENTS, INC.
a California corporation

By: Abdolrashid Boroumand
Name: Abdolrashid Boroumand
Title: President

SECOND LENDER:

FIRST NATIONAL OF AMERICA, INC.

By: _____
Name:
Title:

TORTUOSO INVESTMENTS, INC.
a California corporation

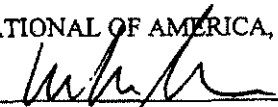
By: _____
Name: Abdolrashid Boroumand
Title: President

TAVISTOCK INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SECOND LENDER:

FIRST NATIONAL OF AMERICA, INC.

By:  _____
Name: *N. LEE BECK*
Title: *MANAGING DIRECTOR*

ACKNOWLEDGMENT

State of California
County of Los Angeles

On 3/8/06 before me, Patricia Lanier, Notary Public
(here insert name and title of the officer)

personally appeared Julie A. Gilbert

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

WITNESS my hand and official seal.

Signature Patricia Lanier

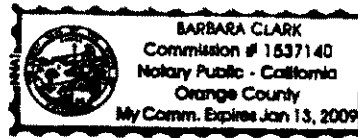


(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.

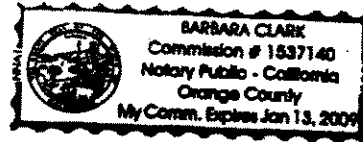


Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.



Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.



Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.

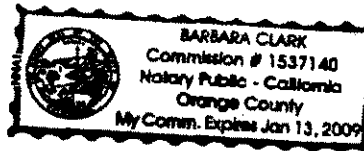


Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.

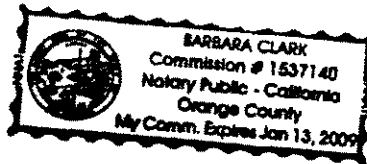


Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.

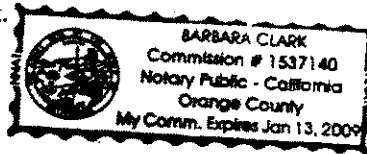


Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.



Signature Barbara Clark

STATE OF New Jersey)
)
) ss:
COUNTY OF Somerset)

KRISTINE H CRUZ-VASQUEZ
MY COMMISSION EXPIRES
SEPTEMBER 1ST 2010
NOTARY PUBLIC

On the 9th day of March in the year 2006 before me, the undersigned, personally appeared Walter La Brie, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Kristine H Cruz-Vasquez
Notary Public

STATE OF)
) ss:
COUNTY OF)

On the ___ day of March in the year 2006 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

NYDOCS1-408006.7

24

SMRH 0000607

Exhibit 3 000099

EXHIBIT A

LEGAL DESCRIPTION

The land is described as follows:

PARCEL 1:

THAT PORTION OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN DEED TO COUNTY OF RIVERSIDE, RECORDED MAY 24, 1949 IN BOOK 1079 PAGE 60 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE NORTH LINE OF SAID SECTION 31, BEING A POINT ON SAID NORTH LINE NORTH 89° 42' 26" EAST, 40.00 FEET THEREON FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH 00° 09' 54" WEST, 2,860.80 FEET ON SAID EAST LINE; THENCE SOUTH 00° 10' 45" WEST, 1001.09 FEET ON SAID EAST LINE TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE WESTERLY OF 2,040.00 FEET RADIUS; THENCE SOUTHERLY 404.64 FEET ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 21' 53", TO THE WEST LINE OF SAID SECTION 31; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE ON THE SOUTH LINE OF SAID SECTION, NORTH 89° 50' 47" EAST, 1,972.62 FEET, NORTH 89° 51' 01" EAST, 2,651.43 FEET AND NORTH 89° 52' 18" EAST, 783.13 FEET TO THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTH 00° 12' 39" EAST, 5,335.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE ON THE NORTH LINE OF SAID SECTION SOUTH 89° 39' 19" WEST, 1,321.44 FEET; THENCE SOUTH 89° 44' 58" WEST, 1,322.01 FEET; AND SOUTH 89° 42' 26" WEST, 2,734.41 FEET TO THE POINT OF BEGINNING;

EXCEPTING THAT PORTION DESCRIBED BY DEED TO THE COUNTY OF RIVERSIDE, RECORDED OCTOBER 15, 1986 AS INSTRUMENT NO. 258010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

THAT PORTION OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF

NYDOCS1-815085.1

SMRH 0000608

CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD
(80.00 FEET WIDE) AS DESCRIBED IN THE DEED TO COUNTY OF RIVERSIDE,
RECORDED AUGUST 2, 1949 IN BOOK 1099 PAGE 31 OF OFFICIAL RECORDS OF
RIVERSIDE COUNTY, CALIFORNIA, WITH THE WEST LINE OF SECTION 31, IN
TOWNSHIP 4 SOUTH, RANGE 6 EAST; SAID INTERSECTION BEING A POINT ON A
CURVE IN SAID EAST LINE CONCAVE WESTERLY OF 2,040.00 FEET
RADIUS TO WHICH A RADIAL BEARS SOUTH 78° 27' 22" EAST;
THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET ON SAID WEST LINE OF
SECTION 31 TO THE SOUTHWEST CORNER OF SAID SECTION 31, BEING THE
SOUTHEAST CORNER OF SAID
SECTION 36;
THENCE SOUTH 89° 52' 25" WEST, 536.35 FEET ALONG THE SOUTH LINE OF SAID
SECTION 38 TO THE INTERSECTION OF THE EAST LINE OF SAID DEL RIO DEL
SOL ROAD, SAID INTERSECTION BEING A POINT ON A CURVE OF SAID EAST
LINE, CONCAVE EASTERLY OF 1,960.00 FEET RADIUS TO WHICH A RADIAL BEARS
NORTH 73° 55' 05" WEST;
THENCE ALONG SAID EAST LINE, NORTHERLY 482.81 FEET ALONG SAID CURVE,
THROUGH A CENTRAL ANGLE OF 14° 06' 50"; THENCE NORTH 30° 11' 45" EAST,
229.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY OF
2,040.00 FOOT RADIUS AND NORTHERLY 664.10 FEET ON SAID CURVE THROUGH
A CENTRAL ANGLE OF 18° 39' 07" TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY
OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO.
40088 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9

NYDOCS1-815085.1

SMRH 0000609

EXHIBIT B

SECOND LOAN DOCUMENTS

(All documents dated as of March 14, 2006, unless otherwise indicated.)

- 1 Promissory Note
- 2 Deed of Trust
- 3 Assignment of Leases and Rents
- 4 Guaranty
- 5 Environmental Indemnity
- 6 Assignment of Licenses, Permits and Approvals
- 7 Two (2) UCC-1 Financing Statements
- 8 Servicing Fee Agreement
- 9 Intercreditor Agreement
- 10 Subordination and Standstill Agreement
- 11 Escrow Instruction Letter
- 12 W-9

EXHIBIT 4

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE COMPANY N.H.S.

WHEN RECORDED MAIL TO:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive
4th Floor
Costa Mesa, CA 92626
Attn: John R. Simon, Esq.

DOC # 2006-0183118
03/15/2006 08:00A Fee:103.00
Page 1 of 33
Recorded in Official Records
County of Riverside
Larry M. Ward
Assessor, County Clerk & Recorder



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SUBORDINATION AND STANDSTILL AGREEMENT

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(\$3.00 Additional Recording Fee Applies)

ST06CSD 8/96 (Rev. 8/97)

SMRH 0000794

Exhibit 4 000104

SUBORDINATION AND STANDSTILL AGREEMENT

by and between

**NORTHWOODS CORPORATION, STRADELLA INVESTMENTS, INC., SARBONNE
INVESTMENTS, INC., SPIROS INVESTMENTS, INC., SAVONA INVESTMENTS, INC.,
SANDAL INVESTMENTS, INC., TORTUOSO INVESTMENTS, INC., and TAVISTOCK
INVESTMENTS, INC.,
as Subordinate Lender**

and

**FIRST NATIONAL OF AMERICA, INC.,
as Superior Lender**

Dated as of March 14, 2006

Eagle Ridge Subordination and Standstill Agreement
NYDOCS1-810274.6

SMRH 0000543

SUBORDINATION AND STANDSTILL AGREEMENT

This SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is dated as of March __, 2006 by and between NORTHWOODS CORPORATION, a Delaware corporation, STRADELLA INVESTMENTS, INC., a California corporation ("Stradella"), SARBONNE INVESTMENTS, INC., a California corporation, SPIROS INVESTMENTS, INC., a California corporation, SAVONA INVESTMENTS, INC., a California corporation, SANDAL INVESTMENTS, INC., a California corporation, TORTUOSO INVESTMENTS, INC., a California corporation, and TAVISTOCK INVESTMENTS, INC., a California corporation (individually and collectively, "Subordinate Lender") and FIRST NATIONAL OF AMERICA, INC., a Florida corporation ("Superior Lender").

RECITALS

WHEREAS, Superior Lender has made or is the owner and holder of a loan to RM Eagle LLC, a Delaware limited liability company ("Borrower") in the original principal amount of \$43,000,000.00 (the "Superior Loan"), which Superior Loan is evidenced by that certain Promissory Note (the "Superior Note") dated as of the date hereof (the "Closing Date") made by Borrower to Superior Lender, and secured by that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (and Fixture Filing) made by Borrower for the benefit of Superior Lender (the "Superior Mortgage"), constituting a second deed of trust lien on certain real property located in Rancho Mirage, California and more particularly described in Exhibit A annexed hereto (the "Premises");

WHEREAS, Subordinate Lender has made or is the owner and holder of that certain Subordinate Long Form Deed of Trust and Assignment of Rents (the "Subordinate Mortgage") dated as of the date hereof made by Borrower for the benefit of Subordinate Lender, constituting a third deed of trust lien on the Premises;

WHEREAS, Subordinate Lender is also the owner and holder of a loan to Borrower in the original principal amount of \$25,000,000.00 (the "First Loan"), which First Loan is evidenced by that certain Secured Promissory Note (the "First Note") dated as of the date hereof made by Borrower to Subordinate Lender and secured by that certain Long Form Deed of Trust and Assignment of Rents (the "First Mortgage") made by Borrower for the benefit of First Lender (the First Note and the First Mortgage, collectively, the "First Loan Documents");

WHEREAS, the lien of the First Mortgage is prior to and superior to the lien of the Superior Mortgage, and nothing contained in this Agreement shall in any way pertain to the First Loan Documents, or be deemed in any way to impair the rights of Subordinate Lender under the First Loan Documents (it being understood and acknowledged that the First Loan Documents, and the rights of First Lender thereunder, and the Superior Loan Documents, and the rights of Superior Lender thereunder, are subject to a separate Intercreditor Agreement dated as of the date hereof between Subordinate Lender and Superior Lender);

WHEREAS, Subordinate Lender is a party to that certain Purchase and Sale Agreement dated as of February 21, 2006 between Subordinate Lender, as seller, and Borrower, as purchaser (the "Purchase and Sale Agreement") and the other Purchase and Sale Documents (as hereinafter defined); and

Eagle Ridge Subordination and Standstill Agreement
NYDOCS1-816274.6

SMRH 0000544

WHEREAS, the Superior Lender is unwilling to make the Superior Loan unless (a) the Subordinate Mortgage and the Purchase and Sale Documents are subject and subordinate to the Superior Mortgage in the manner hereinafter set forth, and (b) the rights of the Subordinate Lender under the Subordinate Documents are limited such that, among other things, (i) the Subordinate Lender shall receive no payments nor take any action against the Borrower or the Premises under the Subordinate Documents until such time as the Superior Loan Liabilities have been paid in full, (ii) the Subordinate Lender shall take no actions to delay refinance, foreclosure or collection of the Superior Mortgage, and (iii) Superior Lender will control the disposition of Subordinate Lender's claims against Borrower and the Premises in the event of Borrower's bankruptcy or debtor reorganization proceedings.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subordinate Lender and Superior Lender each hereby agrees as follows:

Section 1. Certain Definitions; Rules of Construction. As used in this Agreement, the following capitalized terms shall have the following meanings:

"Affiliate" of any specified Person shall mean any other Person directly or indirectly Owning and Controlling, or directly or indirectly Owned and Controlled by, or under direct or indirect common Ownership and Control with, such specified Person. As used in this definition, "Owning", "Owned" and "Ownership" mean the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of the Person in question.

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

"Award" has the meaning provided in Section 6(d).

"Bankruptcy Code" means Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Borrower" has the meaning provided in the Recitals hereto.

"Borrower Proceeding" means a Proceeding in which Borrower is a debtor.

"Closing Date" is defined in the recitals hereto.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. "Controlled by," "Controlling" and "under common Control with" shall have the respective correlative meaning thereto.

"Control Affiliate" of any specified Person shall mean any other Person directly or indirectly Controlling, or directly or indirectly Controlled by, or under direct or indirect common Control with, such specified Person.

"Enforcement Action" means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including the taking of possession or control of the Premises or any material portion thereof, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to Subordinate Lender under the Subordinate Documents, or to Superior Lender under the Superior Loan Documents, as the case may be, at law, in equity or otherwise with respect to Borrower and/or the Premises.

"Event of Default" as used herein means (i) with respect to the Subordinate Documents, any default or event of default thereunder which has occurred and is continuing (i.e., has not been cured by Borrower or waived in writing by Subordinate Lender); and (ii) with respect to the Superior Loan and the Superior Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (i.e., has not been cured by Borrower or waived in writing by Superior Lender).

"Institutional Lender" means any institutional lender such as a bank, insurance company, pension trust, pension fund, investment bank, trust company, investment company, money management firm or other business entity that is engaged in the business of making or owning real estate loans or operating commercial properties.

"Lender" means Subordinate Lender and/or Superior Lender, as the context may require.

"Patriot Act Requirements" means that, at all times, (a) none of the funds or other assets of the Person in question (which, for the purposes of this paragraph, is intended to apply to a proposed Permitted Transferee) or any principal (for purposes of this paragraph a principal shall be deemed to be the owner of a one percent (1%) or greater interest) in such Person, shall constitute property of, or be beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruction Terrorism (the "USA Patriot Act") Act of 2001 (Public Law 107-56), The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated under any such legislation with the result that the investment in any such Person in question or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law (any such person, entity or government being referred to herein as an "Embargoed Person"); (b) no Embargoed Person shall have any interest of any nature, as applicable, with the result that the investment in any such Person in question or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law; and (c) none of the funds of the Person in question or any principal in such Person, as applicable, shall have been derived from any unlawful activity with the result that the investment in such Person or any principal in such Person, as applicable (whether directly or indirectly), is prohibited by law or the proposed Transfer is in violation of law.

"Permitted Transferee" means any reputable Person of good character and, in the case of a closely-held entity, for which each principal that holds a controlling interest therein is also reputable and of good character, and which Person(s) and principal(s) are in compliance with the Patriot Act Requirements.

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

"Premises" has the meaning provided in the Recitals hereto.

"Proceeding" has the meaning provided in Section 7(a).

"Protective Advances" means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises or any portion thereof (including all reasonable attorneys' fees, costs relating to the entry upon the Premises or any portion thereof to make repairs and the payment, purchase, contest or compromise of any encumbrance, charge or lien which in the good faith judgment of Lender appears to be prior or superior to the Subordinate Mortgage or Superior Mortgage), or any portion thereof, respectively, from forfeiture, casualty, loss or waste.

"Purchase and Sale Agreement" has the meaning provided in the Recitals hereto.

"Purchase and Sale Documents" means, collectively, the Purchase and Sale Agreement and all of the other documents or instruments executed or delivered in connection therewith, including without limitation, the Participation Agreement (and the Memoranda executed in connection therewith), the Purchase Agreement Memorandum and the Hotel Agreement, as those terms are defined in the Purchase and Sale Agreement, but excluding the First Mortgage, the First Note and the Commercial Parcel Agreement.

"Subordinate Documents" means, collectively, the Subordinate Mortgage and the Purchase and Sale Documents, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

"Subordinate Document Liabilities" shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Subordinate Documents and all amounts due or to become due pursuant to the Subordinate Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest (but excluding the First Cash Portion Payment and the Second Cash Portion Payment (which is evidenced by the First Note), as such terms are defined in the Purchase and Sale Agreement).

"Subordinate Lender" has the meaning provided in the first paragraph of this Agreement.

"Subordinate Mortgage" has the meaning provided in the Recitals hereto.

"Superior Lender" has the meaning provided in the first paragraph of this Agreement.

"Superior Loan" has the meaning provided in the Recitals hereto.

"Superior Loan Documents" means the documents evidencing, securing or otherwise executed in connection with the Superior Loan, which are listed on Exhibit B attached hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

"Superior Loan Liabilities" shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Superior Loan Documents and all amounts due or to become due pursuant to the Superior Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

"Superior Loan Modification" has the meaning provided in Section 5(a).

"Superior Mortgage" has the meaning provided in the Recitals hereto.

"Superior Note" has the meaning provided in the Recitals hereto.

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

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

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

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

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

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

(v) the headings and captions used in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of the provisions of this Agreement;

(vi) the terms "includes" or "including" shall mean without limitation by reason of enumeration;

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

(viii) the words "to Superior Lender's knowledge" or "to the knowledge of Superior Lender" (or words of similar meaning) shall mean to the actual knowledge of officers of Superior Lender with direct oversight responsibility for the Superior Loan without independent investigation or inquiry and without any imputation whatsoever; and

(ix) the words "to Subordinate Lender's knowledge" or "to the knowledge of Subordinate Lender" (or words of similar meaning) shall mean to the actual knowledge of officers of Subordinate Lender with direct oversight responsibility for the Subordinate Documents without independent investigation or inquiry and without any imputation whatsoever.

Section 2. Approval of Loans and Loan Documents.

(a) Superior Lender. Superior Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Subordinate Mortgage and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Subordinate Mortgage; and (ii) the execution, delivery and performance of the Subordinate Mortgage will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Superior Loan Documents.

(b) Subordinate Lender. Subordinate Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Superior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Superior Loan Documents, (ii) the execution, delivery and performance of the Superior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default any of the Subordinate Documents, (iii) Superior Lender is under no obligation or duty to, nor has Superior Lender represented that it will, see to the application of the proceeds of the Superior Loan and (iv) any application or use of the proceeds of the Superior Loan for purposes other than those provided in the Superior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Superior Loan Documents. Subordinate Lender hereby acknowledges and agrees that any conditions precedent to Subordinate Lender's consent to deed of trust or other financing as set forth in the any of the Subordinate Documents or any other agreements with Borrower, as they apply to the Superior Loan Documents or the making of the Superior Loan, have been satisfied or waived.

Section 3. Representations and Warranties.

(a) Superior Lender. Superior Lender hereby represents and warrants as follows:

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

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

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

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

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

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

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

Lender's knowledge, constitute a violation by Superior Lender of any statute, law or regulation that is applicable to Superior Lender.

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

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

(x) The Superior Loan is not cross-defaulted with any indebtedness or obligations of Borrower other than those evidenced or secured by the Subordinate Documents or the First Mortgage.

(xi) Superior Lender is in compliance with the USA Patriot Act.

(b) Subordinate Lender. Subordinate Lender hereby represents and warrants as follows:

(i) The Subordinate Mortgage and the Purchase and Sale Documents constitute all of the Subordinate Documents. To Subordinate Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Subordinate Documents.

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

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

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

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

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

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

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

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

(x) The Subordinate Documents are not cross-defaulted with any other indebtedness or obligation of Borrower. The Premises do not secure any other indebtedness or obligations owing from Borrower or any other Person to Subordinate Lender or any of its Affiliates (other than the First Mortgage).

(xi) Subordinate Lender is in compliance with the USA Patriot Act.

Section 4. Transfer of Superior Loan or Subordinate Loan Documents. (a) Superior Lender may Transfer the Superior Loan, and any interest therein, to Fairway Onshore Loan Fund LLC, a Delaware limited liability company, and/or to any Institutional Lender.

(b) Subordinate Lender shall not Transfer the Subordinate Documents, or any of its rights or interests therein, except that (i) Subordinate Lender may Transfer all (but not part) of its rights and interests under the Subordinate Documents to a Permitted Transferee

and (ii) any constituent entity in Subordinate Lender may Transfer its rights and interests in the Subordinate Documents to any other constituent entity therein, provided that, in each case, (A) Subordinate Lender shall not be in default under this Agreement, (B) no later than thirty (30) days prior to the proposed Transfer, Subordinate Lender shall have notified Superior Lender in writing of the proposed Transfer, including the name of the proposed transferee and, if the proposed transferee is a closely-held entity, the holder(s) of the ownership interests therein, and, if the proposed transferee is a constituent entity, shall thereafter deliver such documents as Superior Lender shall reasonably require in order to determine that the proposed transferee is a constituent entity transferee, and (C) in the case of clause (b)(i) hereof, any transferee thereunder shall, if required by Superior Lender as a condition to such Transfer, execute and deliver to Superior Lender a written confirmation of its agreement to comply with all of the terms and conditions of this Agreement.

(c) If more than one Person shall hold a direct interest in the Subordinate Documents, the holder(s) of more than 50% of the aggregate interests in the Subordinate Documents (or if none of the Persons holding a direct interest own more than 50%, then the holder of a plurality of such interests) shall designate by written notice to Superior Lender one of such Persons (the "Directing Subordinate Lender") to act on behalf of all such Persons holding an interest in the Subordinate Documents. Each entity comprising Subordinate Lender hereby designates Stradella to be the Directing Subordinate Lender hereunder. Except as otherwise agreed in writing by Subordinate Lender and Superior Lender, the Directing Subordinate Lender shall have the sole right to receive any notices which are required to be given or which may be given to Subordinate Lender pursuant to this Agreement and to exercise the rights and power given to Subordinate Lender hereunder, including any approval rights of Subordinate Lender. Once the Directing Subordinate Lender has been designated hereunder, Superior Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than 50% of the aggregate interests in the Subordinate Documents (or if none of the Persons holding a direct interest own more than 50%, then the aggregate holder of a plurality of such interests) of the designation of a different Person to act as the Directing Subordinate Lender. Notwithstanding any provision of this Section 4(c) to the contrary, each Person holding an interest or participation in the Subordinate Documents shall be deemed to be Subordinate Lender for purposes of the rights and restrictions contained in this Section 4 and shall be subject to the rights and restrictions thereof with respect to such Person's interest in the Subordinate Documents.

Section 5. Modifications, Amendments, etc. (a) Subordinate Lender shall not, without the prior written consent of Superior Lender, in its sole discretion, in each instance, enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver of the Subordinate Documents.

(b) Superior Lender shall have the right, without the consent of Subordinate Lender in each instance, to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "Superior Loan Modification") of the Superior Loan or the Superior Loan Documents, provided that no such Superior Loan Modification shall (i) increase the interest rate, (ii) increase the principal amount of the Superior Loan such that it would thereby be equal to greater than a 70% loan-to-value ratio, or (iii) shorten the scheduled maturity date of the Superior Loan (i.e.,

which is thirty (30) months from the closing date thereof), without Subordinate Lender's consent. Without limiting the generality of the foregoing, the following shall not be deemed to contravene the provisions of this Section 5(b): (A) any amounts funded by Superior Lender under the Superior Loan Documents as a result of the making of any Protective Advances by Superior Lender, (B) interest accruals or accretions and any compounding thereof (including default interest); and (C) a Superior Loan Modification in the case of a work-out or other surrender, extension, compromise, release, renewal, or indulgence relating to the Superior Loan.

(c) Subordinate Lender shall deliver to Superior Lender immediately upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Subordinate Documents (including any side letters, waivers or consents entered into, executed or delivered by Subordinate Lender), it being understood that nothing contained in this Section 5(c) is intended to modify or limit in any way the prohibition contained in Section 5(a) hereof.

(d) Superior Lender shall deliver to Subordinate Lender immediately upon execution thereof copies of any and all material modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Superior Loan Documents.

Section 6. Subordination of Subordinate Documents.

(a) All of Subordinate Lender's rights to payment and performance of the Subordinate Document Liabilities, and any liens created pursuant to the Subordinate Documents, are and at all times shall be subject and subordinate to all of Superior Lender's rights to payment and performance of the Superior Loan Liabilities, and the liens created pursuant to the Superior Loan Documents, and to all of the terms, covenants and conditions of the Superior Loan Documents, and to any extensions, substitutions, modifications, amendments, renewals, refinancings, replacements and consolidations thereof, and Subordinate Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower and/or from the Premises of any Subordinate Document Liabilities prior to the date that all of the Superior Loan Liabilities shall have been paid in full. Without limiting the generality of the foregoing, Superior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Superior Lender under the Superior Loan Documents before Subordinate Lender is entitled to receive any payment on account of the Subordinate Document Liabilities. All payments or distributions upon or with respect to the Subordinate Document Liabilities which are received by Subordinate Lender contrary to the provisions of this Agreement shall be received and held in trust by Subordinate Lender for the benefit of Superior Lender and shall be paid over to Superior Lender in same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Superior Loan in accordance with the terms of the Superior Loan Documents.

(b) So long as any amounts shall remain owing to Superior Lender under the Superior Loan Documents, Subordinate Lender agrees that:

(i) Subordinate Lender shall simultaneously send to Superior Lender notices of all defaults under the Subordinate Documents and copies of all notices required to be delivered to Borrower pursuant to the Subordinate Documents. Any notice delivered to Borrower pursuant to the Subordinate Documents shall not be deemed effective until a copy of such notice has been received by Superior Lender.

(ii) Notwithstanding Subordinate Lender's rights under applicable law or any provisions in the Subordinate Documents to the contrary, until ninety-one (91) days following the payment in full of all of the Superior Loan Liabilities, Subordinate Lender acknowledges and agrees that it shall not, without the prior written consent of Superior Lender, in its sole discretion, declare a default under any of the Subordinate Documents, take any Enforcement Action or take any other action or proceeding action related thereto.

(iii) Subordinate Lender waives any and all rights it may have to require that Superior Lender marshal any assets of Borrower in favor of Subordinate Lender, whether in connection with any Enforcement Action or any other realization upon collateral in respect of the Superior Loan Documents or otherwise, and waives any rights of set-off or otherwise;

(iv) Except in the exercise of its rights under the First Loan Documents only, Subordinate Lender shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in the Premises which is or may be prior in right to the Superior Mortgage, and Subordinate Lender hereby waives any and all rights it may acquire by subrogation or otherwise to the lien of the Superior Mortgage or any of the other Superior Loan Documents;

(v) If Subordinate Lender shall receive any cash distributions in respect of, or other proceeds of, the Premises (including, without limitation, (i) any distribution arising directly or indirectly from any lien of Superior Lender being avoided, declared to be fraudulent, or otherwise set aside under the provisions of any law governing fraudulent conveyances or transfers, and (ii) any distribution arising directly or indirectly by reason of or in connection with a Proceeding) in excess of what Subordinate Lender is entitled to receive in payment of the Subordinate Document Liabilities, subject to and in accordance with this Agreement (or would have been entitled to if such Proceeding had not occurred or if any such lien had not been avoided, declared to fraudulent, or otherwise set aside under the provisions of any law governing fraudulent conveyances or transfers), Subordinate Lender shall hold the same in trust, as trustee, for Superior Lender and shall promptly deliver the same to or at the direction of Superior Lender for the benefit of Superior Lender in precisely the form received (except for the endorsement or assignment thereof by Subordinate Lender without recourse or warranty), it being understood that it is the intention of the parties that until all of the Superior Loan Liabilities shall have been paid in full, Superior Lender shall receive all proceeds relating to any realization upon, distribution in respect of or interest in any of the Premises as and to the extent set forth in the Superior Loan Documents (but nothing contained herein shall apply to amounts received by Subordinate Lender pursuant to the First Loan Documents). In the event Subordinate Lender fails to make any such endorsement or assignment, Superior Lender or any of its officers or employees, is hereby irrevocably authorized to make the same.

(c) Subordinate Lender agrees that it shall execute and deliver all such other documents (in recordable form) as shall be reasonably required by Superior Lender and by the title company insuring the lien of the Superior Mortgage to cause the lien and obligations under the Subordination Documents to be subject and subordinate at all times to the lien and obligations of the Superior Loan Documents in favor of Superior Lender.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Superior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"), and Subordinate Lender shall release all of its right, title and interest in and to any such Award in favor of Superior Lender. To the extent the amount of the Award is in excess of amounts required to be paid to Superior Lender under the Superior Loan Documents in order to pay in full all of the Superior Loan Liabilities, such excess Award shall (i) first, be paid to or at the direction of Subordinate Lender until amounts due under the Subordinate Documents have been paid in full, and (ii) second, be paid to Borrower.

Section 7. Bankruptcy.

(a) Bankruptcy. (i) The provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action by or against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (as to Borrower or any other entity, a "Proceeding"), and all references herein to Borrower shall be deemed to apply to the fee title owner of the Premises as a debtor-in-possession and to any trustee in bankruptcy for the estate of the fee title owner of the Premises.

(ii) In the event Superior Lender is required under any bankruptcy or other law to return to Borrower, the estate in bankruptcy thereof, any third party or any trustee, receiver or other similar representative of Borrower any payment or distribution of assets, whether in cash, property or securities, including, without limitation all or any portion of the Premises or any proceeds of the Premises previously received by Superior Lender on account of the Superior Mortgage (a "Reinstatement Distribution"), then to the maximum extent permitted by law, this Agreement and the subordination of the lien of the Subordination Documents with respect to the Premises or proceeds shall be reinstated with respect to any such Reinstatement Distribution. Superior Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

(iii) Notwithstanding Subordinate Lender's rights under applicable law or any provisions in the Subordinate Documents to the contrary, until ninety (91) days following the payment in full of all of the Superior Loan Liabilities, Subordinate Lender covenants and agrees that it will not acquiesce, petition or otherwise invoke or cause any other person to invoke the process of the United State of America, any state or other political subdivision thereof or any other jurisdiction, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government for the purpose of commencing or sustaining a case against Borrower, under the Bankruptcy Code or any state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee,

custodian, sequestrator or other similar official of Borrower or all or any part of its property or assets or ordering the winding-up or liquidation of the affairs of Borrower. Subordinate Lender hereby appoints Superior Lender as its agent, and grants to Superior Lender as its agent an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to Subordinate Lender in connection with any case by or against Borrower under the Bankruptcy Code, or any state bankruptcy insolvency or similar law, including without limitation, the right to vote to accept or reject a plan, to file a claim, or to make any election under Section 1111(b) of the Bankruptcy Code. Subordinate Lender agrees that, upon the request of Superior Lender, Subordinate Lender shall do, execute, acknowledge and deliver to Superior Lender all and every such further acts, deeds conveyances and instruments as Superior Lender may reasonably request for the better assuring and evidencing of the foregoing appointment and grant.

Section 8. Intentionally Omitted.

Section 9. Intentionally Omitted.

Section 10. Intentionally Omitted.

Section 11. Intentionally Omitted.

Section 12. Additional Understandings. For as long as the Superior Loan remains outstanding, Subordinate Lender shall notify Superior Lender immediately if Borrower seeks or requests Subordinate Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or payment of any amounts owing under the Subordinate Documents. In the event of a request by Borrower for Subordinate Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Subordinate Lender shall, if Subordinate Lender has the right to consent, obtain the prior written consent of Superior Lender, in its sole discretion, prior to Subordinate Lender's granting of its consent or agreement thereto, and no such action shall be permitted without Superior Lender's prior written consent.

Section 13. Obligations Hereunder Not Affected. (a) All rights, interests, agreements and obligations of Subordinate Lender and Superior Lender under this Agreement shall remain in full force and effect irrespective of:

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

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

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Superior Loan or the Subordinate Documents, or any manner of sale

or other disposition of any collateral for all or any portion of the Superior Loan Documents or the Subordinate Documents or any other assets of Borrower or any other Control Affiliates of Borrower;

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

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

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

Section 14. Miscellaneous.

(a) Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 14. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) upon receipt if mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (c) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Subordinate Lender:

Stradella Investments, Inc.
c/o Abdolrashid Boroumand
28312 Avenida La Mancha
San Juan Capistrano, CA 92675
Attention:

with a copy to:

Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive
Costa Mesa, CA 92626-1993
Attention: John P. Simon, Esq.

To Superior Lender:

NYDOCS1-810274.6

First National of America, Inc.
188 Mount Airy Road
Basking Ridge, New Jersey 07920
Attention: Jerry P. Sager

with a copy to:

Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Attention: Joseph Bulian, Esq.

(b) No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other Person other than Loan Pledgees. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

(c) Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Subordinate Lender and Superior Lender and shall inure to the benefit of all successors and permitted assigns of Subordinate Lender and Superior Lender.

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

(e) Legal Construction. In all respects, including matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

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

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

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

(i) Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the

Superior Loan Documents or the Subordinate Documents, the terms and conditions of this Agreement shall control.

(j) No Release. Nothing herein contained shall operate to (a) release Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Superior Loan Documents or (ii) any liability of Borrower under the Superior Loan Documents or (b) release Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Subordinate Documents or (ii) any liability of Borrower under the Subordinate Documents.

(k) Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until ninety-one (91) days after payment in full of all of the Superior Loan Document Liabilities and the reconveyance of the lien of the Superior Mortgage against the Premises; provided, however, that any rights or remedies of any party hereto arising out of any breach of any provision hereof occurring prior to the date of termination shall survive such termination.

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

(m) Injunction. Each of Subordinate Lender and Superior Lender acknowledges (and waives any defense based on a claim to the contrary) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by Subordinate Lender or Superior Lender hereunder would cause irreparable harm to the other. Accordingly, Subordinate Lender and Superior Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such nonbreaching party.

(n) Reciprocal Disclaimer. (i) Subordinate Lender and Superior Lender are each sophisticated lenders and/or investors in real estate and their respective decision to enter into the Subordinate Documents and the Superior Loan Documents is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Subordinate Documents and the Superior Loan Documents and such other matters, materials and market conditions and criteria which each of Subordinate Lender and Superior Lender deem relevant. Each of Subordinate Lender and Superior Lender has not relied in entering into this Agreement, and respectively, the Subordinate Documents or the Superior Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of Subordinate Lender and Superior Lender further acknowledges that no employee, agent or representative of the other

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

(ii) Each of Subordinate Lender and Superior Lender acknowledges (x) that the Superior Loan Documents and the Subordinate Documents evidence and/or secure distinct, separate transactions, separate and apart from each other, and (y) that each party to this Agreement is a distinct and separate holder of its respective rights and interests and with its own rights, remedies and collateral which are not necessarily aligned with that of the other parties hereto.

Section 15. Expenses.

(a) To the extent not paid by Borrower or out of or from any collateral securing the Superior Loan which is realized by Superior Lender, Subordinate Lender agrees upon demand to pay to Superior Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts or agents, which Superior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Superior Lender against Subordinate Lender hereunder to the extent that Superior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Subordinate Lender to perform or observe any of the provisions hereof.

(b) To the extent not paid by Borrower out of or from any collateral securing the amounts evidenced or secured by the applicable Subordinate Documents which is realized by Subordinate Lender, Superior Lender agrees upon demand to pay to Subordinate Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts or agents, which Subordinate Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Subordinate Lender against Superior Lender hereunder to the extent that Subordinate Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Superior Lender to perform or observe any of the provisions hereof.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Subordinate Lender and Superior Lender have executed this Agreement as of the date and year first set forth above.

SUBORDINATE LENDER:

NORTHWOODS CORPORATION,
a Delaware corporation

By: 
Name: Julie A. Gilbert
Title: President

STRADELLA INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SARBONNE INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SPIROS INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SAVONA INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SANDAL INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

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a California corporation

By: Abdolrashid Boroumand
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Title: President


SANDAL INVESTMENTS, INC.
a California corporation

By: Abdolrashid Boroumand
Name: Abdolrashid Boroumand
Title: President

TORTUOSO INVESTMENTS, INC.
a California corporation

By: 
Name: Abdolrashid Boroumand
Title: President

TAVISTOCK INVESTMENTS, INC.
a California corporation

By: 
Name: Abdolrashid Boroumand
Title: President

SUPERIOR LENDER:

FIRST NATIONAL OF AMERICA, INC.

By: _____
Name:
Title:

TORTUOSO INVESTMENTS, INC.
a California corporation

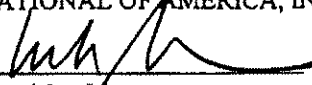
By: _____
Name: Abdolrashid Boroumand
Title: President

TAVISTOCK INVESTMENTS, INC.
a California corporation

By: _____
Name: Abdolrashid Boroumand
Title: President

SUPERIOR LENDER:

FIRST NATIONAL OF AMERICA, INC.

By: 
Name: *W. LEE BECK*
Title: *MANAGING DIRECTOR*

ACKNOWLEDGMENT

State of California
County of Los Angeles

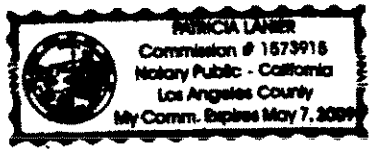
On 3/8/06 before me, Patricia Lanier, Notary Public
(here insert name and title of the officer)

personally appeared Julie A. Gilbert

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

WITNESS my hand and official seal.

Signature Patricia Lanier

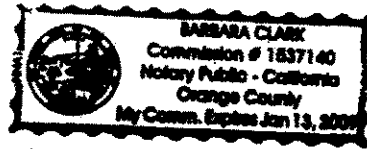


(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

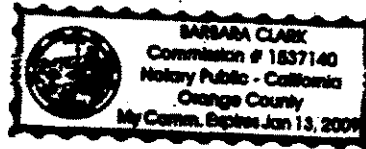


Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.



Signature Barbara Clark

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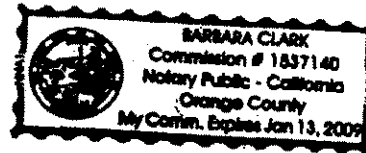


Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

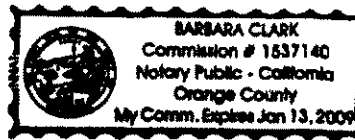


Signature *Barbara Clark*

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hen/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

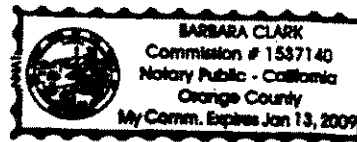


Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hen/their authorized capacity(ies), and that by his/hen/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Barbara Clark

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On March 7, 2006, before me, Barbara Clark, a Notary Public, personally appeared Abdolrashid Boroumand, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature *Barbara Clark*

STATE OF New Jersey)
) ss:
COUNTY OF Somerset)

On the 14th day of March in the year 2006 before me, the undersigned, personally appeared Walter Lee Beck, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

KRISTINE H CRUZ-VARQUEZ
MY COMMISSION EXPIRES
SEPTEMBER 1ST 2010
NOTARY PUBLIC

Witness my hand and official seal.

Kristine H Cruz-Varquez
Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

On the ___ day of March in the year 2006 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

NYDOCS1-810274.6

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SMRH 0000572

Exhibit 4 000134

EXHIBIT A

LEGAL DESCRIPTION

The land is described as follows:

PARCEL 1:

THAT PORTION OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN DEED TO COUNTY OF RIVERSIDE, RECORDED MAY 24, 1949 IN BOOK 1079 PAGE 60 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE NORTH LINE OF SAID SECTION 31, BEING A POINT ON SAID NORTH LINE NORTH 89° 42' 26" EAST, 40.00 FEET THEREON FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH 00° 09' 54" WEST, 2,660.80 FEET ON SAID EAST LINE; THENCE SOUTH 00° 10' 45" WEST, 1001.09 FEET ON SAID EAST LINE TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE WESTERLY OF 2,040.00 FEET RADIUS; THENCE SOUTHERLY 404.84 FEET ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 21' 53", TO THE WEST LINE OF SAID SECTION 31; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE ON THE SOUTH LINE OF SAID SECTION, NORTH 89° 50' 47" EAST, 1,972.62 FEET, NORTH 89° 51' 01" EAST, 2,651.43 FEET AND NORTH 89° 52' 18" EAST, 783.13 FEET TO THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTH 00° 12' 39" EAST, 5,335.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE ON THE NORTH LINE OF SAID SECTION SOUTH 89° 39' 19" WEST, 1,321.44 FEET; THENCE SOUTH 89° 44' 58" WEST, 1,322.01 FEET; AND SOUTH 89° 42' 26" WEST, 2,734.41 FEET TO THE POINT OF BEGINNING;

EXCEPTING THAT PORTION DESCRIBED BY DEED TO THE COUNTY OF RIVERSIDE, RECORDED OCTOBER 15, 1986 AS INSTRUMENT NO. 256010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

THAT PORTION OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF

NYDOCS1-815085.1

SMRH 0000573

CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD
(80.00 FEET WIDE) AS DESCRIBED IN THE DEED TO COUNTY OF RIVERSIDE,
RECORDED AUGUST 2, 1949 IN BOOK 1099 PAGE 31 OF OFFICIAL RECORDS OF
RIVERSIDE COUNTY, CALIFORNIA, WITH THE WEST LINE OF SECTION 31, IN
TOWNSHIP 4 SOUTH, RANGE 6 EAST; SAID INTERSECTION BEING A POINT ON A
CURVE IN SAID EAST LINE CONCAVE WESTERLY OF 2,040.00 FEET
RADIUS TO WHICH A RADIAL BEARS SOUTH 78° 27' 22" EAST;
THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET ON SAID WEST LINE OF
SECTION 31 TO THE SOUTHWEST CORNER OF SAID SECTION 31, BEING THE
SOUTHEAST CORNER OF SAID
SECTION 36;
THENCE SOUTH 89° 52' 25" WEST, 538.35 FEET ALONG THE SOUTH LINE OF SAID
SECTION 36 TO THE INTERSECTION OF THE EAST LINE OF SAID DEL RIO DEL
SOL ROAD, SAID INTERSECTION BEING A POINT ON A CURVE OF SAID EAST
LINE, CONCAVE EASTERLY OF 1,960.00 FEET RADIUS TO WHICH A RADIAL BEARS
NORTH 73° 55' 05" WEST;
THENCE ALONG SAID EAST LINE, NORTHERLY 482.81 FEET ALONG SAID CURVE,
THROUGH A CENTRAL ANGLE OF 14° 06' 50"; THENCE NORTH 30° 11' 45" EAST,
229.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY OF
2,040.00 FOOT RADIUS AND NORTHERLY 664.10 FEET ON SAID CURVE THROUGH
A CENTRAL ANGLE OF 18° 39' 07" TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY
OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO.
40088 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9

NYDOCS1-815085.1

SMRH 0000574

EXHIBIT B

SUPERIOR LOAN DOCUMENTS

(All documents dated as of March 14, 2006, unless otherwise indicated.)

- 1 Promissory Note
- 2 Deed of Trust
- 3 Assignment of Leases and Rents
- 4 Guaranty
- 5 Environmental Indemnity
- 6 Assignment of Licenses, Permits and Approvals
- 7 Two (2) UCC-1 Financing Statements
- 8 Servicing Fee Agreement
- 9 Intercreditor Agreement
- 10 Subordination and Standstill Agreement
- 11 Escrow Instruction Letter
- 12 W-9

EXHIBIT 5

RM EAGLE LLC
(Trustor or Borrower)

to

FIRST AMERICAN TITLE INSURANCE COMPANY
(Trustee)

for the benefit of

FIRST NATIONAL OF AMERICA, INC.
(Beneficiary or Lender)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT (AND FIXTURE FILING)**

Dated: As of March 14, 2006

DOCUMENT PREPARED BY AND WHEN RECORDED RETURN TO

ANDERSON KILL & OLICK, P.C.
1251 Avenue of the Americas
New York, NY 10020
Attention: Joseph Bulian, Esq.

NYDCS1-80797L4
Eagle Ridge Deed of Trust

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THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (AND FIXTURE FILING) (this "Deed of Trust" or "Security Instrument"), is made as of March 14, 2006 by RM EAGLE LLC, a Delaware limited liability company, having its principal place of business at 280 Newport Center Drive, Suite 240, Newport Beach, California 92660 ("Trustor" or "Borrower"), to FIRST AMERICAN TITLE INSURANCE COMPANY, the trustee hereunder, having its mailing address at 3625 14th Street, Riverside, California 92501 ("Trustee") for the benefit of FIRST NATIONAL OF AMERICA, INC., a Florida corporation, having its principal office at 188 Mount Airy Road, Basking Ridge, New Jersey 07920 ("Beneficiary" or "Lender")

WITNESSETH:

To secure the payment of an indebtedness in the original principal sum of up to Forty Three Million and xx/100 Dollars (\$43,000,000.00), lawful money of the United States of America, to be paid with interest according to a certain Promissory Note of even date herewith made by Borrower to Lender (such Promissory Note, as amended, modified, restated, renewed, extended or replaced from time to time, being hereinafter referred to as the "Note", and the loan evidenced by the Note hereinafter referred to as the "Loan"), and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note (said indebtedness and interest due under the Note and all other sums due hereunder under the Note and the other Loan Documents being hereinafter collectively referred to as the "Debt"), Borrower has deeded, mortgaged, given, granted, bargained, transferred, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Trustee (in trust), for the benefit of Lender with power of sale and right of entry and possession, all of it right, title and interest in and to the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Borrower now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and such property, rights, interests and estates hereinafter described are collectively referred to herein as the "Security Property"):

GRANTING CLAUSE ONE

All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand

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whatsoever, both at law and in equity, of Borrower of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

GRANTING CLAUSE TWO

All machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment that 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 Security Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument;

GRANTING CLAUSE THREE

Awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

GRANTING CLAUSE FOUR

All leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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GRANTING CLAUSE FIVE

All proceeds of and any unearned premiums on any insurance policies covering the Security 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 Security Property;

GRANTING CLAUSE SIX

The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Security Property and to commence any action or proceeding to protect the interest of Lender in the Security Property;

GRANTING CLAUSE SEVEN

All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Security Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Security Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Security Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles"); and

GRANTING CLAUSE EIGHT

All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

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

IN TRUST WITH POWER OF SALE, to secure the payment to Lender of the Debt at the time and in the manner provided for in the Note and in this Security Instrument;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents (hereinafter defined) in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

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AND Borrower represents and warrants to and covenants and agrees with Lender as follows:

GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.

Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. All of the covenants, conditions and agreements contained in the Note and the other documents now or hereafter executed by Borrower, Guarantor (as hereinafter defined) and/or others to or in favor of Lender, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise executed and/or delivered in connection with the Note and this Security Instrument (the Note, this Security Instrument and all of such other documents, collectively, the "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. "Guarantor" shall mean Randall Bone and Allison Bone, as husband and wife, and The Randall Bone Living Trust of 1999, jointly and severally.

2. Warranty of Title.

Borrower represents and warrants that Borrower has good, marketable and insurable fee simple title to an undivided sixty percent (60%) interest in the Security Property, and has the full power, authority and right to execute, deliver and perform its obligations under this Security Instrument and to deed, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Borrower possesses an unencumbered fee estate in the Premises and the Improvements and that it owns its interest in the Security Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"), and that this Security Instrument is and will remain a valid and enforceable second lien (subject to becoming a first lien as provided in Section 67 hereof) on and security interest in the Security Property, subject only to said exceptions. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

3. Insurance.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain during the entire term of this Security Instrument (the "Term") policies of insurance against loss or damage by fire, lightning, hail, windstorm, explosion, vandalism, malicious mischief, riot, civil commotion, acts of terrorism, burglary and theft, and such perils as are included in a standard "all-risk" endorsement, and against loss or damage by all risks and hazards covered by a standard extended coverage insurance policy. Such insurance shall be in an amount equal to the then full replacement cost of the Improvements

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and Equipment, without deduction for physical depreciation. The policies of insurance carried in accordance with this Section shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" and no coinsurance or if coinsurance, then an "Agreed Amount Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$10,000 or five percent (5%) of net cash flow after debt service, whichever is less.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Security Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards in an amount equal to the replacement cost of the security property or such other amount to be determined by Lender.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate for any policy year with no deductible or self insured retention. In addition, at least \$5,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for any and all claims, including all legal liability imposed upon Borrower and all court costs and attorneys' fees incurred in connection with the ownership, operation and maintenance of the Security Property. Lender shall be named an Additional Insured with respect to all liability coverage.

(iii) From and after the commencement of the Operating Period (as hereinafter defined), rental loss and/or business interruption insurance in an amount sufficient to compensate Borrower for all Gross Income from Operations (as hereinafter defined) during a period of not less than eighteen (18) months. The amount of such insurance shall be increased from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the estimate of (or the actual) gross revenue, as may be applicable, increases.

(iv) From and after the commencement of the Operating Period, insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), to the extent that such items now or hereafter exist upon the Security Property, in an amount at least equal to the outstanding principal amount of the Note or \$2,000,000, whichever is less.

(v) At the time as Borrower has employees, worker's compensation insurance with respect to any employees of Borrower, as required by any governmental authority or legal requirement.

(vi) During any period of construction, repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Security Property insuring against such risks (including, without limitation, fire and extended coverage

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and collapse of the improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender in its sole discretion.

(vi) If the Security Property is or becomes a legal "non-conforming" use, "Ordinance or Law Coverage" endorsement and insurance coverage to compensate for the cost of demolition, the increased cost of construction and the loss of value on the undamaged portion of the Security Property in an amount equal to the original principal balance of the Loan in amounts as requested by Lender.

(vii) Such other insurance as may be customary for properties of the same type as the Security Property in the geographic area in which the Security Property is located and as may from time to time be reasonably required by Lender in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this Section: (i) shall be issued by companies approved by Lender and licensed to do business in the state where the Security Property is located, with a claims paying ability rating of "A" or better by A.M. Best Company; (ii) shall name Lender and its successors and/or assigns as their interest may appear as the Lender/mortgagee; (iii) shall contain a non-contributory standard mortgagee clause and a lender's loss payable endorsement or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the Term without cost to Lender; (vi) shall be assigned and the originals delivered to Lender; (vii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrower shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided, however, that Borrower is not required to furnish such evidence of payment to Lender in the event that such Insurance Premiums have been paid by Lender pursuant to Section 6 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices. Borrower may obtain the funds necessary to make payments of the Insurance Premiums as required hereunder out of undisbursed Loan proceeds upon submission to Lender of a draw request subject to and in accordance with Section 65 hereof and the Pre-Development Expense Budget (as hereinafter defined); provided, however, if on the date of any such request there shall be insufficient funds allocated to Insurance Premiums in the Pre-Development Expense Budget, as determined by Lender, in its sole discretion, then Borrower

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shall make such payments out of its own funds. The term "Operating Period" shall mean the period commencing after completion of construction of the first phase of the Project.

4. Casualty.

(a) If the Security Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Borrower shall give prompt notice thereof to Lender. Following the occurrence of an Insured Casualty, Borrower, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as immediately prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

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

(i) Borrower shall give immediate notice thereof to Lender. Lender may settle and adjust any claim without the consent of Borrower and agree with the insurance company or companies on the amount to be paid on the loss, and the proceeds of any such policy shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Security Instrument.

(ii) In the event of an Insured Casualty where the loss is in an aggregate amount less than fifty percent (50%) of the original principal balance of the Note, and if, in the reasonable judgment of Lender, the Security Property can be restored within six (6) months and prior to the Maturity Date (as defined in the Note) to an economic unit not materially less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was immediately prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Lender) shall be applied towards the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, in the manner set forth below. Borrower hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iii) Except as provided above in clause (ii) of this Section 4, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event which with notice and/or the passage of time would constitute an Event of Default, has occurred, then

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Borrower shall pay to Lender an additional amount equal to the Prepayment Premium (as defined in the Note), if any, in accordance with Section 4 of the Note. Any such application to the Debt shall be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments.

(iv) In the event Borrower is entitled to reimbursement out of insurance proceeds held by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other reasonable evidences of cost, payment and performance as Lender may reasonably require and approve. Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Borrower. All proceeds of insurance deposited with Lender hereunder shall first be fully disbursed before the disbursement of any further proceeds of the Loan.

5. Payment of Taxes and Other Charges.

Borrower shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "Other Charges") as the same become due and payable. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days after the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Security Property, and shall promptly pay for all utility services provided to the Security Property. Borrower shall obtain the funds necessary to make payments of the Taxes required hereunder, but only up to the amount of Taxes attributable to Borrower's undivided sixty percent (60%) interest in the Premises based upon the most recent tax bill, out of undisbursed Loan proceeds upon submission to the Lender of a draw request, together with a copy of the most

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recent tax bill, and subject to and in accordance with Section 65 hereof and the Pre-Development Expense Budget (which Pre-Development Expense Budget contains a line item relating to payment of Taxes attributable to Borrower's undivided sixty percent (60%) interest in the Premises, as estimated by Lender as of the date hereof (and which estimate takes into account a potential reassessment of the Security Property) for the period from the date hereof until the Initial Maturity Date, as such term is defined in the Note); provided however, if on the date of any such request there shall be insufficient funds allocated to Taxes in the Pre-Development Expense Budget, as determined by Lender, in its sole discretion, then Borrower shall make such payments out of its own funds. Without limiting the generality of the foregoing, Borrower shall be responsible for payment of the Taxes and Other Charges attributable to the forty percent (40%) undivided interest in the Premises (the "40% Undivided Interest") owned by Peter Solomon ("Solomon"), unless Borrower has provided Lender with receipts for payment or other evidence satisfactory to Lender that such Taxes and Other Charges have been paid no later than thirty (30) days after the date on which such Taxes and/or Other Charges would otherwise be delinquent if not paid.

6. Tax and Insurance Impound Fund; Other Reserves.

(a) **Tax and Insurance Impound Fund.** Contemporaneously with the execution hereof, Borrower shall have deposited with Lender out of the proceeds of the Loan the amount of \$332,500.00, representing an amount equal to six (6) months of Taxes and Insurance Premiums that Lender estimates will be payable during the next ensuing twelve (12) months. Borrower shall also pay to Lender on demand, a sum of money which Lender reasonably estimates, together with such monthly deposits, will be sufficient to maintain six (6) months of Taxes and Insurance Premiums during each next ensuing twelve (12)-month period. Funds paid to Lender pursuant to this provision, together with any additions thereto, may be hereinafter called the "Tax and Insurance Impound Fund". From and after the occurrence of an Event of Default, Lender may, at its election, apply the Tax and Insurance Impound Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3 and 5 hereof. In making any payment relating to the Tax and Insurance Impound Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Impound Fund shall exceed the amounts which Lender estimates shall be due for Taxes and Insurance Premiums in the following twelve (12) months, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Impound Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Security Property. No earnings or interest on the Tax and Insurance Impound Fund shall be payable to Borrower. If Lender so elects at any time, Borrower shall provide, at Borrower's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Lender. If Lender does not so elect, Borrower shall reimburse Lender for the cost of making annual tax searches throughout the Term.

(b) **Security Interest.** Borrower hereby pledges to Lender and grants to Lender a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound Fund and any other reserve required by Lender hereunder or under any other

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Loan Document (each a "Reserve" and collectively "Reserves") and all proceeds thereof as security for the payment of the Debt and performance of all obligations secured by this Security Instrument. Upon the occurrence of an Event of Default, (i) Lender shall have no obligation to disburse any amounts from any of the Reserves to the Borrower or otherwise, (ii) Lender is hereby authorized and shall be entitled to do any one or more of the following, at Lender's election (1) continue to hold any moneys in any of the Reserves as security, (2) pay or apply any such moneys for the purposes of the applicable Reserve irrespective of the default, (3) pay or apply any such moneys against any obligation of Borrower (including full or partial payment of the Debt) in any order that Lender may determine in its sole discretion.

(c) General Provisions Regarding Reserves. Borrower's obligations to make deposits into each Reserve are separate from Borrower's obligations to make deposits into each other Reserve, and from its obligations to pay as and when due all principal, interest, and other amounts evidenced and secured by the Loan Documents. The Reserves shall be held in Lender's name at one or more financial institutions selected by Lender in its sole discretion. Interest earned on each of the Reserves other than the Tax and Insurance Impound Fund shall be added to the applicable Reserve, and may be held, disbursed and applied in the same manner as other moneys in such Reserve. Lender shall have no obligation to produce any specific rate of return on any of the Reserves. Provided that Lender shall hold (and invest if applicable) the Reserves in accordance with the customary standards used by holders of such funds in connection with rated debt or rated pools of debt, Lender shall not be responsible for any loss. The Reserves are not and shall not be trust funds. Lender is authorized to commingle moneys held in the Reserves among the Reserves and with other moneys held by Lender. Nothing in this Section 6 shall excuse Borrower's performance of any obligation set forth elsewhere in this Security Instrument or in the Loan Documents.

(d) Right to Receive Authorization. Lender shall have the right at any time to request from Borrower or from any Guarantor written authorization in form and substance satisfactory to Lender, separate and apart from the authorizations set forth in the Loan Documents, to make (or refrain from making) any payment from or with respect to any Reserve (including payments to Lender for credit against the obligations of Borrower hereunder), or to take (or refrain from taking) any action pertaining to any Reserve. Lender shall have no obligation to request any such written authorization ever, and Lender's not requesting any such written authorization shall not give rise to any rights in Borrower or any obligation, liability or detriment of Lender. Further, Lender's requesting such written authorization in any case or cases shall not give rise to any obligation to request such written authorization in any subsequent case. If such written authorization is given, then Lender shall have the right to rely on the same irrevocably. If Lender requests any such written authorization for any matter which the Loan Documents or applicable law permits or requires Lender to do under the circumstances then in effect or as contemplated in such request for written authorization, then until such time as Lender receives such written authorization (including any time following denial of such written authorization) Lender is hereby irrevocably authorized to do any one or more of the following, at Lender's option (i) hold all or any part of the applicable Reserve without making payment therefrom, (ii) make any payments from the Reserve that are then permitted or required under the Loan Documents or applicable law, or (iii) exercise or refrain from exercising any other rights or remedies pertaining to the Reserves that are then permitted under the Loan Documents or under applicable law. Lender's rights under the foregoing sentence may be exercised simultaneously

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or seriatim in any combination or sequence. If Lender shall exercise any of such rights by reason of not having received any requested written authorization, and if the requested written authorization is subsequently given (or if a denial of written authorization is subsequently rescinded), Lender shall not then be required to undo the results of any such exercise of rights, and Lender shall not be bound by any obligation which Lender determines in its reasonable discretion is inconsistent with any of the rights that have been so exercised. The rights of Lender under this paragraph shall govern and prevail notwithstanding anything to the contrary in the Loan Documents or elsewhere. Without limitation, the rights of Lender under this Subsection shall govern and prevail over any provision of the Loan Documents which imposes on Lender any obligation whatsoever pertaining to any Reserve

7. Condemnation.

Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "Condemnation") and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as immediately prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("Award") for any taking accomplished through a Condemnation (a "Taking") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Security Instrument. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Borrower shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Security Instrument and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Lender to expenses of collecting the Award and to discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Borrower shall cause any Award that is payable to Borrower to be paid directly to Lender.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than the lesser of (i) \$250,000.00 or (ii) twenty five percent (25%) of the then outstanding original principal balance of the Note, and if, in the reasonable judgment of Lender, the Security Property can be restored within six (6) months and prior to the Maturity Date to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Lender) shall be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to Condemnation, in the manner set forth below. Borrower hereby covenants and

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agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or applied towards the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event which with notice and/or the passage of time would constitute an Event of Default, has occurred, then Borrower shall pay to Lender an additional amount equal to the Prepayment Premium, if any, in accordance with Section 4 of the Note. Any such application to the Debt shall be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments. If the Security Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Borrower is entitled to payment of the Award received by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) funds or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Lender may reasonably require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Lender, be retained by Lender and applied to payment of the Debt. All condemnation awards deposited with Lender hereunder shall first be fully disbursed before the disbursement of any further proceeds of the Loan.

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8. Leases and Rents.

(a) Borrower does hereby absolutely and unconditionally assign to Lender, all Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Lender grants to Borrower a revocable license to operate and manage the Security Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Borrower herein shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Security Property. Lender is hereby granted and assigned by Borrower the right, at its option, upon revocation of the license granted herein, to enter upon the Security Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper.

(b) All non-residential Leases shall provide that they are subordinate to this Security Instrument and that the tenant agrees to attorn to Lender. None of the Leases shall contain any option to purchase, any right of first refusal to purchase or any right to terminate the lease term (except in the event of the destruction or condemnation of all or substantially all of the Security Property). Leases executed after the date hereof shall not contain any provisions which adversely affect the Security Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Lender. Each tenant shall conduct business only in that portion of the Security Property covered by its lease. Upon request, Borrower shall furnish Lender with executed copies of all Leases.

(c) Borrower shall not, without the prior consent of Lender which consent shall not be unreasonably withheld (i) enter into any Lease of all or any part of the Security Property, (ii) cancel, terminate, abridge or otherwise modify the terms of any Lease, or accept a surrender thereof, (iii) consent to any assignment of or subletting under any Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (v) accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents. If Lender fails to respond to a request for consent hereunder within ten (10) business days of receipt thereof, such consent shall be deemed granted, provided that such request shall have been accompanied by all information requested by Lender or reasonably necessary for Lender to evaluate such request and shall have clearly stated, in 14 point type or greater, that if Lender fails to respond to such request within ten (10) business days, Lender's consent shall be deemed to have been granted. Notwithstanding the foregoing, Lender's consent shall not be required for renewal Leases containing economic terms which are no less favorable than the terms that are existing under the original Lease. In addition, Borrower shall not (A) lease all or

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any part of the Security Property, (B) cancel, terminate, abridge or otherwise modify the terms of any Lease, or accept a surrender thereof, (C) consent to any assignment of or subletting under any Lease not in accordance with its terms or (D) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, unless such actions are exercised for a commercially reasonable purpose in arm's-length transactions for market rate terms.

(d) Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases 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 the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall deliver to Lender, upon request, tenant estoppel certificates from each commercial tenant at the Security Property in form and substance reasonably satisfactory to Lender, provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year; and (vii) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Security Property as Lender shall from time to time require.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at such commercial or savings bank or banks, or otherwise held in compliance with applicable law, as may be reasonably satisfactory to Lender. 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 legal requirements, name Lender as payee or Lender thereunder (or at Lender's option, be 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. Following the occurrence and during the continuance of any Event of Default, Borrower shall, upon Lender's request, if permitted by any applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Security Property, to be held by Lender subject to the terms of the Leases.

9. Maintenance and Use of Security Property.

(a) Borrower shall cause the Security Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender. Borrower shall promptly comply with all laws, orders and ordinances affecting the Security Property, or the use thereof. Except as otherwise provided in subsection 9(b), Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Security Property or any part thereof. If under applicable

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zoning provisions the use of all or any portion of the Security Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender. Borrower shall not (i) change the use of the Security Property, (ii) permit or suffer to occur any waste on or to the Security Property or to any portion thereof or (iii) take any steps whatsoever to convert the Security Property, or any portion thereof, to a condominium or cooperative form of management. Borrower will not install or permit to be installed on the Premises any underground storage tank. Borrower shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Security Instrument.

(b) Without limiting the generality of the provisions of Section 9(a) hereof, Borrower represents and warrants that it will not cause the Security Property to be designed, constructed, completed, maintained and updated other than in accordance in all material respects with the General Plan Amendment and Zoning Map Amendment (as hereinafter defined) and in compliance in all material respects with all requirements of all zoning ordinances and regulations and applicable laws. Borrower represents to Lender that, currently, the City of Rancho Mirage General Plan (the "General Plan") designates the majority of Section 31 (which is commonly referred to as The Eagle at Rancho Mirage) for residential development of varying densities, together with the designation of the southeast corner as commercial (the "Southeast Corner"), and that The Eagle Specific Plan for Section 31 dated February 12, 1993 (the "Specific Plan") was previously adopted to establish the zoning designations and planning requirements for a gated residential and golf course community. Borrower represents that, as described in that certain staff report to the Planning Commission dated January 12, 2006 (the "Staff Report"), the "General Plan Amendment and Zoning Map Amendment" means that certain General Plan Amendment and Zoning Map Amendment that is currently in process as initiated by the City of Rancho Mirage ("City"), which is to be considered by the Rancho Mirage Planning Commission and City Council after their conducting public hearings in accordance with Governmental Code Sections 65090-95, 65350-62 and 65853-57, and Rancho Mirage Municipal Code ("RMMC") Chapter 17.73 and 17.74, and which seeks to amend the Section 31 land use designations in order to establish 175 acres of resort hotel zoning and low density residential (two units per acre maximum) over the remainder of Section 31 other than the Southeast Corner (the "Project"). Borrower represents further to Lender that (i) according to the Staff Report and that certain memorandum from Robert Brockman to Randall Bone, dated January 13, 2006 (the "Brockman Memo"), the City will require an application for an amendment to or a replacement of the Specific Plan as a means to adopt detailed planning requirements tailored to Section 31 (and that Government Code Section 65450 authorizes cities to require specific plans for the systematic implementation of a general plan), (ii) according to the Brockman Memo, the replacement Specific Plan would be reviewed by the Planning Commission and ultimately would require approval of the City Council after its conducting public hearings in accordance with Government Code Sections 65090-95 and 65450-57 and RMMC Chapters 17.72-17.74, (iii) according to the Brockman Memo, subdivision approval in accordance with the Subdivision Map Act, Government Code Sections 66410, et seq., constitutes the means to subdivide the property into planning areas consistent with the Specific Plan and the subdivision maps ("Maps") would be subject to the review and approval of the Planning Commission and the City Council after conducting public hearings in accordance with Government Code Sections 65090-95 and

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RMMC Chapters 16.12 and 17.74 (and subdivision maps to create the individual lots within each planning area would be subject to the same procedure), (iv) based upon the existing Specific Plan and the Brockman Memo, it is likely that the City would require a Development Plan Review approval in conjunction with all subdivision maps and that, as with the existing Specific Plan, all proposals for subdivision and development of the individual planning areas would require Development Plan Review approval, which is subject to review by the Architectural Review Board and the Planning Commission and approval by the City Council after conducting public hearings in accordance with Government Code Sections 65090-95 and RMMC Chapters 17.42 and 17.74. Borrower shall use all of its commercially reasonable efforts to diligently and expeditiously comply with the requirements of the City in order to effect Approval of the General Plan Amendment and Zoning Map Amendment and the other actions contemplated by the above-described process, and in connection therewith, Borrower shall promptly provide Lender with copies of all material written communications and keep Lender apprised of the status of the approval process for the Project. Borrower shall not amend or modify the General Plan Amendment and Zoning Map Amendment without Lender's prior written consent, which shall not be unreasonably withheld. Borrower shall, prior to recordation, submit all Maps and any and all amendments thereto to Lender for Lender's review and approval. As a condition precedent to approval by Lender, as required by Lender, (i) Borrower shall execute, acknowledge and deliver to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect the change in the legal description of the Security Property resulting from the recordation of the Maps, and (ii) Borrower shall deliver to Lender, at Borrower's sole expense, a title endorsement to the Lender's title insurance policy in form and substance satisfactory to Lender. Subject to the execution and delivery by Borrower of any documents required under this Section 9(b), Lender shall, if required by applicable law, sign any Map approved by Lender pursuant to this Section 9(b), within a reasonable period after written request by Borrower. The term "Authorities" means the governmental or quasi-governmental agencies or authorities having jurisdiction over the Security Property. The term "Approval" means that, with respect to any item or matter for which approval by any Authorities is required, such item has been approved by action of the highest governing body of such Authorities, and all applicable appeal and referendum periods and statutes of limitation for challenging or appealing such approval have expired without the filing of an appeal or challenge, and if an appeal of challenge has been filed, that such appeal or challenge has been resolved on terms satisfactory to Lender in its sole and absolute discretion.

10. Transfer or Encumbrance of the Security Property.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in owning and operating properties such as the Security Property in agreeing to make the Loan, and that Lender will continue to rely on Borrower's ownership of the Security Property as a means of maintaining the value of the Security Property as security for repayment of the Debt. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Security Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover the Debt by a sale of the Security Property. Borrower shall not, without the prior written consent of Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Security Property or any part thereof, or permit the Security Property or any part thereof to be sold, conveyed, alienated,

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mortgaged, encumbered, pledged or otherwise transferred (except for the First DOT and the Third DOT, as such terms are hereinafter defined).

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 10 shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Security Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Security Property for other than actual occupancy by a space tenant thereunder; (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iv) if Borrower, Guarantor or any general partner or managing member (or manager, as the case may be) of Borrower or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in all instances in one or a series of transactions by which an aggregate of more than 49% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (v) if Borrower, any Guarantor or any general partner of Borrower or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing member (or manager, as the case may be), joint venturer or the transfer, assignment or pledge of any ownership interest of any general partner, managing member (or manager, as the case may be) or joint venturer in Borrower or the transfer, assignment or pledge of any ownership interest in any general partner, managing member (or manager, as the case may be) or joint venturer; or (vi) if Borrower or any Guarantor is a limited partnership or limited liability company, the voluntary or involuntary sale, conveyance, transfer or pledge of any limited partnership interests or non-managing membership interests or the creation or issuance of new limited partnership interests or non-managing membership interests, by which an aggregate of more than 49% of such limited partnership interests or non-managing membership interests are held by, or pledged to, parties who are not currently limited partners or members.

Notwithstanding the foregoing, (x) any involuntary transfer caused by the death of any holder of an ownership interest in Borrower, or in any member of Borrower, shall not be deemed to be a violation of this Paragraph 10(b) so long as (A) Borrower (and any member of Borrower) is reconstituted, as required by Lender, in its reasonable discretion, following such death and (B) those persons responsible for the management and control of Borrower and of the Security Property remain unchanged as a result of such death or any replacement management of Borrower under its organizational documents and the Security Property is approved by Lender; and (y) a transfer for estate-planning purposes by Randall Bone ("RB") of his ownership interest in Borrower or in any member of Borrower, to members of RB's immediate family or to an entity wholly controlled, legally or beneficially, by RB or by members of RB's immediate family, shall not be deemed to be a violation of this Paragraph 10(b), provided (i) RB remains fully liable for all of his and their respective obligations under the Loan Documents, (ii) the proposed transferee assumes in writing all of the obligations of RB, as transferor, under the Loan Documents satisfactory in form and substance to Lender, (iii) the persons responsible for the management of Borrower under its organizational documents and of the Security Property remain unchanged or any replacement management is approved by Lender, which shall not be unreasonably withheld, (iv) Borrower is reconstituted, as required by Lender, in its reasonable

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discretion, following such gift, (v) the proposed transferee delivers such other documents as Lender shall reasonably require and (vi) prior written notice of any such transfers shall have been received by Lender. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property without Lender's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property.

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

11. Representations and Covenants Concerning the Borrower and Security Property.

Borrower represents, warrants and covenants as follows:

(a) Organization and Existence. Borrower is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Delaware and in all other jurisdictions in which Borrower is transacting business. Borrower has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents. Borrower and each managing member have delivered to Lender true and correct copies of their organizational documents and there are no other documents or agreements which supplement, amend or otherwise modify such organizational documents.

(b) Authorization. Borrower has taken all necessary actions for the authorization of the borrowing on account of the Loan and for the execution and delivery of the Loan Documents, including, without limitation, that those members of Borrower whose approval is required by the terms of Borrower's organizational documents have duly approved the transactions contemplated by the Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Borrower's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.

(c) Valid Execution and Delivery. All of the Loan Documents requiring execution by Borrower have been duly and validly executed and delivered by Borrower.

(d) 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 by Lender and its successors, transferees and assigns, subject only to bankruptcy laws and general principles of equity.

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(e) No Defenses. The Note, this 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 the Note, this Security Instrument or any of the other Loan Documents, or the exercise of any right thereunder, render this Security Instrument unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury. None of Borrower, Guarantor, nor any constituent (irrespective of the number of tiers of ownership) partner, member, manager, shareholder, officer, director or other person related to Borrower (the "Borrower Affiliates") has any claim or right whatsoever against Lender or any shareholder, director, officer, member, manager, partner, employee, agent or attorney of Lender, and their successors and assigns (the "Lender Parties"), except only for the express contractual obligations of Lender set forth in the Loan Documents which are executed and delivered to become first effective as of this date. Any rights or claims contrary to this provision, whether known or unknown, are hereby expressly waived, including without limitation any such rights or claims arising from any course of dealing, statement, agreement, assurance, or inducement, document or instrument to which Lender or any other Lender Party is a party or otherwise is bound. Borrower shall indemnify, defend and hold Lender and the other Lender Parties harmless from and against any such claim brought or such right asserted against Lender or any of the other Lender Parties by Borrower or any of the Borrower Affiliates or anyone claiming by, through or under any of them. Such indemnity shall include all costs of defense, including reasonable attorneys' fees and expenses, and all damages.

(f) 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, the Loan Documents.

(g) 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, any Guarantor or any general partner or managing member of Borrower or any Guarantor. The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower 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 is a party or by which Borrower is bound.

(h) Compliance with Applicable Laws and Regulations. Any Improvements and the use of the Security Property comply with, and shall remain in compliance with, all applicable statutes, rules, regulations and private covenants now or hereafter relating to the ownership, construction, use or operation of the Security Property, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, environmental protection, zoning and land use. The Improvements comply with, and shall remain in compliance with, applicable health, fire and building codes. There is no evidence of any illegal activities relating to controlled substances on the Security 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 Security Property for the purposes contemplated by the Development, shall be obtained and maintained in full force and effect thereafter. All of the Improvements shall comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

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(i) 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.

(j) No Litigation. There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Security Property, an adverse outcome of which would materially affect the Borrower's performance under the Note, this Security Instrument or the other Loan Documents.

(k) Title. Borrower has good and marketable fee simple title to the Security Property, and good title to the Equipment, subject to no liens, charges or encumbrances other than the Permitted Exceptions, the First DOT and the Third DOT. The possession of the Security Property has been peaceful and undisturbed and title thereto has not been disputed or questioned to the best of Borrower's knowledge

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

(m) Second Lien. Upon the execution by Borrower and the recording of this Security Instrument, and upon the execution and filing of UCC-1 financing statements or amendments thereto, Lender will have a valid second lien on the Security Property and a valid security interest in the Equipment subject to no liens, charges or encumbrances other than the Permitted Exceptions and the First DOT.

(n) ERISA. Borrower has made and shall continue to make all required contributions to all employee benefit plans, if any, and Borrower has no knowledge of any material liability which has been incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi-employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and any other federal or state law.

(o) Contingent Liabilities. Borrower has no known material contingent liabilities.

(p) No Other Obligations. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Security Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Security Property and other than obligations under this Security Instrument and the other Loan Documents. No member or partner has pledged or otherwise conveyed their respective ownership interests in Borrower as security for any financial obligation of Borrower or such member or partner.

(q) Fraudulent Conveyance. 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)

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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 Borrower's assets exceed and will, immediately following the execution and delivery of the Loan Documents, exceed 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 Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, 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 Borrower).

(r) 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.

(s) Access/Utilities. The Security 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 Security Property as presently used and enjoyed are located in the public right-of-way abutting the Security Property, and all such utilities are connected so as to serve the Security Property without passing over other property. All roads necessary for the full utilization of the Security 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 Security Property.

(t) 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, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes.

(u) Single Tax Lot. The Premises consists of a single lot or multiple tax lots; no portion of said tax lot(s) covers property other than the Premises or a portion of the Premises and no portion of the Premises lies in any other tax lot.

(v) Special Assessments. Except as disclosed in the title insurance policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements or otherwise affecting the Security Property, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Security Property that may result in such special or other assessments.

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(w) Flood Zone. The Security Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

(x) Misstatements of Fact. No statement of fact made in the 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 which has not been disclosed which adversely affects, nor as far as the Borrower can foresee, might adversely affect the business, operations or condition (financial or otherwise) of the representing party.

(y) Condition of Improvements. The Security Property has not been damaged by fire, water, wind or other cause of loss or any previous damage to the Security Property has been fully restored.

(z) No Insolvency or Judgment. Neither Borrower, nor any member of Borrower, nor any guarantor of the Loan is currently (a) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Security Property is located or in any other court located in the United States. The Loan will not render the Borrower nor any member of Borrower insolvent. Borrower is and will remain solvent and Borrower will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due. As used herein, 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.

(aa) No Condemnation. No part of any property subject to this Security Instrument has been taken in condemnation or other like proceeding to an extent which would impair the value of the Security Property, this Security Instrument or the Loan or the usefulness of such property for the purposes contemplated by the loan application and/or the loan commitment relating to the Loan, nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Security Property.

(bb) No Labor or Materialmen Claims. All parties furnishing labor and materials have been paid in full and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Security Property, whether prior to, equal with or subordinate to the lien of this Security Instrument.

(cc) No Purchase Options. No tenant, person, party, firm, corporation or other entity has an option to purchase the Security Property, any portion thereof or any interest therein.

(dd) Leases. The Security Property is not subject to any Leases other than the Leases described in the rent roll delivered to Lender in connection with this Security Instrument. No person has any possessory interest in the Security Property or right to occupy the same except under and pursuant to the provisions of the Leases. As of the date hereof, (i) the Borrower is the

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owner and holder of the landlord's interest under each Lease; (ii) there are no prior assignments of any Lease or any portion of Rents which are presently outstanding and have priority over the Assignment of Leases and Rents (the "Assignment of Leases and Rents"), dated the date hereof, given by Borrower to Lender and intended to be duly recorded; (iii) the Leases are on the standard form of lease approved by Lender and have not been modified or amended, except as disclosed to Lender in writing on the date hereof; (iv) each Lease is in full force and effect; (v) neither Borrower nor any tenant under any Lease is in default under any of the terms, covenants or provisions of the Lease, and Borrower knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under any Lease; (vi) there are no offsets or defenses to the payment of any portion of the Rents; and (vii) all Rents due and payable under each Lease have been paid in full and no said Rents have been paid more than one (1) month in advance of the due dates thereof.

(ee) Boundary Lines. No improvements on adjoining properties encroach upon the Security Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Security Property except those which are insured against by title insurance.

(ff) Survey. The survey of the Security Property delivered to Lender in connection with this Security Instrument, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Security Property is situated, is certified to the Lender, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Security Property or the title thereto.

(gg) Forfeiture. There has not been and shall never be committed by Borrower or any other person in occupancy of or involved with the operation or use of the Security Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Security Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

(hh) Adequate Capitalization. Borrower is adequately capitalized and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(ii) Management Agreement. The Security Property is currently managed by Borrower. In the event the Borrower elects to engage a third party to manage the Security Property (the "Manager"), Borrower shall comply with the provisions of Section 61 hereof.

(ij) 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 Friedman Equities ("Broker"). Pursuant to a separate agreement between Borrower and Broker, a brokerage commission is due and payable on the date hereof. Borrower shall pay such commission in addition to any sums payable to Lender by Borrower hereunder or under any of the other Loan Documents. In no event shall Lender be responsible for the payment of any

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such commission. Broker is not a third party beneficiary hereunder and has no right to require that either Borrower or Lender amend this Security Instrument or any of the other Loan Documents in any manner.

12. Single Purpose Entity/Separateness.

Borrower represents, warrants and covenants as of the date of hereof and (except for items (f) and (m), which are representations made only as of the date hereof, and are not continuing covenants) until such time as the Debt is paid in full as follows:

(a) Borrower does not own and will not own any asset or property other than (i) the Security Property, and (ii) incidental personal property necessary for the ownership or operation of the Security Property.

(b) Borrower has not engaged in and will not engage in any business other than the ownership, management and operation of the Security Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any affiliate of the Borrower, any constituent party of Borrower, any guarantor (a "Guarantor") of the Debt or any part thereof or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) indebtedness secured by the First DOT or Third DOT, and (iii) unsecured trade and operational debt incurred in the ordinary course of business not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances, but, in no event, to exceed \$250,000.00 in the aggregate. No indebtedness other than the Debt (and indebtedness secured by the First DOT and Third DOT) may be secured (subordinate or pari passu) by the Security Property except as expressly provided herein.

(e) Borrower has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any affiliate of any constituent party or Guarantor); and shall not acquire obligations or securities of its affiliates.

(f) Borrower is solvent and reasonably expects to be able to pay its debts from its assets as the same shall become due.

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will at all times have provisions in its organizational documents imposing on it substantially the same requirements as are specified in this Section 12. Borrower will not, nor will any partner, member, shareholder, trustee, Lender, or principal of Borrower (each, a "Constituent Owner"), amend, modify or otherwise change any provision of Borrower's limited liability company agreement or other organizational documents without Lender's prior written consent. In addition, for each

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Constituent Owner owning greater than a 49% interest in Borrower, such Constituent Entity will not amend, modify, or otherwise change any material provision of its organizational documents without Lender's prior consent.

(h) Borrower shall continuously maintain its existence and right to do business in the state where the Security Property is located.

(i) Borrower will conduct and operate its business as presently conducted and operated.

(j) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Borrower will file its own tax returns unless required otherwise by applicable law. Borrower shall maintain its books, records, resolutions and agreements as official records.

(k) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any Guarantor or any affiliate of any constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

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

(m) Borrower has and reasonably expects to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(n) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party of Guarantor, or any other person.

(o) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(p) Borrower does not and will not guarantee, become obligated for, or hold itself out to be responsible for the debts or obligations of any other person or entity or the decisions or actions respecting the daily business or affairs of any other person or entity.

(q) Borrower will not permit any affiliate or constituent party independent access to its bank accounts.

(r) Borrower shall pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations.

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(s) If Borrower is a limited partnership or a limited liability company, the general partner or managing member (or manager, as the case may be) of Borrower (the "SPC Entity") shall be a corporation whose sole asset is its interest in Borrower and whose sole purpose is to act as the general partner or managing member (or manager, as the case may be) of Borrower, and the SPC Entity will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 12 as if such representation, warranty or covenant was made directly by such general partner or managing member (or manager, as the case may be) of Borrower. SPC Entity has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and SPC Entity will at all times have provisions in its organizational documents imposing on it substantially the same requirements as are specified in this Section 12. SPC Entity will not, nor will any partner, member, shareholder, trustee, Lender, or principal of SPC Entity, amend, modify or otherwise change any provision of its organizational documents without Lender's prior written consent.

(t) SPC Entity shall not, without the unanimous consent of its board of directors, institute proceedings for itself or Borrower to be adjudicated bankrupt or insolvent; consent to the institution of a bankruptcy or insolvency proceedings against it or Borrower; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) for itself or Borrower or a substantial part of its or Borrower's property; make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due.

(u) SPC Entity shall not, without the unanimous consent of its board of directors, for itself or for Borrower (i) liquidate or dissolve, in whole or in part; (ii) consolidate, merge or enter into any form of consolidation with or into any other person or entity, nor convey, transfer or lease its or Borrower's assets substantially as an entirety to any person or entity nor permit any person or entity to consolidate, merge or enter into any form of consolidation with or into itself or Borrower; or (iii) amend any provisions of its or Borrower's organizational documents containing provisions similar to those contained in this Section 12.

(v) Borrower shall conduct its business so that the assumptions made with respect to Borrower and its affiliates in the opinions of their legal counsel that have been delivered to Lender in connection with the Loan at all times shall be true and correct in all respects.

13. Estoppel Certificates and No Default Affidavits.

After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, (vi) that the Note, this Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification; and (vii) reaffirming all representations and warranties of Borrower set forth herein and in the other Loan Documents as

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of the date requested by Lender or, to the extent of any changes to any such representations and warranties, so stating such changes.

14. Controlling Agreement.

It is expressly stipulated and agreed to be the intent of Borrower, and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 14 (and the similar provision contained in the Note) shall control every other covenant and agreement in this Security Instrument and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Debt (or, if the Note and all other Debt have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

15. Changes in Laws Regarding Taxation.

If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Security Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Security Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without any prepayment consideration except that if an Event of Default, or an event which with notice and/or the passage of time would constitute an Event of Default, has occurred, then Borrower shall pay to Lender an additional amount equal to the Prepayment Premium in accordance with Section 4 of the Note.

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16. No Credits on Account of the Debt.

Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Security Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Security Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred, then the Borrower shall pay to Lender an additional amount equal to the Prepayment Premium, if any, in accordance with Section 4 of the Note.

17. Documentary Stamps.

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 or this Security Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

18. Books and Records.

(a) The financial statements, rent rolls, operating statements and balance sheets heretofore furnished to Lender are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Borrower and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Borrower from that set forth in said financial statements. Borrower hereby represents and warrants that no information material to the financial condition of the Borrower, any Guarantor or Security Property has been withheld or otherwise not delivered to Borrower.

(b) Borrower will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Security Property and will furnish to Lender on or before thirty (30) days after the end of each calendar quarter the following items, each certified by Borrower as being true and correct: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, the expiration date of each lease, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar quarter, noting Net Operating Income (as hereinafter defined), Gross Income from Operations (as hereinafter defined) and Operating Expenses (as hereinafter defined), and including an itemization of actual (not pro forma) capital and other information necessary and sufficient under generally accepted accounting practices to fairly represent the financial position and results of operation of the Security Property during such calendar month, all in form satisfactory to Lender; (iii) a property balance sheet for each such calendar quarter and (iv) a calculation reflecting the

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Debt Service Coverage Ratio (as hereinafter defined) as of the last day of each such calendar quarter. Within ninety (90) days following the end of each calendar year, Borrower shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Borrower in such detail as Lender may request, and setting forth the financial condition and the income and expenses for the Security Property for the immediately preceding calendar year, which statements shall be prepared by Borrower. All information required to be provided herein shall be accompanied by a certificate executed by the chief financial officer of Borrower or the managing member of Borrower, as applicable, in favor of Lender stating that each such statement or item of information presents fairly the financial condition of the Security Property being reported upon and shall be reviewed by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender. Each such annual financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and by a certified public accountant reasonably satisfactory to Lender, and shall be accompanied by a certificate executed by the certified public accountant in favor of Lender stating that such financial statements present fairly the financial condition of the Security Property being reported upon and otherwise in form acceptable to Lender. Borrower shall also deliver to Lender each year a copy of the Federal and state income tax return for Borrower and each Guarantor within thirty (30) days of the filing thereof. At any time and from time to time Borrower shall deliver to Lender or its agents such other financial data as Lender or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Security Property.

For the purposes of this Security Instrument, the following terms shall have the following meanings:

The term "**Net Operating Income**" shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

The term "**Operating Expenses**" shall mean the total of all expenditures, computed in accordance with generally accepted accounting principles, of whatever kind relating to the operation, maintenance and management of the Security Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, debt service, capital expenditures, and contributions to the Tax and Insurance Impound Fund and any other reserves required under the Loan Documents.

The term "**Gross Income from Operations**" shall mean all income, computed in accordance with generally accepted accounting principles, derived from the ownership and operation of the Security Property from whatever source, including, but not limited to, Rents, utility charges, escalations, forfeited security deposits, greens fees, cart and equipment rentals, pro shop sales and services, food and beverage sales, outing revenues, membership dues and releasable membership fees (which includes any and all funds paid to Borrower in connection with the sale of memberships relating to the golf course and golf club to be operated on the Premises), interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, and other pass-through or reimbursements paid by tenants under the

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Leases of any nature but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any government or governmental agency, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, proceeds of casualty insurance and condemnation awards (other than business interruption or other loss of income insurance), and any disbursements to Borrower from the Tax and Insurance Impound Fund or any other escrow fund established by the Loan Documents.

The term "Debt Service Coverage Ratio" shall mean a ratio for the applicable period in which: (A) the numerator is the Net Operating Income (excluding interest on credit accounts) for such period as set forth in the statements required hereunder; and (B) the denominator is the aggregate amount of principal and interest due and payable on the Note (assuming that the entire principal amount of the Loan has been advanced). For purposes of calculating the Debt Service Coverage Ratio, Lender may include Operating Expenses that were budgeted for the applicable period but were either not incurred or not paid, unless the same were not paid or incurred with Lender's written consent and will not be required to be paid on a going-forward basis. Operating Expenses that are paid less frequently than monthly may be prorated to reflect a monthly allocation.

The term "Loan to Value Ratio" shall mean a ratio, determined by Lender as of any particular date, in which (1) the numerator shall be the then outstanding principal balance of the Note and (2) the denominator shall be the most recent appraised value of the Security Property (but not more than ninety (90) days prior to the date on which the ratio is being calculated) as determined by an MAI appraiser acceptable to Lender in its sole discretion.

19. Performance of Other Agreements.

Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Security Property.

20. Further Acts, Etc.

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument or for facilitating the sale of the Loan and the Loan Documents as described herein below. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Security Property. Upon foreclosure, the appointment of a

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receiver or any other relevant action, Borrower will, at the cost of Borrower and without expense to Lender, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of or the Security Property. Borrower grants to Lender and Trustee 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 and Trustee at law and in equity, including, without limitation, such rights and remedies available to Lender and Trustee pursuant to this Section.

21. Recording of Security Instrument, Etc.

Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Security 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 the lien or security interest hereof upon, and the interest of Lender in, the Security Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage, deed of trust or similar instrument supplemental hereto, any security instrument with respect to the Security Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage, deed of trust or similar instrument supplemental hereto, any security instrument with respect to the Security Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.

22. Reporting Requirements.

Borrower agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower or the death, insolvency or bankruptcy filing of any Guarantor.

23. Events of Default.

The Debt shall become immediately due and payable at the option of Lender upon the happening of any one or more of the following events of default (each an "Event of Default"):

(a) failure of Borrower to pay (i) any scheduled payment (whether such amount is interest, principal, Reserves, or otherwise) owing to Lender as and when the same is due under the Note, this Security Instrument or any of the other Loan Documents, or (ii) any other amount from time to time owing to Lender under the Note, this Security Instrument or any of the other Loan Documents within five (5) days following written notice that the same is due;

(b) subject to Borrower's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable (unless sums equaling

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the amount of Taxes and Other Charges then due and payable have been delivered to Lender in accordance with Section 6 hereof);

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request;

(d) if Borrower transfers or encumbers any portion of the Security Property without Lender's prior written consent, except for the First DOT and the Third DOT and as may be otherwise expressly permitted under Section 10;

(e) if any representation or warranty of Borrower, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(f) if Borrower, any principal, managing member (or manager, as the case may be) or general partner in Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Borrower, any principal, managing member (or manager, as the case may be) or general partner in Borrower or of any Guarantor shall be appointed or if Borrower, any principal, managing member (manager, as the case may be) or general partner in Borrower or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, any principal, managing member (or manager, as the case may be) or general partner in Borrower or any Guarantor or if any proceeding for the dissolution or liquidation of Borrower, any principal, managing member (or manager, as the case may be) or general partner in Borrower or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, any principal, managing member (or manager, as the case may be) or general partner in Borrower or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Security Property whether it be superior or junior in lien to this Security Instrument;

(i) subject to Borrower's right to contest as provided herein, if the Security Property becomes subject to any mechanic's, materialman's or other lien and such lien is not removed of record within thirty (30) days of the filing or recording of such lien (except a lien for local real estate taxes and assessments not then due and payable);

(j) if Borrower fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Security Property within thirty (30) days after Borrower first receives notice of any such violations;

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(k) except as permitted in this Security Instrument, the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Lender;

(l) if Borrower shall be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable grace and/or cure periods contained in those Loan Documents; or

(m) if Borrower fails to cure a default under any other term, covenant or provision of this Security Instrument within thirty (30) days after Borrower first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Borrower may be permitted up to an additional sixty (60) days to cure such default provided that Borrower diligently and continuously pursues such cure.

24. Late Payment Charge.

If any scheduled payment on the Debt is not paid on or before the date on which such payment is due, or if any other payment secured hereby is not paid within five days following written notice that the same is due, then Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law in order to defray a portion of the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument. Such late charge shall be immediately due and payable without notice or demand by Lender. Borrower recognizes that its default in making, when due, any payment under this Note or the occurrence of any other Event of Default will require Lender to incur additional expense in servicing and administering the Loan and in loss to Lender of the use of the money due and in frustration to Lender in meeting its other financial and loan commitments. Borrower additionally acknowledges that the damages caused thereby would be extremely difficult and impractical to ascertain. Borrower agrees (a) that an amount equal to the late charge plus the accrual of interest at the Default Rate (as defined in the Note) is a reasonable estimate of the damage to Lender in the event of a late payment, and (b) that the accrual of interest at the Default Rate following any other Event of Default is a reasonable estimate of the damage to Lender in the event of such other Event of Default, regardless of whether there has been an acceleration of the Loan.

25. Right To Cure Defaults.

Upon the occurrence of any Event of Default or if Borrower fails to make any payment (including, without limitation, any required payments for taxes, insurance or to discharge any liens with respect to the Property) or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Security Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Security Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and

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disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender, shall constitute a portion of the Debt, shall be secured by this Security Instrument and the other Loan Documents and shall be due and payable to Lender upon demand.

26. Additional Remedies.

(a) Upon the occurrence of any Event of Default, Lender or Trustee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Security Property by Lender itself or through Trustee or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(i) declare the entire Debt to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Security Instrument in which case the Security 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;

(iii) 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 of this Security Instrument for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Security Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to the power of sale contained herein 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;

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

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

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Security Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Lender's interest in the Leases and Rents and enter into or upon the Security Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every

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part of the Security Property and conduct the business thereat; (B) complete any construction on the Security Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Security Property; (D) exercise all rights and powers of Borrower with respect to the Security Property, whether in the name of Borrower 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; and (E) apply the receipts from the Security Property to the payment of Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Security Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(ix) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Security Property occupied by Borrower and require Borrower to vacate and surrender possession to Lender of the Security Property or to such receiver and, in default thereof, evict Borrower by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including without limitation the right to receive and/or establish a lock box for all Rents proceeds from the Intangibles and any other receivables or rights to payments of Borrower relating to the Security Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Security Property, this Security Instrument shall continue as a lien on the remaining portion of the Security Property.

(b) The proceeds of any sale made under or by virtue of this Section, together with any other sums which then may be held by Lender under this Security Instrument, whether under the provisions of this Section or otherwise, shall be applied by Lender to the payment of the Debt in such priority and proportion as Lender in its sole discretion shall deem proper, notwithstanding the provisions of Section 2924(c) and (d) of the California Civil Code.

(c) Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender or Trustee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender and Trustee are hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Security Property and rights so sold and for that purpose Lender and Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more

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persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(e) Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Lender may bid for and acquire the Security Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

(f) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Security Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Security Instrument upon the Security Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

(g) Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.

(h) Lender may resort to any remedies and the security given by the Note, this Security Instrument or the Loan Documents in whole or in part, and in such portions and in such order as determined by Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Security Instrument or any of the other Loan Documents. The failure of Lender or Trustee to exercise any right, remedy or option provided in the Note, this Security Instrument or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Security Instrument or the other Loan Documents. No acceptance by Lender of any payment after the occurrence of any Event of Default and no payment by Lender of any obligation for which Borrower is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Borrower, or Borrower's liability to pay such obligation. No sale of all or any portion of the Security Property, no forbearance on the part of Lender or Trustee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Lender or Trustee to Borrower, shall operate to release or in any manner affect the interest of Lender in the remaining Security Property or the liability of Borrower to pay the Debt. No waiver by Lender or Trustee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Lender and Trustee in exercising the rights and remedies under this Section 26 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Borrower immediately upon notice from Lender or Trustee, with interest at the Default Rate for the period

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after notice from Lender or Trustee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Security Instrument.

(i) The interests and rights of Lender under the Note, this Security Instrument or in any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Lender may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Security Property or any portion thereof, or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

(j) In accordance with California Code of Civil Procedure Section 736, as such Section may be amended from time to time, Lender may bring an action for breach of contract against Borrower for breach of any "environmental provision" (as such term is defined in such Section) made by Borrower herein or in any other Loan Document, for the recovery of damages and/or for the enforcement of the environmental provision.

(k) In accordance with California Code of Civil Procedure Section 726.5, as such Section may be amended from time to time, Lender may waive the security of this Security Instrument as to any parcel of real property that is "environmentally impaired" or is an "affected parcel" (as such terms are defined in such Section), and as to any personal property attached to such parcel, and thereafter exercise against Borrower, to the extent permitted by such Section 726.5, the rights and remedies of an unsecured creditor, including reduction of Lender's claim against Borrower to judgment, and any other rights and remedies permitted by law. Borrower and Lender acknowledge that pursuant to California Code of Civil Procedure Section 726.5, Lender's rights under this Section are limited to instances in which Borrower or any affiliate, agent, co-tenant, partner or joint venturer of Borrower either (i) caused, contributed to, permitted or acquiesced in the release (as defined in such Section 726.5) or threatened release of Hazardous Substances (as such term is defined in the Environmental Indemnity, as hereinafter defined), or (ii) had actual knowledge or notice of such release or threatened release prior to the execution and delivery of this Security Instrument and failed to disclose such release or threatened release to Lender in writing after Lender's written request for information concerning the environmental condition of the Security Property, unless Lender otherwise obtained actual knowledge of such release or threatened release prior to the execution and delivery of this Security Instrument.

(l) In the event Lender elects, in accordance with California Code of Civil Procedure Section 726.5, to waive all or part of the security of this Security Instrument and proceed against Borrower on an unsecured basis, the valuation of the real property, the determination of the environmentally impaired status of such security and any cause of action for a money judgment shall, at the request of Lender, be referred to a referee in accordance with California Code of Civil Procedure Sections 638 *et seq.* Such referee shall be an M.A.I. appraiser selected by Lender and approved by Borrower, which approval shall not be unreasonably withheld or delayed. The decision of such referee shall be binding upon both Borrower and Lender, and judgment upon the award rendered by such referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645. Borrower shall pay all reasonable costs and expenses incurred

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by Lender in connection with any proceeding under California Code of Civil Procedure Section 726.5, as such Section may be amended from time to time.

(m) Upon the occurrence and during the continuance of any breach, default, or Event of Default, Lender shall not be obligated to render any performance to Borrower under the Loan Documents.

(n) Anything to the contrary herein or elsewhere notwithstanding, except as specifically provided otherwise by law, without the prior written consent of Lender, which may be withheld or conditioned in Lender's sole and absolute discretion, Borrower shall have no right to cure any Event of Default (and no right to cure shall be implied) and Lender shall have no obligation to accept the cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Borrower, or any other event or condition whatsoever. Borrower hereby (i) acknowledges that Lender may refuse (in its sole and absolute discretion for any reason whatsoever) any cure of any Event of Default, and notwithstanding any purported cure of such Event of Default, Lender may exercise any and/or all rights and remedies available to it; and (ii) waives any and all rights to cure any Event of Default.

Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter, provided, however, that such Event of Default shall cease to continue only if Lender shall execute and deliver a written agreement in which Lender expressly states that such Event of Default has ceased to continue. Lender shall not be obligated under any circumstances whatsoever to execute and deliver any such writing.

Without limitation, this Section shall govern in any case where reference is made in this Security Instrument or elsewhere in the Loan Documents to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default," "the continuance of an Event of Default" or "after an Event of Default has ceased" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

27. Right of Entry.

In addition to any other rights or remedies granted under this Security Instrument, Lender, Trustee and their agents, during the Term, shall have the right to enter and inspect the Security Property during normal business hours. The cost of such inspections or audits shall be borne by Borrower should Lender determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Lender. The cost of such inspections, if not paid for by Borrower following demand, may be added to the principal balance of the sums due under the Note and this Security Instrument and shall bear interest thereafter until paid at the Default Rate.

28. Security Agreement.

(a) This Security Instrument is both a real property Security Instrument and a "security agreement" within the meaning of the Uniform Commercial Code. The Security Property includes both real and personal property and all other rights and interests, whether

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tangible or intangible in nature, of Borrower in the Security Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender and Trustee, as security for the Debt, a security interest in the Security Property to the full extent that the Security Property may be subject to the Uniform Commercial Code (said portion of the Security Property so subject to the Uniform Commercial Code being called in this Section the "Collateral"). This Security Instrument shall also constitute a "fixture filing" for purposes of the Uniform Commercial Code. As such, this Security Instrument covers all items of the Collateral that are or are to become fixtures, and the purpose of this Section is to create a fixture filing under Section 9313 and 9402 of the Uniform Commercial Code. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Security Instrument. The rights, remedies and interests of Lender under the security agreement and under the other provisions of this Security Instrument are independent and cumulative, and there shall be no merger of any security interest created by the security agreement with any lien created under the other provisions of this Security Instrument. Lender may elect to exercise or enforce any of its rights, remedies, or interests under either or both the security agreement and the other provisions of this Security Instrument as Lender may from time to time deem appropriate.

(b) If an Event of Default shall occur, Lender and Trustee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender or Trustee, Borrower shall at its expense assemble the Collateral and make it available to Lender and Trustee at a convenient place acceptable to Lender. Borrower shall pay to Lender and Trustee on demand any and all expenses, including attorneys' fees and disbursements, incurred or paid by Lender and Trustee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Borrower, such Borrower shall notify Lender and Trustee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after written request from Lender, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Borrower's obligations under the Note, this Security Instrument and any of the other Loan Documents. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its

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behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Security Instrument.

29. Actions and Proceedings.

Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Security Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect their interest in the Security Property. Lender shall, at its option, be subrogated to the lien of any deed of trust, mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

30. Waiver of Setoff and Counterclaim.

All amounts due under this Security Instrument, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding in which Lender or Trustee is a participant, or arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Debt.

31. Contest of Certain Claims.

Notwithstanding the provisions of Sections 5 and 23 hereof, Borrower shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Security Property if, and so long as, (a) Borrower shall have notified Lender of same within five (5) days of obtaining knowledge thereof; (b) Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Security Property or any part thereof, to satisfy the same; (c) Borrower shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety reasonably satisfactory to Lender, in an amount equal to 125% of the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Security Property or any part thereof; (d) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Security Property; and (f) notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay (and if Borrower shall fail so to do, Lender may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Lender, the Security Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Lender may

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pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

32. Recovery of Sums Required to be Paid.

Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

33. Marshalling and Other Matters.

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

34. Hazardous Substances/Compliance with Environmental Laws.

Borrower acknowledges that Borrower has executed and delivered to Lender that certain Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity") pursuant to which, *inter alia*, Borrower and Guarantor have fully indemnified Lender for certain environmental matters concerning the Security Property as provided therein. The provisions of the Environmental Indemnity are hereby incorporated herein and this Security Instrument shall secure all of the obligations of Borrower thereunder.

35. Intentionally Deleted.

36. Intentionally Deleted.

37. Handicapped Access.

(a) Borrower agrees that the Security Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 (if applicable), all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Security Property, Borrower shall not alter the Security Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The

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foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.

(c) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

38. Indemnification.

In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower shall protect, defend, indemnify and save harmless Lender and Trustee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against Lender and Trustee by reason of the occurrence or existence of any of the following, prior to (i) the acceptance by Lender of a deed-in-lieu of foreclosure with respect to the Security Property or (ii) the foreclosure of this Security Instrument by Lender pursuant to which it succeeds to Borrower's fee simple interest in the Security Property, unless caused solely by the actual willful misconduct or gross negligence of Lender or Trustee, (a) ownership of this Security Instrument, the Security Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Security Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways (including, without limitation, any golf course or related activity whatsoever); (c) any use, nonuse or condition in, on or about the Security Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Security Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from, or affecting the Security Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (i) any violation of the Environmental Laws (as defined in the Environmental Indemnity), which are based upon or in any way related to such Hazardous Substance including, without limitation, the costs and expenses of any remedial work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Security Property to comply with any laws relating to access to the Security Property; (k) any representation or warranty made in the Note, this Security Instrument or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with the Loan, any Lease or other transaction involving the Security Property or any part thereof under any legal requirement or any liability asserted against Lender with respect thereto; and (m) the claims of any lessee of any or any portion of the Security Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts payable to Lender or Trustee by reason of the application of this Section shall be secured by this

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Security Instrument and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender or Trustee until paid. The obligations and liabilities of Borrower under this Section 38 shall survive and termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Security Property by foreclosure or a conveyance in lieu of foreclosure.

39. Notices.

Any notice, report, demand or other instrument authorized or required to be given or furnished ("Notices") shall be in writing and shall be given as follows: (a) by hand delivery; (b) by deposit in the United States mail as first class certified mail, return receipt requested, postage paid; (c) by overnight nationwide commercial courier service; or (d) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a)-(c) above, in each case, addressed to the party intended to receive the same at the following address(es):

Lender:	First National of America, Inc. 188 Mount Airy Road Basking Ridge, New Jersey 07920 Attention: Jerry P. Sager Re: Eagle Ridge Telecopier: 908-604-6699
with copies to:	Anderson Kill & Olick, P.C. 1251 Avenue of the Americas New York, New York 10020 Attention: Joseph Bulian, Esq. Telecopier: 212-278-1733
Borrower:	At the address set forth in the introductory paragraph of this Security Instrument.
with a copy to:	Greenberg Glusker Fields Claman Machtinger & Kinsella, LLP 1900 Avenue of the Stars, Suite 2100 Los Angeles, CA 90067 Attn: Stephen Claman, Esq. Telecopier: 310-201-2374

Any party may change the address to which any such Notice is to be delivered, by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 39. Notices shall be deemed to have been given on the date they are actually received; provided, that the inability to deliver Notices because of a changed address of which no Notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or

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refusal to accept delivery. Notice for either party may be given by its respective counsel. Additionally, notice from Lender may also be given by the Servicer. Borrower hereby requests that a copy of any Notice of Default or Notice of Sale be mailed to Borrower at the address provided herein.

40. Authority.

(a) Borrower (and the undersigned representative of Borrower, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, and to deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Security Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

(b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

41. Waiver of Notice.

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

42. Remedies of Borrower.

In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or any of the other Loan Documents, it has an obligation to act reasonably or promptly, neither Lender nor Trustee shall be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

43. Sole Discretion of Lender.

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

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44. Non-Waiver.

The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or Guarantor 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, (b) the release, regardless of consideration, of the whole or any part of the Security Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or any of the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its sole discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights and remedies of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender or Trustee 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.

45. 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 Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

46. Liability.

If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Lender's consent to any transfer of the Security Property, this Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

47. Inapplicable Provisions.

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

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48. Headings, Etc.

The headings and captions of various provisions 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.

49. Duplicate Originals.

This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

50. Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Security Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Trustee" shall mean "Trustee and any subsequent trustee under this Security Instrument," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Security Property" shall include any portion of the Security Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Security Property and Collateral and enforcing its rights hereunder. 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.

51. Homestead.

Borrower hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Security Property as against the collection of the Debt, or any part hereof.

52. Assignments.

Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.

53. Waiver of Jury Trial.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT,

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OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

54. Full Recourse

Borrower shall at all times be personally and fully liable for the repayment of the Loan and all other sums payable to Lender hereunder.

55. Acceleration in Case of Insolvency.

If Borrower shall voluntarily file a petition under Title 11 of the U.S. Code (the "Act"), as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in any involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower or any Guarantor shall collude with any person or entity to file an involuntary petition under the Act as to which Borrower or any Guarantor is the debtor or as to which any property of any of them is property of the estate therein, or if in the absence of such collusion Borrower shall fail to obtain vacation of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within sixty (60) days of the filing of such involuntary proceeding, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Security Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of creditors, or if there is an attachment, execution or other judicial seizure of any portion of the assets of Borrower and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Security Instrument to be immediately due and payable without prior notice, and Lender may invoke any remedies permitted or provided for herein or in any of the Loan Documents or pursuant to applicable law. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's or any Guarantor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Security Instrument.

56. Trustee's Fees; Substitute Trustee

(a) Borrower shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

(b) Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security

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Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this Section for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

57. Governing Law. THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. WHENEVER POSSIBLE, EACH PROVISION OF THIS SECURITY INSTRUMENT SHALL BE INTERPRETED IN SUCH A MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS SECURITY INSTRUMENT 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 REMAINING PROVISIONS OF THIS SECURITY INSTRUMENT. NOTHING CONTAINED IN THIS SECURITY INSTRUMENT OR IN ANY LOAN DOCUMENT SHALL REQUIRE BORROWER TO PAY OR LENDER TO ACCEPT ANY SUM IN ANY AMOUNT WHICH WOULD, UNDER APPLICABLE LAW, SUBJECT LENDER TO PENALTY OR ADVERSELY AFFECT THE ENFORCEABILITY OF THIS SECURITY INSTRUMENT. IN THE EVENT THAT THE PAYMENT OF ANY SUM DUE HEREUNDER OR UNDER ANY LOAN DOCUMENT WOULD HAVE SUCH RESULT UNDER APPLICABLE LAW, THEN, IPSO FACTO, THE OBLIGATION OF BORROWER TO MAKE SUCH PAYMENTS SHALL BE REDUCED TO THE HIGHEST SUM THEN PERMITTED UNDER APPLICABLE LAW AND APPROPRIATE ADJUSTMENT SHALL BE MADE BY BORROWER AND LENDER.

58. Consent to Jurisdiction. BORROWER IRREVOCABLY AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT AND ANY ACTION FOR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR OF THE UNITED STATES SITTING IN THE COUNTY AND STATE OF CALIFORNIA. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY COURT OR THAT SUCH ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT COURT. NOTHING HEREIN SHALL LIMIT THE RIGHT OF LENDER TO BRING PROCEEDINGS AGAINST

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BORROWER IN A COURT OF ANY OTHER JURISDICTION. BORROWER HEREBY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR BORROWER SET FORTH HEREIN.

59. Power of Sale.

(a) Upon the occurrence of an Event of Default, Trustee, or the agent or successor of Trustee, at the request of Lender, shall sell or offer for sale the Security Property in such portions, order and parcels as Lender may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and provisions of the law of the State in which the Security Property is located. Such sale shall be made at the area within the courthouse of the county in which the Security Property (or any portion thereof to be sold) is situated (whether the parts or parcels thereof, if any, in different counties are contiguous or not, and without the necessity of having any personal property hereby secured present at such sale) which is designated by the applicable court of such County as the area in which public sales are to take place, or, if no such area is designated, at the area at the courthouse designated in the notice of sale as the area in which the sale will take place, on such day and at such times as permitted under applicable law of the State where the Security Property is located, after advertising the time, place and terms of sale and that portion of the Security Property in accordance with such law, and after having served written or printed notice of the proposed sale by certified mail on each Borrower obligated to pay the Note and other secured indebtedness secured by this Security Instrument according to the records of Lender in accordance with applicable law. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

At any such public sale, Trustee may execute and deliver in the name of Borrower to the purchaser a conveyance of the Security Property or any part of the Security Property in fee simple. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Security Property may be sold in its entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect, and if Lender so elects, Trustee may sell the personal property covered by this Security Instrument at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State in which the Security Property is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until all the Security Property is sold or the Note and other secured indebtedness is paid in full. If the Note and other secured indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts or guaranty, assignments of lease, or other security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Lender may determine.

(b) Upon any foreclosure sale or sales of all or any portion of the Security Property under the power herein granted, Lender may bid for and purchase the Security Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

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(c) In the event of a foreclosure or a sale of all or any portion of the Security Property under the power herein granted, the proceeds of said sale shall be applied, in whatever order Lender in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith (including, without limitation, attorneys' fees and expenses), to fees and expenses of Trustee (including, without limitation, Trustee's attorneys' fees and expenses), to insurance premiums, liens, assessments, taxes and charges (including, without limitation, utility charges advanced by Lender), to payment of the outstanding principal balance of the Debt, and to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

60. Miscellaneous.

(a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Borrower and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Borrower nor shall privity of contract be presumed to have been established with any such third party. If Lender deems it to be in its best interest to retain assistance of persons, firms or corporations (including, without limitation, attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Borrower shall reimburse Lender for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

(b) Borrower covenants and agrees that during the Term, unless Lender shall have previously consented in writing, (a) Borrower will take no action that would cause it to become an "employee benefit plan" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under the state statutes, and (b) Borrower will not sell, assign or transfer the Security Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Lender its written assumption of the obligations of this covenant. Borrower further covenants and agrees to protect, defend, indemnify and hold Lender harmless from and against all loss, cost, damage and expense (including without limitation, all attorneys' fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) that Lender may incur as a result of Borrower's breach of this covenant. This covenant and indemnity shall survive the extinguishment of the lien of this Security Instrument by foreclosure or action in lieu thereof; furthermore, the foregoing indemnity shall supersede any limitations on Borrower's liability under any of the Loan Documents.

(c) The Loan Documents contain the entire agreement between Borrower and Lender relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

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(d) Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this Section. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower or all or any part of the Security Property under any federal or state law for which forfeiture of the Security Property or any part thereof or of any monies paid in performance of Borrower's obligations under the Loan Documents is a potential result, shall, at the election of Lender, constitute an Event of Default hereunder without notice or opportunity to cure.

(e) Borrower acknowledges that, with respect to the Loan, Borrower is relying 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. 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 the Borrower or its affiliates. Borrower acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(f) Borrower covenants and agrees to pay Lender upon receipt of written notice from Lender, all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Security Instrument and the other Loan Documents; (ii) Borrower's performance of and compliance with Borrower's respective agreements and covenants contained in this Security Instrument and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Lender's performance and compliance with all agreements and conditions contained in this Security Instrument and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Security Instrument and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Lender pursuant to this Security Instrument and the other Loan Documents.

(g) This Security Instrument shall be governed by and construed in accordance with the laws of the State in which the Premises are located and the applicable laws of the United States of America.

61. Management of the Security Property.

The Security Property is currently managed by Borrower. If Borrower elects to engage a third party to manage the Security Property (the "Manager"), Borrower must obtain the consent of Lender to the Manager, which consent shall not be unreasonably withheld, and Borrower and Manager must enter into a management agreement, which shall be subject to the approval of Lender (the "Management Agreement"). Borrower shall thereafter maintain such Management Agreement for the operation of the Security Property in full force and effect and

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timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of the Manager thereunder, and shall not permit the termination or amendment of such Management Agreement unless the prior written consent of Lender is first obtained. If Lender at any time consents to the appointment of any Manager, such Manager and Borrower shall, as a condition of Lender's consent, enter into an assignment and subordination of such Management Agreement in form satisfactory to Lender, which shall, *inter alia*, provide for the assignment and subordination of the Manager's rights and interests under the Management Agreement, and all fees of the Manager pursuant to such Management Agreement, to the rights and interests of Lender under the Loan Documents, including without limitation under this Security Instrument, and shall provide further that, upon an Event of Default, Borrower, at Lender's request made at any time while such Event of Default continues, shall, as applicable, either (i) cease managing the Security Property and hire a replacement Manager approved by Lender or (ii) terminate the Management Agreement and replace the Manager with a Manager approved by Lender.

62. Sale of Notes and Securitization.

(a) Borrower acknowledges that Lender and its successors and assigns shall have the right to do any and all of the following: (i) sell this Security Instrument, the Note and other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Security Instrument to one or more investors, (iii) deposit this Security Instrument, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, (iv) otherwise sell the Loan or interest therein to investors, or (v) cause the Note, this Security Instrument and the other Loan Documents to be split into two or more notes, parts or interests, in whatever proportion Lender deems appropriate, which may be in the form of *pari passu* interests, senior and junior interests, or other interests, and thereafter to sell, assign, participate, syndicate or securitize all or any part of either or both of such severed or split obligations and documents (the transactions referred to in clauses (i) through (v) are hereinafter each referred to as "Secondary Market Transaction" or "Securitization"). Without limiting clause (v) above, Lender may do any one or more of the following: (i) cause the Note and this Security Instrument to be split into a first and second mortgage (or deed of trust) loan, (ii) create one more senior and subordinate notes (*i.e.*, an A/B or A/B/C structure), (iii) create multiple components of the original Note or notes (and allocate or reallocate the principal balance of the Loan among such components) or (iv) otherwise sever the Loan into two or more loans secured by mortgages or deeds of trust and by a pledge of partnership or membership interests (directly or indirectly) in Borrower (*i.e.*, a senior loan/mezzanine loan structure), in each such case, in whatever proportion and whatever priority Lender determines; provided, however, in each such instance the outstanding principal balance of all the resulting notes evidencing the Loan (or components of such notes) immediately after the effective date of such modification equals the outstanding principal balance of the Loan immediately prior to such modification and the weighted average of the interest rates for all such notes (or components of such notes) immediately after the effective date of such modification equals the interest rate of the original Note immediately prior to such modification. If requested by Lender, Borrower (and Borrower's constituent members, if applicable, and each guarantor and indemnitor) shall execute promptly after such request, such documentation as Lender may reasonably request to evidence and/or effectuate any such modification or severance. Borrower shall cooperate with Lender in effecting any such Secondary Market Transaction and shall

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cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction. Borrower shall not be required to modify any documents evidencing or securing the Loan so as to modify (A) the interest rate payable under the Note, (B) the stated maturity of the Note, (C) the amortization of principal of the Note, (D) the non-recourse provisions of the Loan or (E) any other material economic term of the Loan. However, in the case of split notes, the interest rate and principal amortization may be changed, provided that for the combined obligations taken as an aggregate, the over-all interest rate and amortization of principal shall remain the same. Borrower shall provide such information, legal opinions and documents relating to Borrower, Guarantor, if any, the Security Property and any tenants of the Improvements as Lender may reasonably request in connection with such Secondary Market Transaction. In addition, Borrower shall make available to Lender all information concerning its business and operations that Lender may reasonably request. Lender shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Borrower to Lender may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. 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 and Borrower 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 such information 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 Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

(b) In the event that the provisions of this Security Instrument or any Loan Documents require the receipt of written confirmation from each Rating Agency with respect to the ratings on the rated single or multi-class securities, or, in accordance with the terms of the transaction documents relating to a Secondary Market Transaction, such a rating confirmation is required in order for the consent of the Lender to be given, the Borrower shall pay all of the costs and expenses of the Lender, Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency as a condition to the delivery of such confirmation.

63. Servicer.

The Loan will be serviced by Lender or other party selected by Lender (the "Servicer"), and Lender may delegate all or any portion of its responsibilities under this Security Instrument and the other Loan Documents to the Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall enter into an agreement with Lender and/or Servicer in form acceptable to Lender and/or Servicer providing, among other things, for a fee to be payable by Borrower to such party (the "Servicing Fee") in consideration of the servicing duties being performed with respect to the Loan. The Servicing Agreement shall be deemed to be a Loan Document hereunder.

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64. Guaranties Unsecured.

Anything to the contrary herein or elsewhere notwithstanding, the Guaranty (or Guaranties, if applicable) of even date herewith given to Lender in connection with the Security Property shall not be secured hereby or by any of the other Loan Documents or by any of the Security Property or Collateral or by any security of any nature which secures the Loan or which secures any of the obligations which are secured by the Loan Documents. Without limitation, this Section 64 has priority over any provision of this Security Instrument or of any of the other Loan Documents which states (directly or indirectly) or implies that any such Guaranty is so secured.

65. Undisbursed Loan Proceeds/Pre-Development Expenses.

(a) **Pre-Development Expense Budget.** In addition to payments of Taxes, Insurance Premiums, interest under the Note and the Servicing Fee (as hereafter defined) therefrom, Borrower may utilize funds from undisbursed Loan proceeds up until the Initial Maturity Date to pay for certain costs and expenses related to the Pre-Development Work (as hereinafter defined) in accordance with the budget set forth in Exhibit B annexed hereto (the "Pre-Development Expense Budget"; and the costs and expenses set forth in the Pre-Development Expense Budget are sometimes herein referred to, collectively, as the "Pre-Development Expenses") upon written request of Borrower detailing the Pre-Development Expenses previously incurred by Borrower and invoiced, provided that each of the Loan Disbursement Conditions (as hereafter defined) set forth in Section 65(b) hereof and the other terms and conditions set forth in Section 65(c) hereof shall have been satisfied. In no event shall Borrower be entitled to reimbursement of any costs with respect to an item of Pre-Development Expenses in excess of the amount allocated for such item in the Pre-Development Expense Budget, and in any such event or in the event that the amounts available out of undisbursed Loan proceeds shall be inadequate at any time to pay for the item of Pre-Development Expenses for which Borrower is requesting reimbursement, then Borrower shall be responsible for payment of the amount of any such deficiency (inclusive of the full amount thereof) out of its own funds. The term "Pre-Development Work" means certain design and planning work related to the Project and the Partition (as hereinafter defined), including without limitation, architectural, environmental, engineering, survey, legal and accounting services performed in connection therewith. Notwithstanding anything to the contrary contained herein, Borrower expressly requests and authorizes Lender to make advances directly to itself out of undisbursed Loan proceeds for payment of interest under the Note and any other charges, costs and expenses incurred by Lender in connection with the Loan, including without limitation default interest, late charges and any other amounts.

(b) **Conditions Precedent to Disbursement of Loan Proceeds.** No disbursement of Loan proceeds shall be made by Lender to Borrower at any time unless each of the following conditions precedent shall have been satisfied (collectively, the "Loan Disbursement Conditions"):

(i) no Event of Default has occurred under this Security Instrument or under any other Loan Document, and no event, circumstance or condition has occurred or exists

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which, with the passage of time or the giving of notice, would constitute an Event of Default under this Security Instrument or under any of the other Loan Documents;

(ii) no litigation or proceedings are pending or threatened (including proceedings under Title 11 of the United States Code) against Borrower, any Guarantor or the Security Property, which litigation or proceedings, in the sole and exclusive judgment of Lender, are material;

(iii) all representations and warranties made by Borrower to Lender herein and otherwise in connection with this Loan continue to be true and accurate;

(iv) the approval process for the General Plan Amendment and Zoning Map Amendment is continuing in accordance with Section 9(b) hereof;

(v) Lender shall be satisfied as to the continuing accuracy of the Pre-Development Expense Budget;

(vi) Borrower shall provide to Lender a completed draw request on Lender's standard form, together with such documentation and certifications as Lender may reasonably request, detailing the Pre-Development Expenses previously incurred and invoiced for which Borrower is seeking payment thereunder;

(vii) if the requested disbursement relates to Pre-Development Work, Borrower shall provide Lender with all invoices, receipts, lien waivers (as provided hereinbelow) and other documentation of lawful and workmanlike progress or completion and lien-free status, if applicable, all as may be reasonably requested by Lender;

(viii) if the requested disbursement relates to Pre-Development Work, Borrower shall provide Lender such evidence as may be reasonably satisfactory to Lender that, after payment of the requested disbursement, the funds remaining in the Pre-Development Expense Budget for such item of Pre-Development Work (together with deposits that are required to be made therein, if applicable) shall be sufficient to pay for the remainder of such item of Pre-Development Work;

(ix) if the requested disbursement relates to Pre-Development Work, Lender shall have completed such field inspections as it deems necessary, and Borrower shall pay any costs and expenses incurred by Lender in connection with the same;

(x) if the requested disbursement relates to Pre-Development Work, Borrower shall provide sworn statements, and any contractor shall provide sworn statements and waivers of lien, covering all work for which disbursement is to be made to a date specified therein, and covering all work done on the Premises, to a reasonably current date, otherwise paid for or to be paid for by Borrower or any other person, all in compliance with the mechanics' lien laws of the State of California and with the requirements of Lender and the title insurance company (for issuance of interim title endorsements covering such disbursement), together with such invoices, contracts or other supporting data as Lender or such title insurance company may require;

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(xi) Endorsements to the title insurance policy, if required by Lender, to cover the amount and date of the disbursement (whether into escrow or otherwise) insuring that the Security Instrument remains a valid second lien (or first lien, as the case may be) on the Premises, subject only to permitted exceptions, and that nothing has intervened to affect the validity or priority of the Security Instrument, insuring against mechanics' lien claims for work performed prior to the date covered by such continuation, and containing a mechanics' lien interim certification with respect to the current disbursement;

(xii) Borrower shall have paid to Lender with each request for disbursement (A) a draw processing fee equal to \$1,850.00 and (B) and any other amounts payable to Lender hereunder; and

(xiii) all documents and information provided under this subparagraph shall be in form and substance satisfactory to Lender in its reasonable discretion.

(c) General Conditions relating to Disbursement of Loan Proceeds.

Subject to the satisfaction of the terms and conditions herein contained, the Loan proceeds shall be disbursed as follows:

(i) Disbursement of Loan proceeds shall be made, and the conditions precedent to each disbursement, shall be made, from time to time, but not more frequently than once in each calendar month, and, with respect to disbursements for Pre-Development Work, in amounts of not less than \$50,000.00. All draw requests and related draw documents must be received by Lender on or before the fourth (4th) day of the calendar month. Requests received after such fourth (4th) day will be processed during the immediately succeeding calendar month. If the fourth (4th) day of the calendar month falls on a non-Business Day, the draw request and related draw documents must be filed with Lender before such date in order to be processed during such month. Each disbursement of Loan proceeds will be funded on the fifteenth (15th) day (or if such day falls on a non-Business Day, the immediately preceding Business Day) of the same calendar month in which the draw request is received, subject to compliance with foregoing requirements.

(ii) Borrower shall be responsible for payment of all costs and expenses incurred by Lender in connection with requests for disbursement of Loan proceeds, including but not limited to (A) all title examination, title endorsement, survey, escrow, filing, search, recording and registration fees and charges; (B) all fees and disbursements of architects, engineers and consultants engaged by Borrower or Lender, and (C) all fees and disbursements of legal counsel engaged by Lender in connection with the disbursements, including, without limitation, counsel engaged in connection with the enforcement or administration of this Security Instrument or any of the other Loan Documents, and Borrower hereby requests and authorizes Lender to make disbursements of Loan proceeds directly to itself for payment of all such cost and expenses.

(iii) Any disbursement of Loan Proceeds shall be made for payment of Pre-Development Expenses in strict accordance with the Pre-Development Expense Budget. No amendment of the Pre-Development Expense Budget shall be made without Lender's prior written consent. No reallocation of line items within the Pre-Development Expense Budget shall

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Eagle Ridge Deal of Trust

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be made unless Borrower can demonstrate to Lender's satisfaction that (x) sufficient funds remain in the line item from which the amount is to be reallocated to pay all Pre-Development Expenses which may be paid from that line item; and (y) no line items in the Pre-Development Expense Budget (other than the line item to which the reallocation is sought) are required, in Lender's judgment, to be increased.

(iv) In connection with the transactions contemplated hereby, Lender shall have the right (but not the duty) to employ such consultants as it may deem appropriate from time to time, to (a) review and make recommendations regarding the Pre-Development Expense Budget, (b) inspect the Premises from time to time to insure that any work is being performed and as herein provided, (c) review and make recommendations regarding any elements of a request for disbursement, (d) obtain information and documentation respecting the Project, attend meetings respecting the Project and formulate reports for Lender pertaining to the Project and (e) perform such other services as Lender from time to time may reasonably require, all solely on behalf of Lender. The costs and disbursements of such consultants shall be payable by Borrower. Neither Lender nor any such consultants shall be deemed to have assumed any responsibility to, or be liable to, Borrower or the Guarantor with respect to any actions taken or omitted by Lender or such consultants pursuant hereto. Notwithstanding the aforesaid or anything else provided in this Security Instrument to the contrary, Borrower shall not be entitled to rely on any statements or actions of Lender's consultants and no consultant retained by Lender shall have the power or authority to grant any consents or no approvals or bind Lender in any manner, absent confirmation by Lender of the accuracy of the information conveyed by such consultant to Borrower.

(v) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Loan shall at all times be In Balance (as hereinafter defined). The Loan shall be deemed to be "In Balance" only if the total of the Available Funds (as hereinafter defined), in Lender's sole and absolute judgment, shall equal or exceed the aggregate of: (a) the amount required to pay interest on the Loan to the Initial Maturity Date, as estimated by Lender; (b) the amount required to pay Taxes becoming due and payable until the Initial Maturity Date, as estimated by Lender; (c) the amount required to pay for certain of the Pre-Development Expenses incurred or to be incurred in connection with the Project, in accordance with the Pre-Development Expense Budget, until the Initial Maturity Date, and (d) amounts to be paid as retainage to persons who have supplied labor, services or materials related to the Pre-Development Work, including, without limitation, any contractors, architects and subcontractors. As used herein, the term "Available Funds" shall mean:

- A. the undisbursed proceeds of the Loan, net of any unpaid accrued interest on the Loan; plus
- B. any other amounts deposited by Borrower pursuant to this subparagraph (c)(v) and then held by Lender; plus
- C. the value of any portion of Borrower's equity as may be then held in cash by Lender; for the purposes hereof, letters of credit shall not be treated as cash or a cash equivalent.

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Borrower agrees that if for any reason the Loan is not In Balance, Borrower, within ten (10) days after request by the Lender, will deposit with Lender cash in an amount which will place the Loan In Balance, which deposit shall first be exhausted before any further disbursement of the proceeds of the Loan shall be made. No interest shall be payable on such amounts.

66. First Deed of Trust and Third Deed of Trust.

Reference is hereby made to that certain (i) Long Form Deed of Trust and Assignment of Rents (the "First DOT") dated as of the date hereof made by Borrower for the benefit of Northwoods Corporation, a Delaware corporation, Stradella Investments, Inc., a California corporation, Sarbonne Investments, Inc., a California corporation, Spiros Investments, Inc., a California corporation, Savona Investments, Inc., a California corporation, Sandal Investments, Inc., a California corporation, Tortuoso Investments, Inc., a California corporation, and Tavistock Investments, Inc., a California corporation (collectively, "Seller"), constituting a first deed trust lien against the Premises and (ii) Subordinate Long Term Deed of Trust and Assignment of Rents (the "Third DOT") dated as of the date hereof made by Borrower for the benefit of Seller, constituting a third deed of trust lien against the Premises. The First DOT is subject to that certain Intercreditor Agreement dated as of the date hereof between Lender and Seller, and the Third DOT is subject to that certain Subordination and Standstill Agreement dated as of the date hereof between Lender and Seller (the "Subordination and Standstill Agreement").

67. Partition Action/Total Property Acquisition.

Reference is made to that certain Purchase and Sale Agreement ("Purchase and Sale Agreement") dated as of February 21, 2006 between Seller, as seller, and Borrower, as purchaser, which is subject to the Subordination and Standstill Agreement. Borrower represents that it is endeavoring to acquire the 40% Undivided Interest from Solomon and, in connection therewith, Borrower shall provide Lender promptly with copies of all written communications involving Solomon and keep Lender informed on a current basis regarding its efforts to acquire the 40% Undivided Interest. All documents to be entered into between Borrower (and/or Guarantor) and Solomon shall require the prior written approval of Lender. Upon acquisition by Borrower of the 40% Undivided Interest, Borrower shall cause the First DOT to be released as a lien against the Security Property and the lien of this Security Instrument shall automatically continue as a first lien against the Security Property and this Security Instrument and the other Loan Documents shall remain unaffected thereby, and Borrower shall execute and deliver to Lender such instruments and amendments and/or restatements to the Loan Documents, as Lender shall require, in its sole discretion, to confirm and/or effectuate the foregoing. Unless Borrower has entered into a binding written agreement with Solomon for the acquisition of the 40% Undivided Interest by no later than sixty (60) days after the date hereof and closed on the acquisition by no later than one hundred eighty (180) days after the date hereof, Borrower shall file the Partition Action, as such term is defined in the Purchase and Sale Agreement, and thereafter will diligently prosecute the Partition Action to a final request or judgment (the Partition Action, and any partition that results therefrom, the "Partition"). Borrower shall provide Lender promptly with copies of all written communications relating to the Partition Action and to all documents to be executed and/or delivered in connection with the Total

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Property Acquisition Date, the 60% Acquisition Date or the Third Party Acquisition Date, as the case may be (as each of such terms is defined in the Purchase and Sale Agreement), and shall keep Lender informed on a current basis regarding the status of each of the foregoing. Borrower shall at all times comply with all of the provisions of the Purchase and Sale Agreement (and all documents executed and/or delivered in connection therewith). All documents to be entered into between Borrower (and/or Guarantor) and any third parties in connection therewith shall require the prior written consent of Lender, which shall not be unreasonably withheld. Upon the occurrence of either of the Total Property Acquisition Date or the 60% Acquisition Date, Borrower shall cause the First DOT to be released as a lien against the Security Property (and comply with the other provisions of the Purchase and Sale Agreement) and the lien of this Security Instrument shall automatically continue as a first lien against the Security Property and this Security Instrument and the other Loan Documents shall remain unaffected thereby (subject, in the event of the 60% Acquisition Date, to reconfiguration of the Premises in accordance with the Purchase and Sale Agreement, provided Lender has approved any such reconfiguration and Borrower has complied with the terms and conditions set forth in this Section 67), and Borrower shall execute and deliver to Lender such instruments and amendments and/or restatements to the Loan Documents as Lender shall require, in its sole discretion, to confirm and/or effectuate the foregoing. Upon the occurrence of the Third Party Acquisition Date, Borrower shall pay in full to Lender all of the indebtedness evidenced by the Note, together with all other amounts due to Lender thereunder and under the other Loan Documents. Borrower shall be responsible for payment of all costs and expenses related to the matters described in this Section 67, and Borrower shall pay to Lender, upon demand, all of the costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lender in connection therewith.

68. Commercial Parcel. Provided no Event of Default exists, upon Borrower's written request after the Commercial Parcel (as defined in the Purchase and Sale Agreement) becomes a separate legal parcel following the recordation of a parcel map or subdivision map creating the Commercial Parcel as a separate legal parcel subject to and in accordance with the terms and conditions of the Purchase and Sale Agreement and the Commercial Parcel Agreement (as defined in the Purchase and Sale Agreement), Lender shall execute and deliver a reconveyance of the Commercial Parcel from the lien of this Security Instrument in form acceptable to Lender, for no additional consideration. Borrower shall be responsible for payment of all costs and expenses related to the reconveyance of the Commercial Parcel from this Security Instrument, and Borrower shall pay to Lender, upon demand, all of the costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lender in connection therewith.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of
the day and year first above written.

BORROWER

**RM EAGLE LLC, a Delaware limited liability
company**

By: **SME Management, Inc., a Delaware
corporation**

By: 

**Name: Randall Bone
Title: President**

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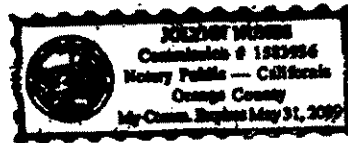
Exhibit 5 000202

STATE OF CALIFORNIA)
) S.S.:
COUNTY OF *Orange*)

On *March 8*, 2006, before me, *Johann Nunes Notary Public* personally appeared *Randall Bone* —, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(x) whose name(x) *is* subscribed to the within instrument and acknowledged to me that *he* ~~she~~ they executed the same in *his* ~~her~~ their authorized capacity(i)s, and that by *his* ~~her~~ their signature(s) on the instrument the person(s), or the entity(*s*) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Johann Nunes



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Eagle Ridge Deed of Trust

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EXHIBIT A
Legal Description

The land is described as follows:

PARCEL 1:

THAT PORTION OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN DEED TO COUNTY OF RIVERSIDE, RECORDED MAY 24, 1949 IN BOOK 1079 PAGE 60 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE NORTH LINE OF SAID SECTION 31, BEING A POINT ON SAID NORTH LINE NORTH 89° 42' 26" EAST, 40.00 FEET THEREON FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH 00° 09' 54" WEST, 2,660.80 FEET ON SAID EAST LINE; THENCE SOUTH 00° 10' 45" WEST, 1001.09 FEET ON SAID EAST LINE TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE WESTERLY OF 2,040.00 FEET RADIUS; THENCE SOUTHERLY 404.64 FEET ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 21' 53", TO THE WEST LINE OF SAID SECTION 31; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE ON THE SOUTH LINE OF SAID SECTION, NORTH 89° 50' 47" EAST, 1,972.62 FEET, NORTH 89° 51' 01" EAST, 2,651.43 FEET AND NORTH 89° 52' 18" EAST, 783.13 FEET TO THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTH 00° 12' 39" EAST, 5,335.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE ON THE NORTH LINE OF SAID SECTION SOUTH 89° 39' 19" WEST, 1,321.44 FEET; THENCE SOUTH 89° 44' 58" WEST, 1,322.01 FEET; AND SOUTH 89° 42' 28" WEST, 2,734.41 FEET TO THE POINT OF BEGINNING;

EXCEPTING THAT PORTION DESCRIBED BY DEED TO THE COUNTY OF RIVERSIDE, RECORDED OCTOBER 15, 1986 AS INSTRUMENT NO. 256010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

THAT PORTION OF SECTION 16, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF

NYDCS1-815085.1

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CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD
(80.00 FEET WIDE) AS DESCRIBED IN THE DEED TO COUNTY OF RIVERSIDE,
RECORDED AUGUST 2, 1949 IN BOOK 1099 PAGE 31 OF OFFICIAL RECORDS OF
RIVERSIDE COUNTY, CALIFORNIA, WITH THE WEST LINE OF SECTION 31, IN
TOWNSHIP 4 SOUTH, RANGE 6 EAST; SAID INTERSECTION BEING A POINT ON A
CURVE IN SAID EAST LINE CONCAVE WESTERLY OF 2,040.00 FEET
RADIUS TO WHICH A RADIAL BEARS SOUTH 78° 27' 22" EAST;

THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET ON SAID WEST LINE OF
SECTION 31 TO THE SOUTHWEST CORNER OF SAID SECTION 31, BEING THE
SOUTHEAST CORNER OF SAID

SECTION 36;

THENCE SOUTH 89° 52' 25" WEST, 536.35 FEET ALONG THE SOUTH LINE OF SAID
SECTION 36 TO THE INTERSECTION OF THE EAST LINE OF SAID DEL RIO DEL
SOL ROAD, SAID INTERSECTION BEING A POINT ON A CURVE OF SAID EAST
LINE, CONCAVE EASTERLY OF 1,960.00 FEET RADIUS TO WHICH A RADIAL BEARS
NORTH 73° 55' 05" WEST;

THENCE ALONG SAID EAST LINE, NORTHERLY 482.81 FEET ALONG SAID CURVE,
THROUGH A CENTRAL ANGLE OF 14° 06' 50"; THENCE NORTH 30° 11' 45" EAST,
229.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY OF
2,040.00 FOOT RAOIUS AND NORTHERLY 664.10 FEET ON SAID CURVE THROUGH
A CENTRAL ANGLE OF 18° 39' 00" TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY
OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO.
40088 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9

NYDOCS1-815065.1

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SMRH 0000940

EXHIBIT B

Pre-Development Expense Budget

Draw Processing Fee	\$53,650.00
Servicing Fee	\$1,050,000.00
Legal & Accounting	\$506,384.93
General Administration & Operations	\$750,514.30
R.E. Taxes	\$1,625,000.00
Insurance	\$37,500.00
Architect & Engineering	\$245,000.00
Market Study	\$105,000.00
Contingency	\$284,257.90
Capitalized Interest	\$10,817,996.37
Total	\$15,475,303.50

NYDOCS1-815098.1

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EXHIBIT 6

RECORDING REQUESTED BY
 FIRST AMERICAN TITLE INSURANCE COMPANY
 AND WHEN RECORDED MAIL TO
 FIRST AMERICAN TITLE INSURANCE COMPANY
 3 FIRST AMERICAN WAY NDT'S DIVISION
 SANTA ANA, CA 92707

DOC # 2009-0053140
 02/04/2009 08:00A Fee:21.00
 Page 1 of 5
 Recorded in Official Records
 County of Riverside
 Larry U. Ward
 Assessor, County Clerk & Recorder



Trustee Sale No. 08-24875
 Loan No. RM EAGLE
 Title Order No. NCS-369156-LA2 TSG
 Sales Line: (714)573-1965

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NOTICE OF TRUSTEE'S SALE
 UNIFIED SALE

27 T
042

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 03-14-2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 03-04-2009 at 09:00 AM., FIRST AMERICAN TITLE INSURANCE COMPANY as the duly appointed Trustee under and pursuant to that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (and Fixture Filing) (the "Deed of Trust") recorded on March 14, 2006, in as Instrument 2006-0181836 of official records in the Office of the Recorder of RIVERSIDE County, California, executed by: RM EAGLE LLC, A DELAWARE LIMITED LIABILITY COMPANY, as Trustor, FIRST NATIONAL OF AMERICA, INC., A FLORIDA CORPORATION, as original Beneficiary, will sell at public auction sale to the highest bidder for cash, cashier's check drawn by a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state. Sale will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to the Deed of Trust. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay all unpaid indebtedness and obligations owing under the note and each and every other document or instrument secured by the Deed of Trust, together with all accrued and unpaid interest thereon, and estimated fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

Place of Sale:

AT THE SIXTH STREET ENTRANCE TO THE CORONA CIVIC CENTER BUILDING, 815 W. SIXTH STREET, CORONA, CALIFORNIA

Legal Description:

AN UNDIVIDED 60% INTEREST UNTO:

PARCEL 1: (APN NO.: 618-410-007 AND 004)
 THAT PORTION OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN DEED TO COUNTY OF RIVERSIDE, RECORDED MAY 24, 1949 IN BOOK 1079 PAGE 60 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE NORTH LINE OF SAID SECTION 31, BEING A POINT ON SAID NORTH LINE NORTH 89° 42' 26" EAST, 40.00 FEET THEREON FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH 00° 09' 54" WEST, 2,660.80 FEET ON SAID EAST LINE; THENCE SOUTH 00° 10' 45" WEST, 1001.09 FEET ON SAID EAST LINE TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE WESTERLY OF 2,040.00 FEET RADIUS; THENCE SOUTHERLY 404.64 FEET ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 21' 53", TO THE WEST LINE OF SAID SECTION 31; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE ON THE SOUTH LINE OF SAID SECTION, NORTH 89° 50' 47" EAST, 1,972.62 FEET, NORTH 89° 51' 01" EAST, 2,651.43 FEET AND NORTH 89° 52' 18" EAST, 783.13 FEET TO THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTH 00° 12' 39" EAST, 5,335.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE ON THE NORTH LINE OF SAID SECTION SOUTH 89° 39' 19" WEST, 1,321.44 FEET; THENCE SOUTH 89° 44' 58" WEST, 1,322.01 FEET; AND SOUTH 89° 42' 26" WEST, 2,734.41 FEET TO THE POINT OF BEGINNING;
EXCEPTING THAT PORTION DESCRIBED BY DEED TO THE COUNTY OF RIVERSIDE, RECORDED OCTOBER 15, 1986 AS INSTRUMENT NO. 256010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;
ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2: (APN NO.: 674-430-007)

THAT PORTION OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN THE DEED TO COUNTY OF RIVERSIDE, RECORDED AUGUST 2, 1949 IN BOOK 1099 PAGE 31 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE WEST LINE OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST; SAID INTERSECTION BEING A POINT ON A CURVE IN SAID EAST LINE CONCAVE WESTERLY OF 2,040.00 FEET RADIUS TO WHICH A RADIAL BEARS SOUTH 78° 27' 22" EAST; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET ON SAID WEST LINE OF SECTION 31 TO THE SOUTHWEST CORNER OF SAID SECTION 31, BEING THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 89° 52' 25" WEST, 536.35 FEET ALONG THE SOUTH LINE OF SAID SECTION 36 TO THE INTERSECTION OF THE EAST LINE OF SAID DEL RIO DEL SOL ROAD, SAID INTERSECTION BEING A POINT ON A CURVE OF SAID EAST LINE, CONCAVE EASTERLY OF 1,960.00 FEET RADIUS TO WHICH A RADIAL BEARS NORTH 73° 55' 05" WEST; THENCE ALONG SAID EAST LINE, NORTHERLY 482.81 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14° 06' 50"; THENCE NORTH 30° 11' 45" EAST, 229.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY OF 2,040.00 FOOT RADIUS AND NORTHERLY 664.10 FEET ON SAID CURVE THROUGH A CENTRAL ANGLE OF 18° 39' 07" TO THE POINT OF BEGINNING;
EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

Amount of unpaid balance and other charges: \$43,996,570.78 (estimated)

Street address and other common designation of the real property purported as:

VACANT LAND:

DIRECTIONS MAY BE OBTAINED BY WRITTEN REQUEST SUBMITTED WITHIN TEN DAYS FROM THE
FIRST PUBLICATION OF THIS NOTICE TO:

GIBSON, DUNN & CRUTCHER LLP
ATTN: DENNIS B. ARNOLD
333 SOUTH GRAND AVE.
LOS ANGELES, CA 90071-3197

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9

Notice is further given that pursuant to Section 9604 of the California Commercial Code, the Trustee, will, as a result of the failure Trustor to pay the unpaid indebtedness described above, conduct a unified sale of both the real property encumbered by the Deed of Trust described above, and that the Trustee will sell simultaneously with the above described real property encumbered by the Deed of Trust, at the same public auction and under a single bid, each and all of the Personal Property (as defined and described in Exhibit "A" attached hereto and incorporated herein with the same force and effect as if set forth in full herein).

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. The property heretofore described is being sold "as is, where is", without covenant or warranty, express or implied, regarding title, possession, encumbrances, condition, suitability for a particular purpose, or the location or existence of any personal property, to satisfy the indebtedness secured by the Deed of Trust, and any advances thereunder. This notice is given in compliance with a written request made to the Trustee by the present beneficiary under the Deed of Trust, Stark Onshore Master Holding LLC, a Wisconsin limited liability company.

DATE: 02-02-2009

Sales Line: (714)573-1965 Trustee: (714)250-3572

FIRST AMERICAN TITLE INSURANCE COMPANY


Diane Erickson, Sr. Trustee Sale Officer

FIRST AMERICAN TITLE INSURANCE COMPANY
IS A DEBT COLLECTOR ATTEMPTING TO
COLLECT A DEBT. ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

EXHIBIT "A"

THIS EXHIBIT "A" IS THE EXHIBIT "A" REFERENCED IN THE NOTICE OF TRUSTEE'S SALE (UNIFIED SALE) TO WHICH THIS EXHIBIT IS ATTACHED AND FORMS A PART OF SAID NOTICE OF TRUSTEE'S SALE (UNIFIED SALE)

All right, title, interest, claim and estate of Trustor now owned, or hereafter acquired, in and to the following (hereinafter collectively referred to herein as the "**Personal Property**"):

(i) All machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the real property encumbered by the Deed of Trust (the "**Property**") and any improvements thereon, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Property and any improvements thereon and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Property, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Property and any improvements thereon (hereinafter collectively referred to as the "**Equipment**"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State of California (the "**Uniform Commercial Code**"), superior in lien to the lien of the Security Instrument;

(ii) Awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Property and any improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Property and any improvements thereon;

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

(iv) All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code (including, without limitation, the Reserves), and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(v) All licenses, permits, authorizations, consents and approvals now or hereafter issued by any and all governmental agencies and authorities in connection with the operation, construction, use or occupancy of any improvements on the Property and/or the Property; and

(vi) All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Deed of Trust or Notice of Trustee's Sale (Unified Sale), as applicable.

EXHIBIT 7

①

FIRST AMERICAN TITLE INSURANCE COMPANY

WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO

STARK RM EAGLE LLC
3600 SOUTH LAKE DRIVE
ST. FRANCIS, WISCONSIN 53235-3716

DOC # 2009-0115144

03/11/2009 08:00A Fee:28.00

Page 1 of 4

Recorded in Official Records
County of Riverside

Larry W. Ward
Assessor, County Clerk & Recorder



S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
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only

Trustee Sale No. 08-24875 Loan No. RM EAGLE Title Order No. NCS-369156-LAZ TSG

29

**TRUSTEE'S DEED UPON SALE
AND BILL OF SALE**

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9



The undersigned grantor declares:

- 1) The Grantee herein was the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was..... \$44,022,223.54
- 3) The amount paid by the grantee at the trustee sale was..... \$20,000,000.00
- 4) The documentary transfer tax is \$ 0.00
- 5) Said property is in RANCHO MIRAGE

and FIRST AMERICAN TITLE INSURANCE COMPANY, as Trustee (herein called Trustee), as the duly appointed Trustee or substituted Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to

STARK RM EAGLE LLC, A WISCONSIN LIMITED LIABILITY COMPANY, as to an undivided 60% interest,

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of RIVERSIDE, State of California, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (and Fixture Filing) ("Deed of Trust") dated 03-14-2006 and executed by RM EAGLE LLC, A DELAWARE LIMITED LIABILITY COMPANY, as Trustor, and Recorded 03-14-2006, Instrument 2006-0181836 of official records of RIVERSIDE County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

Trustee Sale No.: 08-24875
Loan No.: RM EAGLE
Title Order No.: NCS-369156-LA2 TSG

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on 03-04-2009. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being \$20,000,000.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the time of said Trustee's Sale.

This sale was a unified sale of real and personal property. The undersigned further sells, transfers and conveys by quitclaim to grantee the personal property security and collateral, as described in the Notice of Sale. Such sale on behalf of the Secured Party is "AS IS, WHERE IS" WITH ALL FAULTS, AND WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND.

DATE: March 4, 2009

FIRST AMERICAN TITLE INSURANCE COMPANY

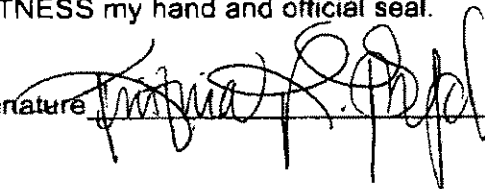


ARLENE C. BOWDITCH
STATE OF CALIFORNIA
COUNTY OF ORANGE

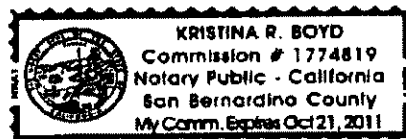
On 03-04-2009 before me, KRISTINA R. BOYD, Notary Public, personally appeared ARLENE C. BOWDITCH, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  _____

(Seal)



TS: 08-24875
ORDER NO: NCS-369156-LA2

EXHIBIT 'A'

The Land referred to is situated in the City of Rancho Mirage, County of Riverside, State of California, and is described as follows:

PARCEL 1: (APN NO.: 618-410-007 AND 004)

THAT PORTION OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN DEED TO COUNTY OF RIVERSIDE, RECORDED MAY 24, 1949 IN BOOK 1079 PAGE 60 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE NORTH LINE OF SAID SECTION 31, BEING A POINT ON SAID NORTH LINE NORTH 89° 42' 26" EAST, 40.00 FEET THEREON FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH 00° 09' 54" WEST, 2,660.80 FEET ON SAID EAST LINE; THENCE SOUTH 00° 10' 45" WEST, 1001.09 FEET ON SAID EAST LINE TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE WESTERLY OF 2,040.00 FEET RADIUS; THENCE SOUTHERLY 404.64 FEET ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 21' 53", TO THE WEST LINE OF SAID SECTION 31; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE ON THE SOUTH LINE OF SAID SECTION, NORTH 89° 50' 47" EAST, 1,972.62 FEET, NORTH 89° 51' 01" EAST, 2,651.43 FEET AND NORTH 89° 52' 18" EAST, 783.13 FEET TO THE SOUTHEAST CORNER OF SAID SECTION; THENCE NORTH 00° 12' 39" EAST, 5,335.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE ON THE NORTH LINE OF SAID SECTION SOUTH 89° 39' 19" WEST, 1,321.44 FEET; THENCE SOUTH 89° 44' 58" WEST, 1,322.01 FEET; AND SOUTH 89° 42' 26" WEST, 2,734.41 FEET TO THE POINT OF BEGINNING;

EXCEPTING THAT PORTION DESCRIBED BY DEED TO THE COUNTY OF RIVERSIDE, RECORDED OCTOBER 15, 1986 AS INSTRUMENT NO. 256010 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE CITY OF RANCHO MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2: (APN NO.: 674-430-007)

THAT PORTION OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF RIO DEL SOL ROAD (80.00 FEET WIDE) AS DESCRIBED IN THE DEED TO COUNTY OF RIVERSIDE, RECORDED AUGUST 2, 1949 IN BOOK 1099 PAGE 31 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE WEST LINE OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 6 EAST; SAID INTERSECTION BEING A POINT ON A CURVE IN SAID EAST LINE CONCAVE WESTERLY OF 2,040.00 FEET RADIUS TO WHICH A RADIAL BEARS SOUTH 78° 27' 22" EAST; THENCE SOUTH 00° 10' 45" WEST, 1,257.93 FEET ON SAID WEST LINE OF SECTION 31 TO THE SOUTHWEST CORNER OF SAID SECTION 31, BEING THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 89° 52' 25" WEST, 536.35 FEET ALONG THE SOUTH LINE OF SAID SECTION 36 TO THE INTERSECTION OF THE EAST LINE OF SAID DEL RIO DEL SOL

ROAD, SAID INTERSECTION BEING A POINT ON A CURVE OF SAID EAST LINE, CONCAVE
EASTERLY OF 1,960.00 FEET RADIUS TO WHICH A RADIAL BEARS NORTH 73° 55' 05" WEST;
THENCE ALONG SAID EAST LINE, NORTHERLY 482.81 FEET ALONG SAID CURVE, THROUGH A
CENTRAL ANGLE OF 14° 06' 50"; THENCE NORTH 30° 11' 45" EAST, 229.63 FEET TO THE
BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY OF 2,040.00 FOOT RADIUS AND
NORTHERLY 664.10 FEET ON SAID CURVE THROUGH A CENTRAL ANGLE OF 18° 39' 07" TO
THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE CITY OF RANCHO
MIRAGE, RECORDED FEBRUARY 11, 1987 AS INSTRUMENT NO. 40088 OF OFFICIAL RECORDS
OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 674-430-007-1 and 618-410-004-6 and 618-410-007-9

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067.

A true and correct copy of the foregoing document entitled (*specify*): **FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTOR'S PLAN OF REORGANIZATION (DATED FEBRUARY 13, 2013)** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 13, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- ATTORNEY FOR RONALD SCHWARTZ Kyra E Andrassy kandrassy@wglp.com
- ATTORNEY FOR NORTHWOODS Jay J Chung jaychung@leeanavchung.com
- ATTORNEY FOR INTERESTED PARTY Daniel Denny ddenny@gibsondunn.com
- ATTORNEY FOR OUST Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- ATTORNEY FOR RONALD SCHWARTZ Evan D Smiley esmiley@wglp.com
- ATTORNEY FOR RONALD SCHWARTZ Autumn D Spaeth aspaeth@wglp.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- ATTORNEY FOR VIRIDIAN Scott H Yun syun@stutman.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **February 13, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Via US Mail

Internal Revenue Service
Insolvency I Stop 5022
300 N. Los Angeles, St., #4062
Los Angeles, CA 90012

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **February 13, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service

The Honorable Catherine E. Bauer
U.S. Bankruptcy Court

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

411 W. Fourth St., #5165
Santa Ana, CA 92701

Service information continued on attached page

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

February 13, 2013
Date

Lindsey L. Smith
Printed Name

/s/ Lindsey L. Smith
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Stradella Investments, Inc.
28312 Avenida La Mancha
San Juan Capistrano, CA 92675

Office of the United States Trustee
Nancy S. Goldenberg
411 West Fourth St., Ste. 9041
Santa Ana, CA 92701-8000

Abdoirashid Boroumand
28312 Avenida La Mancha
San Juan Capistrano, CA 92675

Karlin and Peebles, LLP
8383 Wilshire Blvd., Ste. 708
Beverly Hills, CA 90211

Northwoods Corporation
11661 San Vicente Blvd., Ste. 1035
Los Angeles, CA 90049

Ronald Schwartz
c/o Guralnick & Gilliland, LLP
40-004 Cook Street, Ste. 3
Palm Desert, CA 92211

Sheppard Mullin
c/o Michael Steward, Esq.
650 Town Center Dr., 4th Floor
Costa Mesa, CA 92626

St. Cloud Company, Inc.
28312 Avenida la Mancha
San Juan Capistrano, CA 92675

Viridian Investments Services, Ltd.
Wickham's Cay
PO Box 662, Road Town, Tortola
British Virgin Islands

Internal Revenue Service
Centralized Insolvency Operations
P.O. Box 21126
Philadelphia, PA 19114-0326

Employment Development Dept.
Bankruptcy Group MIC 92E
P.O. Box 826880
Sacramento, CA 94280-0001

Franchise Tax Board
Attn: Bankruptcy
P.O. Box 2952
Sacramento, CA 95812-2952

Securities & Exchange Commission
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-5627

Santa Ana Division
411 West Fourth Street
Suite 2030
Santa Ana, CA 92701-4500